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Medicaid's Survival is No Small Achievement
By Congressman John D. Dingell

President Clinton's busy pen this week signs into law sweeping and important legislation to raise the minimum wage and reform both welfare and the health insurance market. Little noticed and lightly remarked upon will be another event of supreme importance to 37 million American seniors, mothers, children, people with disabilities and others: the continued survival of Medicaid.

Regrettably, some of my most prized allies in legislative fights, from the establishment of Medicare and passage of civil rights through the health care reform battles of the last Congress, have overlooked this achievement.

Medicaid survives not for lack of effort by the majority party in Congress, who have mounted both frontal assaults and sneak attacks.

Last fall, during budget deliberations, headlines across the country accurately described the GOP's design to replace Medicaid with a block grant program, "Medigrant" (the Post, September 23: "House Panel Votes to End Medicaid"). Those proposals also removed the protections against impoverishment by families and spouses who had to pay for nursing home care for their elderly parents and relatives.

Much the same script was repeated early this summer during yet another budget reconciliation. In June, in an act of startling (or perhaps foolish) ideological consistency, a

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Commerce Committee mark-up provided ample evidence that the majority party in Congress had no intention of guaranteeing medical care to anyone. A series of amendments were offered to clarify whether anyone would be guaranteed health care in the future under Medicaid:

What about guaranteed coverage for the elderly needing nursing home care? Defeated on a party-line vote. What about people with Alzheimer's disease? Defeated on a party-line vote. How about veterans needing nursing home care? Elderly beneficiaries now living in nursing homes? Children with conditions identified during a medical screening under the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program? Pregnant women and infants? All were defeated on party-line votes.

Even as recently as last month, when Medicaid was ostensibly "off the table," the welfare reform bill contained provisions ending guarantees of medical care for poor children and their mothers.

Yet Medicaid lives. Why?

One reason is that a curious coalition formed. Strangely enough, the minority party in Congress was unified. The "Blue Dogs" -- those fiscal conservatives who led the balanced budget fight -- stood firm in insisting that federal funds should not be parceled out without clear criteria for their use. They had their counterparts in the Senate in the form of the bipartisan duo of John Chaffee and John Breaux, and eventually, they were joined by moderate Republicans in the

House.

Oh yes: there was one other very important player. None of this would have happened if the President had not made clear by words and deeds his refusal to accept a budget doing away with Medicaid. Just as important, he refused to let welfare reform serve as the Trojan Horse for the erosion or abolition of our second largest health care program.

It's important to remember who Medicaid serves. Medicaid is America's largest single purchaser of nursing home services and other long-term care. It pays for more than half the nursing home care provided in this country; of the 1.5 million nursing home residents nationwide, about two-thirds, or one million, are covered by Medicaid, mostly at State option.

This year more than 4 million adults 65 and over will receive services from Medicaid. About one-third of these are eligible because they are receiving Supplemental Security Income (SSI) assistance. Others have lost nearly all their assets to the high medical or long-term care expenses that often accompany illness or disease later in life. An estimated 1.9 million seniors are eligible because their incomes are below 120 percent of the poverty level, and they receive Medicaid assistance to pay their Medicare premiums, co-insurance, and deductibles (but not nursing home care or prescription drugs). About 6 million disabled individuals and about 7.4 million low-income women are eligible for Medicaid in 1996. And Medicaid covers about one-fourth of America's children — 70 million in number.

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The Congressional majority argued that they could cut \$72 billion in Federal spending from Medicaid over six years -- and as much as \$250 billion overall in combined Federal and State spending -- and still provide a guarantee of health care in their block grant. But the fine print in their legislation went out of its way to shred any assurance that such coverage must be provided, by explicitly prohibiting any person from trying to enforce any such guarantee against a State in Federal court.

Medicaid is not without its flaws or abuses. Over the years states have concocted a variety of scams to divert money from health care to other uses. Some states brazenly admit that their Medicaid payments have gone to build roads, prisons, and bridges (Louisiana); others have miraculously awarded tax cuts in almost the precise amount of their additional Medicaid allotments (New Hampshire). Too many Governors see Medicaid as an opportunity to shrink State deficits at the expense of the Federal deficit. In fact, certain Governors were the leading force in trying to remove all guarantees of medical care contained in Medicaid today.

Medicaid, for the time being, survives to provide health care for another day. In the 104th Congress, that is no small achievement. Give the President -- and his allies in both parties -- the credit they deserve.

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EXECUTIVE DIRECTOR**HEALTH REFORM BILL CRIMINALIZES GIFTS TO QUALIFY FOR MEDICAID**

Buried in the Kassebaum-Kennedy health reform bill (H.R. 3103) just passed by both Houses of Congress is a provision making it a federal crime to transfer assets to qualify for Medicaid for nursing home or other long-term care. Such transfers are already penalized under Medicaid law: making gifts or establishing trusts without receiving fair value results in a delay in eligibility for Medicaid coverage for such services. However, this activity is not currently a crime.

This provision, invisible in the public discussion and press coverage of the legislation, passed with no hearings, no debate and no effort on the part of any member of Congress clearly to identify the particular activity that is the source of the problem addressed by it. In fact, its existence in the bill appears to be a surprise to many of the proponents of the legislation.

The provision is unnecessary, since individuals who give away money to qualify for Medicaid are already penalized. It is poorly drafted; it is impossible to tell from the report on the legislation whether the activity is a felony (punishable by \$25,000 fine and/or five years in prison) or a misdemeanor (punishable by \$10,000 fine and/or one year in prison). If it were enforced, the people likely to be jailed or fined are old, sick people needing nursing home care. The more probable result of the existence of the provision is that people will be confused about its application and discouraged from applying for Medicaid.

Following are issues raised by the provision.

1. Criminalization of transfers is too harsh and will have negative unintended consequences beyond actual prosecutions.

Anyone who applies for Medicaid within three years of making a gift could be criminally liable. For example, a grandmother applying for Medicaid who made a five thousand dollar gift to her granddaughter for college two and one half years ago could be charged with this crime. Under current law, the delay in eligibility is related to the amount of the gift on the premise that if the money had not been given away, it could be used to pay for nursing home care. The grandmother could possibly lose Medicaid for one to two months from the time of her gift. Under the criminal provision, the only way to assure protection from its reaches is to avoid applying for benefits for an absolute period of three years.

working with federal officials to provide whatever assistance may prove helpful. In that spirit, we offer the following observations and recommendations:

HCFA 1)

States must be encouraged to carry out a unified eligibility process for both new welfare programs and Medicaid. HCFA should create financial incentives for states to adopt a unified process.

HCFA 2)

The Administration should issue guidance clarifying that legal immigrants already in the U.S. remain eligible for Medicaid and other public benefits until the state affirmatively exercises its obligation to disqualify them.

3) The Department of Justice included medical and public health services on the provisional list of programs, services, and assistance the Attorney General has exempted from the immigrant eligibility limitations. We urge the Administration to make this exemption permanent.

4) The Administration should issue guidance clarifying that the immigrant eligibility limitations in the Act apply *only* to public assistance and benefits provided under mandatory spending authority.

HCFA 5)

We recommend that the Administration clarify that the definitions of "emergency medical condition" in the Act and in Section 1903(v) of Medicaid have the same meaning.

HCFA 6)

As hospitals experience a reduction in Medicaid utilization because of the Act's requirements, they may also see their Medicare and Medicaid DSH payments go down. The Administration should take steps to offset the loss of DSH funding.

7) The Administration's regulations governing verification of eligibility status should include current law protections, and should not impose new administrative burdens on health care providers or require public hospital officials to disclose identifying information to the INS.

IMPACT OF WELFARE REFORM LEGISLATION
ON THE HEALTH CARE SAFETY NET

1. ***Bifurcated Eligibility Processes for Welfare and Medicaid Could Create Adverse Selection Problems***

Since the inception of the Medicaid program in 1965, the receipt of welfare benefits under the AFDC program (or, in the case of medically-needy persons, the link to a welfare category) was an eligibility category under Medicaid. Consequently, AFDC recipients were automatically provided with Medicaid coverage when they applied for welfare; no separate application for Medicaid was required.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 severs the historic relationship between AFDC and Medicaid by repealing the AFDC program (for all citations of the Act, see Tab 1). States are required to continue Medicaid coverage for cash assistance recipients who would have been eligible under the AFDC eligibility rules in effect on July 16, 1996, even if the individual does not qualify for cash assistance under the state's new welfare program. Section 114(a)-(b). But the Act does not require states to continue the historic link between the application processes for welfare and Medicaid. States are given the option to link the application processes, but also have the option of conducting separate eligibility determinations for the two programs.

NAPH is concerned that de-linking the welfare and Medicaid eligibility determination processes will have a damaging impact on Medicaid enrollment and on safety net providers. The experience of the Medicaid program over the past 30 years, as well as several studies, show that when eligible individuals have to go through a separate eligibility process for Medicaid instead of automatically enrolling when they apply for AFDC or SSI, they have a lower rate of enrollment in Medicaid. Moreover, enrollment for these eligible individuals tends to happen at the point when they need medical care (i.e., they are ill or injured), instead of when they are healthy and can benefit from preventive and primary care provided through Medicaid. As a result, these individuals will experience more serious, and therefore more expensive, illnesses.

Encouraging eligible individuals to enroll in Medicaid at the point of medical service, a will exacerbate an adverse selection problem already facing managed care plans operated by safety net providers. These plans already tend to have sicker, costlier patient populations because of the historic relationship between these patient populations and safety net providers. A bifurcated eligibility process will result in even more Medicaid eligible individuals enrolling in safety net plans when they need more expensive care. Furthermore, adverse selection gives states with capitated Medicaid programs an incentive to enroll Medicaid eligible individuals at the point of service. The state will be paying plans a capitated rate based on the prior year's case mix, which will generally be a healthier population. But plans will be providing more, and more costly, services than anticipated by the capitation rate because its patient population will be sicker.

NAPH believes that states must be encouraged to carry out a unified eligibility process for both TANF and Medicaid, and urges HCFA to create financial incentives for states to adopt a process that enrolls eligible individuals in TANF and Medicaid at the time the

individual enrolls in TANF. The Act already provides for a \$500 million pool of funding to cover additional administrative costs that states might incur because of the transition to the new welfare program (see Section 114H). This pool could be utilized to structure incentives.

2. *It is Uncertain if Current Legal Residents Remain Eligible for Medicaid in the Absence of State Disqualification*

The Act gives states authority to disqualify certain legal immigrants already present in the U.S. from eligibility (for those legal immigrants who are not disqualified from Medicaid through termination of their SSI coverage). Section 402(b). It is unclear, however, whether the Act automatically terminates Medicaid coverage for current legal immigrants if a state has not enacted legislation disqualifying current legal immigrants. For example, California Governor Pete Wilson has interpreted the state option in the Act as requiring the state to drop current legal immigrants from Medicaid unless and until the state affirmatively decides to retain eligibility for this population. This uncertainty is exacerbated by Section 402(b)(2)(D), entitled "transition for those currently receiving benefits," which states that current legal residents receiving benefits on August 22, 1996 "shall continue to be eligible to receive such benefits until January 1, 1997." This provision can be read to imply that current legal aliens lose their benefits by default on January 1, 1997.

In this situation, the meaning of the statute is not clear from the language, and it is therefore inappropriate to rely solely on the statutory language to interpret the statute. Caminetti v. United States, 242 U.S. 470, 490 (1917); Church of The Holy Trinity v. United States, 143 U.S. 457, 457 (1892). Here, the Act's legislative history and other evidence make it clear that Congress intended that legal residents already residing in the U.S. would remain eligible for public benefits until a state affirmatively exercised its authority under Section 402(b) to disqualify them.

Support for this conclusion comes from the conference history of the Act. The Act as passed by the House would have extended the bar on eligibility for benefits to legal immigrants already in the U.S. The statutory language specifically stated that "an alien who is not a qualified alien . . . is not eligible for any specified Federal program (as defined in paragraph (3))." H.R. 3437, 104th Cong., 2d Sess., § 4402(a)(1) (see Tab 3). Paragraph (3) listed three programs: SSI, food stamps, and Medicaid. H.R. 3437, § 4402(3).

The House leadership made this change shortly before floor debate on the Act began, as a way of obtaining additional federal savings from the bill. The Senate, however, did not make the same change in its bill. When the conference committee reconciled the two bills, it adopted the Senate provisions, which did not require states to cut off benefits received by current legal immigrants. The conference agreement, like the Senate-approved bill, only gave states the option of cutting off benefits. It did not *require* that they do so. In light of this conclusion, the provision regarding the transition for immigrants currently receiving benefits works as a protection for current legal immigrants, ensuring that states do not exercise their authority to cut off benefits before January 1, 1997.

Furthermore, other provisions in Title IV demonstrate that when Congress wanted to cut off benefits to immigrants *before* a state exercised its authority to do otherwise, it explicitly said so. For instance, in a provision denying state and local benefits for undocumented aliens,

Congress gives states the option to provide these benefits to undocumented aliens. But Congress explicitly stated that states desiring to do so must enact a state law after the enactment of the federal welfare reform legislation. It is therefore reasonable to assume that had Congress intended for current legal immigrants to be disqualified from Medicaid until the state legislature affirmatively decided to continue coverage, Congress would have expressly said so.

Based on the foregoing, ***NAPH recommends that the Administration issue guidance clarifying that legal immigrants already in the U.S. remain eligible for Medicaid unless their state affirmatively changes its eligibility requirements for this population.***

3. *The Attorney General's Provisional Specification of Programs, Services, and Assistance Exempted from Limitations on Alien Eligibility Should Be Included in Future Permanent Regulations*

Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act (the Act) provides that aliens who are not qualified aliens (as defined in Section 431 of the Act -- i.e., undocumented aliens) are not eligible for any federal public benefits. Section 411 makes this same population of aliens ineligible for state and local public benefits unless the State enacts new legislation after August 22, 1996 that affirmatively extends such eligibility. In addition, Section 403 bars qualified legal aliens entering the U.S. after August 22, 1996 from eligibility for means-tested federal public benefits for a five year period.

The Act, however, grants the Attorney General authority to establish limited exceptions to these eligibility limitations for certain benefits. These benefits include:

Programs, services, or assistance . . . specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual's income or resources; and (C) are necessary for the protection of life or safety. Sections 401(b)(D), 403(c)(2)(G), 411(b)(4).

In a Notice issued August 23, 1996, the Department of Justice (DOJ) provided a preliminary "provisional specification" of programs, services, and assistance that will be exempt from the eligibility limitations, pending completion of the DOJ's ongoing consultations with other federal agencies regarding the scope and interpretation of the eligibility limitations in Sections 401, 403, and 411 (see Tab 9). The provisional specifications were effective immediately upon issuance of the DOJ Notice.

Included in the "provisional specifications" are "medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety." NAPH is encouraged by the inclusion of medical and public health services in the list of provisionally specified programs. As defined in the DOJ notice, these medical and public health services are a fundamental part of the life-saving assistance that public hospitals and other safety net providers offer to the

most vulnerable populations in our nation's urban areas. ***We urge the Administration to include medical and public health services on the permanent list of programs, services, and assistance exempted from the immigrant eligibility limitations.***

4. *The Administration Should Clarify That the Eligibility Limitations Do Not Apply to Appropriated Health Programs Funded on a Discretionary Basis*

The statutory language is ambiguous on whether future legal immigrants entering the U.S. after August 22, 1996 should be barred from assistance provided under appropriated health programs as well as assistance provided through mandatory spending programs, such as Medicaid. In Section 403, the Act bars legal aliens entering the U.S. after August 22, 1996 from any "federal means-tested public benefit" for a five-year period. The term "federal means-tested public benefit," however, is not defined in the Act.

As the U.S. Supreme Court has stated many times, when the meaning of a statute is not clear, it is appropriate to look to the legislative history and other evidence to discern Congress' true intent in enacting the statute, and to avoid producing a result that is demonstrably inconsistent with clearly expressed congressional intent. See, e.g., Caminetti, 242 U.S. at 490 and Holy Trinity, 143 U.S. at 457. This is the converse of the plain meaning rule, which holds that if the meaning of a word or words is clear from the statutory language, there is no need to resort to legislative history or other extraneous sources. Mallard v. United States, 490 U.S. 296, 300 (1989).

Turning to the legislative history, the conference report notes that the definition of "federal means-tested public benefit" originally included in the bill was deleted on a Byrd rule challenge, but would have read:

a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit.

Joint Explanatory Statement of the Conference Committee, 142 Cong. Rec. H8,927 (daily ed. July 30, 1996) (see Tab 2).

The conference report further states that "It is the intent of the conferees that this definition be presumed to be in place for purposes of this title." Id. This conference language, however, is ineffective because of the Byrd rule and corresponding federal statutory requirements governing the Senate's budget reconciliation process.

Congress debated and enacted the Act as part of the FY 1996 budget reconciliation process. Under Section 313 of the Congressional Budget Act of 1974 (2 U.S.C. § 644 (1996)), commonly known as the Byrd Rule, reconciliation bills cannot contain matter that is extraneous to spending cuts on savings. "Extraneous" is defined under the Byrd Rule, relevant to the Act, as "a provision that is not in the jurisdiction of the Committee with jurisdiction over said title." 2 U.S.C. § 644(b)(1)(C) (see Tab 6). If a point of order is made against an allegedly extraneous provision and 60 votes cannot be mustered to override it, the extraneous provision must be stricken from the bill. 2 U.S.C. § 644(a).

As a colloquy among Sens. Exon, Graham, and Kennedy during Senate floor debate on the conference report explains, the definition of "federal means-tested benefit" was deleted during floor consideration of the Senate bill on a Byrd rule challenge because it contained material that related to *discretionary spending* programs that are outside the jurisdiction of the Senate Finance Committee (see Tab 4). Thus, it was subject to being stricken on a Byrd Rule challenge. Sen. Exon stated the point directly during the colloquy:

During floor consideration of this legislation, we struck [the provisions defining "federal means tested benefit"] because they contained material that was not under the jurisdiction of the Finance Committee, namely many discretionary programs . . . [I]t is clear that this bill should not be used to make changes in discretionary programs, and those who look to interpret the action of the Congress should take this into account.
142 Cong. Rec. S9,400 (daily ed. Aug. 1, 1996) (statement of Sen. Exon).

Because the Byrd Rule challenge was sustained, the Act applies immigrant eligibility limitations *only* to public assistance and benefits provided under mandatory spending authority. The definition contained in the report language should be considered only to the extent that it encompasses mandatory spending programs. ***We urge the Administration to issue guidance clarifying this matter.***

5. *The Definition of Covered Emergency Medical Condition in the Act Should be Construed the Same as Under Medicaid*

Although the Act bars all undocumented aliens from Medicaid, and denies Medicaid eligibility to future legal aliens for five years, the Act exempts treatment and services for an emergency medical condition. Sections 401(b)(1)(A), 403(c)(2)(A). The Act uses the definition of emergency medical condition in current Medicaid law, at Section 1903(v) (see Tab 5).

Section 1903(v) defines an emergency medical condition as:

"a medical condition (*including labor and delivery*) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in--

- (A) placing the patient's health in serious jeopardy,
- (B) serious impairment to bodily functions; or
- (C) serious dysfunction of any bodily organ or part.

Section 1903(v) (codified at 42 U.S.C. 1396b(v) (emphasis added).

The conference report notes that the bill's drafters intended this definition to be "very narrow," stating "the conferees intend that [the definition] only apply to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature." Joint Explanatory Statement at H8,926 (see Tab 2).

Well-accepted principles of statutory interpretation, however, require that the 1903(v) definition of "emergency medical condition" be interpreted as having the same meaning under the Act as it does under Medicaid law (and through judicial interpretation thereof). The plain meaning rule specifically states that if the meaning of a word or words is clear from the statutory language, there is no need to resort to legislative history. Mallard, 490 U.S. at 300. It is clear from the statutory language in the Act that Congress intended "emergency medical condition" to have the same meaning in the Act as it does under Medicaid, since the relevant provision in the Act expressly cross-references Section 1903(v) of title XIX of the Social Security Act. "Emergency medical condition" as defined in 1903(v) encompasses every woman in active labor because a woman in active labor is in need of immediate medical attention. The conference report language is therefore irrelevant. ***NAPH urges the Administration to clarify that the definitions of "emergency medical condition" in the Act and in 1903(v) have the same meaning.***

6. *DSH Payments Should be Increased to Offset Hospitals' Increased Indigent Care Costs and the Impact of Fewer Medicaid Eligible Legal Immigrants on the Calculation of DSH Criteria and Payments*

The Congressional Budget Office estimates that by 2002, about 260,000 elderly legal immigrants, 65,000 disabled individuals, 175,000 other adults, and 140,000 children who would be eligible for Medicaid under current law will be denied coverage because of the Act. If an uninsured low income legal immigrant experiences an injury or illness, and the immigrant's sponsor is impoverished, it is unlikely that the hospital providing care to the immigrant will receive any reimbursement. This will greatly increase the uncompensated care burdens facing public hospitals, which serve a disproportionate number of immigrants.

Ironically, however, hospitals' Medicare disproportionate share hospital (DSH) payments will be decreased in the face of this additional uncompensated care burden. Although the Medicare DSH program is intended partly to help cover hospitals' uncompensated care burdens, it does so not directly but through the use of proxies for uncompensated care. Accordingly, Medicare DSH payments are based on two such proxies. First, they measure a hospital's Medicaid utilization. Because Medicaid days will decrease as immigrants lose coverage under the Act, the DSH payments will decrease accordingly. The second proxy used in the Medicare DSH formula is utilization by SSI beneficiaries. Since the Act bars most legal immigrants from SSI eligibility, Medicare DSH payments will be further reduced to reflect the decrease in SSI utilization. As a result, the significant increase in hospitals' uncompensated care burden imposed by the Act will be met with a corresponding reduction in reimbursement through the Medicare DSH program.

While the Health Care Financing Administration's (HCFA's) ability to modify the Medicare DSH formula is limited because the formula is written into the statute, there nevertheless are measures HCFA could take to interpret the current statutory formula more broadly. Such efforts would at least indirectly compensate hospitals for the losses they will experience upon implementation of the Act. For example, HCFA recently solicited comments on revising the Medicare DSH formula to better approximate actual uncompensated care burdens. 61 Fed. Reg. 27,444 (May 31, 1996). NAPH and several other organizations responded with a range of suggestions. HCFA's response to the comments received,

however, was disappointing, as it rejected most of the ideas submitted. 61 Fed. Reg. 46,166 (Aug. 30, 1996). HCFA even rejected the most incremental suggestion offered by NAPH and others -- that in measuring Medicaid utilization under the formula, it use Medicaid eligible days rather than days actually paid by Medicaid. The broader interpretation has been mandated by two federal courts of appeals which have considered the question. Yet HCFA is still refusing to implement the change outside of those circuits. ***We recommend that HCFA review the comments received on modifying Medicare DSH, particularly with regard to the measurement of Medicaid days, to implement a broader interpretation as a means of partially offsetting the additional burdens imposed by the Act.***

With respect to the Medicaid DSH program, the impact of the Act on these payments will vary by state. As a general matter, the additional uncompensated care burden will cause the hospital-specific DSH caps (section 1923(g) of the Social Security Act) to increase as they are partly based on the unreimbursed cost of providing care to the uninsured. Yet for hospitals in states in which overall DSH payments are at or near their statewide cap imposed by section 1923(f) of the Social Security Act, the increase in the hospital-specific DSH cap is not going to be helpful, unless the state agrees to reallocate DSH funding to assist hospitals burdened by a new immigrant-based uncompensated care burden. Moreover, if a state bases DSH payments on Medicaid utilization and not uncompensated care, the loss of immigrant eligibility for Medicaid will perversely reduce DSH payments to hospitals that need them the most. ***We therefore recommend that HCFA analyze the impact of the Act on hospitals' DSH payments.***

Moreover, we believe that the DSH program can and should be restructured or replaced with a program of more targeted payments directed at those hospitals that are truly in need of supplemental assistance. Part of the criteria for eligibility for such payments should be based on the level of uncompensated care, including care to legal immigrants, particularly in light of the recent passage of the Act. Although a comprehensive discussion of restructuring DSH is beyond the scope of this Memorandum, we look forward to working with HCFA and the Administration in more detail on this issue in the near future.

7. *Requirements Governing Verification of Eligibility Status Should Include Current Law Protections and Should Not Impose New Administrative Burdens on Health Care Providers or Require They Disclose Identifying Information to the INS*

The Act requires the Attorney General, after consultation with the Department of Health and Human Services, to issue regulations requiring verification of the alien and eligibility status of any individual applying for federal public benefits. The Attorney General must issue these regulations within 18 months of August 22, 1996, or no later than February 22, 1998. States must implement a verification system consistent with the federal regulations no later than 24 months following the issuance of the federal regulations.

The Act directs that the federal regulations "shall, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1137 of the Social Security Act." Section 432(a). Section 1137 sets out the requirements under current law for income and eligibility verification of immigration status. It is the authority under which the current verification system, the Systematic Alien Verification for Eligibility (SAVE) program, operates (see Tab 7).

Many aliens apply for Medicaid when they visit an emergency room or public hospital clinic for treatment of a health problem. Requiring verification of alien status can strongly deter aliens from seeking care, since in practice it is often the hospital that must gather the necessary verifying information. In addition, verification requirements could jeopardize patient care because in order to administer verifications in a nondiscriminatory manner, hospitals would have to ascertain the immigration status of *every person* who comes to the emergency department. In a large urban public hospital emergency room, this might mean conducting verification checks on *over 1,000 patients a day*. Verification requirements also place hospitals in an ethical bind; as health care providers, they have an obligation to care for patients--indeed, it is their mission to provide care, not engage in law enforcement duties.

For these reasons, Section 1137, and related statutory provisions in the Immigration Reform and Control Act of 1986 (IRCA), include important protections designed to minimize this deterrent effect. Section 1137 exempts Medicaid emergency medical care from the verification requirements. Therefore, any alien seeking only treatment for an emergency medical condition does not have to disclose identifying information. In addition, the provisions in IRCA establishing the SAVE program prohibit the Immigration and Naturalization Service (INS) from using any information gathered through the SAVE program for enforcement purposes (e.g., deportation). That section states "[the SAVE system] shall not be used by the [INS] for administrative (noncriminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved." (see Tab 8)

NAPH recommends that rather than develop a new verification system under the Act, the Attorney General and INS continue operation of the SAVE system and issue regulations ensuring any necessary changes to the SAVE system as might be required under the Act are made. This approach would be the optimal way of ensuring that the regulations elicit and exchange information in a "form and manner" consistent with Section 1137. Should the Attorney General and INS discontinue the SAVE system and implement a new verification system, ***NAPH urges that the protections of Section 1137 be included in the implementing regulations.***

In addition to the requirement that states establish verification systems, the Act directs states to furnish the INS with "the name and address of, and any other identifying information on, any individual who the state knows is unlawfully in the United States." Section 404(b). NAPH is concerned that this requirement will be read as requiring public hospital officials to disclose to the INS any information they might obtain through care and treatment of patients. For all the reasons set out above, we maintain as a matter of sound health policy that public hospitals should not be required to conduct verifications of immigration status. ***We urge the Administration to clarify that public hospitals are not required to disclose identifying information to the INS.***

ATTACHMENTS

- Tab 1 Referenced Sections of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
- Tab 2 Referenced Sections of Joint Explanatory Statement
- Tab 3 House-approved Act, H.R. 3437, Section 4402
- Tab 4 Colloquy Among Sens. Exon, Graham, and Kennedy
- Tab 5 Section 1903(v) of the Social Security Act (42 U.S.C. § 1396b(v)(3))
- Tab 6 Byrd Rule (2 U.S.C. § 644)
- Tab 7 Section 1137 (42 U.S.C. § 1320b-7)
- Tab 8 Immigration Reform and Control Act of 1986 -- section governing SAVE system
- Tab 9 Notice from Department of Justice (August 23, 1996)

shall provide such information and assistance as the Commissioner deems necessary to enable the Commissioner to comply with this section.

(b) STUDY AND REPORT.—

(1) **IN GENERAL.**—The Commissioner shall conduct a study and issue a report to Congress which examines different methods of improving the social security card application process.

(2) **ELEMENTS OF STUDY.**—The study shall include an evaluation of the cost and work load implications of issuing a counterfeit-resistant social security card for all individuals over a 3-, 5-, and 10-year period. The study shall also evaluate the feasibility and cost implications of imposing a user fee for replacement cards and cards issued to individuals who apply for such a card prior to the scheduled 3-, 5-, and 10-year phase-in options.

(3) **DISTRIBUTION OF REPORT.**—The Commissioner shall submit copies of the report described in this subsection along with a facsimile of the prototype card as described in subsection (a) to the Committees on Ways and Means and Judiciary of the House of Representatives and the Committees on Finance and Judiciary of the Senate within 1 year after the date of the enactment of this Act.

SEC. 112. MODIFICATIONS TO THE JOB OPPORTUNITIES FOR CERTAIN LOW-INCOME INDIVIDUALS PROGRAM.

Section 505 of the Family Support Act of 1988 (42 U.S.C. 1315 note) is amended—

(1) in the heading, by striking "demonstration";

(2) by striking "demonstration" each place such term appears;

(3) in subsection (a), by striking "in each of fiscal years" and all that follows through "10" and inserting "shall enter into agreements with";

(4) in subsection (b)(3), by striking "aid to families with dependent children under part A of title IV of the Social Security Act" and inserting "assistance under the program funded part A of title IV of the Social Security Act of the State in which the individual resides";

(5) in subsection (c)—

(A) in paragraph (1)(C), by striking "aid to families with dependent children under title IV of the Social Security Act" and inserting "assistance under a State program funded part A of title IV of the Social Security Act";

(B) in paragraph (2), by striking "aid to families with dependent children under title IV of such Act" and inserting "assistance under a State program funded part A of title IV of the Social Security Act";

(6) in subsection (d), by striking "job opportunities and basic skills training program (as provided for under title IV of the Social Security Act)" and inserting "the State program funded under part A of title IV of the Social Security Act"; and

(7) by striking subsections (e) through (g) and inserting the following:

"(e) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of conducting projects under this section, there is authorized to be appropriated an amount not to exceed \$25,000,000 for any fiscal year."

SEC. 113. SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL FOR TECHNICAL AND CONFORMING AMENDMENTS.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services and the Commissioner of Social Security, in consultation, as appropriate, with the heads of other Federal agencies, shall submit to the appropriate committees of Congress a legislative proposal proposing such technical and conforming amendments as are necessary to bring

the law into conformity with the policy embodied in this title.

SEC. 114. ASSURING MEDICAID COVERAGE FOR LOW-INCOME FAMILIES.

(a) **IN GENERAL.**—Title XIX is amended—

(1) by redesignating section 1931 as section 1932; and

(2) by inserting after section 1930 the following new section:

"ASSURING COVERAGE FOR CERTAIN LOW-INCOME FAMILIES

"SEC. 1931. (a) REFERENCES TO TITLE IV—ARE REFERENCES TO PRE-WELFARE-REFORM PROVISIONS.—Subject to the succeeding provisions of this section, with respect to a State any reference in this title (or any other provision of law in relation to the operation of this title) to a provision of part A of title IV, or a State plan under such part (or a provision of such a plan), including income and resource standards and income and resource methodologies under such part or plan, shall be considered a reference to such a provision or plan as in effect, as of July 16, 1996, with respect to the State.

"(b) APPLICATION OF PRE-WELFARE-REFORM ELIGIBILITY CRITERIA.—

"(1) IN GENERAL.—For purposes of this title, subject to paragraphs (2) and (3), in determining eligibility for medical assistance—

"(A) an individual shall be treated as receiving aid or assistance under a State plan approved under part A of title IV only if the individual meets—

"(i) the income and resource standards for determining eligibility under such plan, and

"(ii) the eligibility requirements of such plan under subsections (a) through (c) of section 406 and section 407(a), as in effect as of July 16, 1996; and

"(B) the income and resource methodologies under such plan as of such date shall be used in the determination of whether any individual meets income and resource standards under such plan.

"(2) STATE OPTION.—For purposes of applying this section, a State—

"(A) may lower its income standards applicable with respect to part A of title IV, but not below the income standards applicable under its State plan under such part on May 1, 1988;

"(B) may increase income or resource standards under the State plan referred to in paragraph (1) over a period (beginning after July 16, 1996) by a percentage that does not exceed the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) over such period; and

"(C) may use income and resource methodologies that are less restrictive than the methodologies used under the State plan under such part as of July 16, 1996.

"(3) OPTION TO TERMINATE MEDICAL ASSISTANCE FOR FAILURE TO MEET WORK REQUIREMENT.—

"(A) INDIVIDUALS RECEIVING CASH ASSISTANCE UNDER TANF.—In the case of an individual who—

"(i) is receiving cash assistance under a State program funded under part A of title IV,

"(ii) is eligible for medical assistance under this title on a basis not related to section 1902(l), and

"(iii) has the cash assistance under such program terminated pursuant to section 407(e)(1)(B) (as in effect on or after the welfare reform effective date) because of refusing to work,

the State may terminate such individual's eligibility for medical assistance under this title until such time as there no longer is a basis for the termination of such cash assistance because of such refusal.

"(B) EXCEPTION FOR CHILDREN.—Subparagraph (A) shall not be construed as permitting a State to terminate medical assistance for a minor child who is not the head of a household receiving assistance under a State program funded under part A of title IV.

"(c) TREATMENT FOR PURPOSES OF TRANSITIONAL COVERAGE PROVISIONS.—

"(1) TRANSITION IN THE CASE OF CHILD SUPPORT COLLECTIONS.—The provisions of section 406(h) (as in effect on July 16, 1996) shall apply, in relation to this title, with respect to individuals (and families composed of individuals) who are described in subsection (b)(1)(A), in the same manner as they applied before such date with respect to individuals who became ineligible for aid to families with dependent children as a result (wholly or partly) of the collection of child or spousal support under part D of title IV.

"(2) TRANSITION IN THE CASE OF EARNINGS FROM EMPLOYMENT.—For continued medical assistance in the case of individuals (and families composed of individuals) described in subsection (b)(1)(A) who would otherwise become ineligible because of hours or income from employment, see sections 1925 and 1902(e)(1).

"(d) WAIVERS.—In the case of a waiver of a provision of part A of title IV in effect with respect to a State as of July 16, 1996, or which is submitted to the Secretary before the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and approved by the Secretary on or before July 1, 1997, if the waiver affects eligibility of individuals for medical assistance under this title, such waiver may (but need not) continue to be applied, at the option of the State, in relation to this title after the date the waiver would otherwise expire.

"(e) STATE OPTION TO USE 1 APPLICATION FORM.—Nothing in this section, or part A of title IV, shall be construed as preventing a State from providing for the same application form for assistance under a State program funded under part A of title IV (on or after the welfare reform effective date) and for medical assistance under this title.

"(f) ADDITIONAL RULES OF CONSTRUCTION.—

"(1) With respect to the reference in section 1902(a)(5) to a State plan approved under part A of title IV, a State may treat such reference as a reference either to a State program funded under such part (as in effect on and after the welfare reform effective date) or to the State plan under this title.

"(2) Any reference in section 1902(a)(55) to a State plan approved under part A of title IV shall be deemed a reference to a State program funded under such part.

"(3) In applying section 1903(f), the applicable income limitation otherwise determined shall be subject to increase in the same manner as income or resource standards of a State may be increased under subsection (b)(2)(B).

"(g) RELATION TO OTHER PROVISIONS.—The provisions of this section shall apply notwithstanding any other provision of this Act.

"(h) TRANSITIONAL INCREASED FEDERAL MATCHING RATE FOR INCREASED ADMINISTRATIVE COSTS.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall provide that with respect to administrative expenditures described in paragraph (2) the per centum specified in section 1903(a)(7) shall be increased to such percentage as the Secretary specifies.

"(2) ADMINISTRATIVE EXPENDITURES DESCRIBED.—The administrative expenditures described in this paragraph are expenditures described in section 1903(a)(7) that a State demonstrates to the satisfaction of the Secretary are attributable to administrative costs of eligibility determinations that (but

for the enactment of this section) would not be incurred.

(3) **LIMITATION.**—The total amount of additional Federal funds that are expended as a result of the application of this subsection for the period beginning with fiscal year 1997 and ending with fiscal year 2000 shall not exceed \$500,000,000. In applying this paragraph, the Secretary shall ensure the equitable distribution of additional funds among the States.

(4) **TIME LIMITATION.**—This subsection shall only apply with respect to a State for expenditures incurred during the first 12 calendar quarters in which the State program funded under part A of title IV (as in effect on and after the welfare reform effective date) is in effect.

(1) **WELFARE REFORM EFFECTIVE DATE.**—In this section, the term 'welfare reform effective date' means the effective date, with respect to a State, of title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as specified in section 116 of such Act).

(b) **PLAN AMENDMENT.**—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (61),

(2) by striking the period at the end of paragraph (62) and inserting "; and", and

(3) by inserting after paragraph (62) the following new paragraph:

"(63) provide for administration and determinations of eligibility with respect to individuals who are (or seek to be) eligible for medical assistance based on the application of section 1931."

(c) **EXTENSION OF WORK TRANSITION PROVISIONS.**—Sections 1902(e)(1)(B) and 1925(f) (42 U.S.C. 1396a(e)(1)(B), 1396r-6(f)) are each amended by striking "1998" and inserting "2001".

(d) **ELIMINATION OF REQUIREMENT OF MINIMUM AFDC PAYMENT LEVELS.**—(1) Section 1902(c) (42 U.S.C. 1396a(c)) is amended by striking "if—" and all that follows and inserting the following: "if the State requires individuals described in subsection (1)(1) to apply for assistance under the State program funded under part A of title IV as a condition of applying for or receiving medical assistance under this title."

(2) Section 1903(i) (42 U.S.C. 1396b(i)) is amended by striking paragraph (9).

SEC. 115. DENIAL OF ASSISTANCE AND BENEFITS FOR CERTAIN DRUG-RELATED CONVICTIONS.

(a) **IN GENERAL.**—An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))) shall not be eligible for—

(1) assistance under any State program funded under part A of title IV of the Social Security Act, or

(2) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977.

(b) **EFFECTS ON ASSISTANCE AND BENEFITS FOR OTHERS.**—

(1) **PROGRAM OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES.**—The amount of assistance otherwise required to be provided under a State program funded under part A of title IV of the Social Security Act to the family members of an individual to whom subsection (a) applies shall be reduced by the amount which would have otherwise been made available to the individual under such part.

(2) **BENEFITS UNDER THE FOOD STAMP ACT OF 1977.**—The amount of benefits otherwise required to be provided to a household under

the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977), or any State program carried out under the Food Stamp Act of 1977, shall be determined by considering the individual to whom subsection (a) applies not to be a member of such household, except that the income and resources of the individual shall be considered to be income and resources of the household.

(c) **ENFORCEMENT.**—A State that has not exercised its authority under subsection (d)(1)(A) shall require each individual applying for assistance or benefits referred to in subsection (a), during the application process, to state, in writing, whether the individual, or any member of the household of the individual, has been convicted of a crime described in subsection (a).

(d) **LIMITATIONS.**—

(1) **STATE ELECTIONS.**—

(A) **OPT OUT.**—A State may, by specific reference in a law enacted after the date of the enactment of this Act, exempt any or all individuals domiciled in the State from the application of subsection (a).

(B) **LIMIT PERIOD OF PROHIBITION.**—A State may, by law enacted after the date of the enactment of this Act, limit the period for which subsection (a) shall apply to any or all individuals domiciled in the State.

(2) **INAPPLICABILITY TO CONVICTIONS OCCURRING ON OR BEFORE ENACTMENT.**—Subsection (a) shall not apply to convictions occurring on or before the date of the enactment of this Act.

(e) **DEFINITIONS OF STATE.**—For purposes of this section, the term "State" has the meaning given it—

(1) in section 419(5) of the Social Security Act, when referring to assistance provided under a State program funded under part A of title IV of the Social Security Act, and

(2) in section 3(m) of the Food Stamp Act of 1977, when referring to the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977.

(f) **RULE OF INTERPRETATION.**—Nothing in this section shall be construed to deny the following Federal benefits:

(1) Emergency medical services under title XIX of the Social Security Act.

(2) Short-term, noncash, in-kind emergency disaster relief.

(3)(A) Public health assistance for immunizations.

(B) Public health assistance for testing and treatment of communicable diseases if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.

(4) Prenatal care.

(5) Job training programs.

(6) Drug treatment programs.

SEC. 116. EFFECTIVE DATE; TRANSITION RULE.

(a) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on July 1, 1997.

(2) **DELAYED EFFECTIVE DATE FOR CERTAIN PROVISIONS.**—Notwithstanding any other provision of this section, paragraphs (2), (3), (4), (5), (8), and (10) of section 409(a) and section 411(a) of the Social Security Act (as added by the amendments made by section 103(a) of this Act) shall not take effect with respect to a State until, and shall apply only with respect to conduct that occurs on or after, the later of—

(A) July 1, 1997; or

(B) the date that is 6 months after the date the Secretary of Health and Human Services receives from the State a plan described in section 402(a) of the Social Security Act (as added by such amendment).

(3) **GRANTS TO OUTLYING AREAS.**—The amendments made by section 103(b) shall take effect on October 1, 1996.

(4) **ELIMINATION OF CHILD CARE PROGRAMS.**—The amendments made by section 103(c) shall take effect on October 1, 1996.

(5) **DEFINITIONS APPLICABLE TO NEW CHILD CARE ENTITLEMENT.**—Sections 403(a)(1)(C), 403(a)(1)(D), and 419(4) of the Social Security Act, as added by the amendments made by section 103(a) of this Act, shall take effect on October 1, 1996.

(b) **TRANSITION RULES.**—Effective on the date of the enactment of this Act:

(1) **STATE OPTION TO ACCELERATE EFFECTIVE DATE.**—

(A) **IN GENERAL.**—If the Secretary of Health and Human Services receives from a State a plan described in section 402(a) of the Social Security Act (as added by the amendment made by section 103(a)(1) of this Act), then—

(i) on and after the date of such receipt—

(I) except as provided in clause (ii), this title and the amendments made by this title (other than by section 103(c) of this Act) shall apply with respect to the State; and

(II) the State shall be considered an eligible State for purposes of part A of title IV of the Social Security Act (as in effect pursuant to the amendments made by such section 103(a)); and

(ii) during the period that begins on the date of such receipt and ends on June 30, 1997, there shall remain in effect with respect to the State—

(I) section 403(h) of the Social Security Act (as in effect on September 30, 1995); and

(II) all State reporting requirements under parts A and F of title IV of the Social Security Act (as in effect on September 30, 1995), modified by the Secretary as appropriate, taking into account the State program under part A of title IV of the Social Security Act (as in effect pursuant to the amendments made by such section 103(a)).

(B) **LIMITATIONS ON FEDERAL OBLIGATIONS.**—

(1) **UNDER AFDC PROGRAM.**—The total obligations of the Federal Government to a State under part A of title IV of the Social Security Act (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997 shall not exceed an amount equal to the State family assistance grant.

(ii) **UNDER TEMPORARY FAMILY ASSISTANCE PROGRAM.**—Notwithstanding section 403(a)(1) of the Social Security Act (as in effect pursuant to the amendments made by section 103(a) of this Act), the total obligations of the Federal Government to a State under such section 403(a)(1)—

(I) for fiscal year 1996, shall be an amount equal to—

(aa) the State family assistance grant; multiplied by

(bb) $\frac{1}{365}$ of the number of days during the period that begins on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as added by the amendment made by section 103(a)(1) of this Act) and ends on September 30, 1996; and

(II) for fiscal year 1997, shall be an amount equal to the lesser of—

(aa) the amount (if any) by which the State family assistance grant exceeds the total obligations of the Federal Government to the State under part A of title IV of the Social Security Act (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997; or

(bb) the State family assistance grant, multiplied by $\frac{1}{365}$ of the number of days during the period that begins on October 1, 1996, or the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as added by the amendment made by section 103(a)(1) of this Act),

U.S.C. 654) is amended by inserting "and Indian tribes or tribal organizations (as defined in subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b))" after "law enforcement officials".

(d) **CONFORMING AMENDMENT.**—Subsection (c) of section 428 (42 U.S.C. 628) is amended to read as follows:

"(c) For purposes of this section, the terms 'Indian tribe' and 'tribal organization' shall have the meanings given such terms by subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), respectively."

Subtitle H—Medical Support

SEC. 381. CORRECTION TO ERISA DEFINITION OF MEDICAL CHILD SUPPORT ORDER.

(a) **IN GENERAL.**—Section 609(a)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(2)(B)) is amended—

(1) by striking "issued by a court of competent jurisdiction";

(2) by striking the period at the end of clause (i) and inserting a comma; and

(3) by adding, after and below clause (ii), the following:

"if such judgment, decree, or order (I) is issued by a court of competent jurisdiction or (II) is issued through an administrative process established under State law and has the force and effect of law under applicable State law."

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) **PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1997.**—Any amendment to a plan required to be made by an amendment made by this section shall not be required to be made before the 1st plan year beginning on or after January 1, 1997, if—

(A) during the period after the date before the date of the enactment of this Act and before such 1st plan year, the plan is operated in accordance with the requirements of the amendments made by this section; and

(B) such plan amendment applies retroactively to the period after the date before the date of the enactment of this Act and before such 1st plan year.

A plan shall not be treated as failing to be operated in accordance with the provisions of the plan merely because it operates in accordance with this paragraph.

SEC. 382. ENFORCEMENT OF ORDERS FOR HEALTH CARE COVERAGE.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 315, 317, 323, 365, 369, 372, and 373 of this Act, is amended by inserting after paragraph (18) the following new paragraph:

"(19) **HEALTH CARE COVERAGE.**—Procedures under which all child support orders enforced pursuant to this part shall include a provision for the health care coverage of the child, and in the case in which a noncustodial parent provides such coverage and changes employment, and the new employer provides health care coverage, the State agency shall transfer notice of the provision to the employer, which notice shall operate to enroll the child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice."

Subtitle I—Enhancing Responsibility and Opportunity for Non-Residential Parents

SEC. 391. VISITATION TO STATES FOR ACCESS AND VISITATION PROGRAMS.

Part D of title IV (42 U.S.C. 651-669), as amended by section 353 of this Act, is amended by adding at the end the following new section:

"SEC. 469B. GRANTS TO STATES FOR ACCESS AND VISITATION PROGRAMS.

"(a) **IN GENERAL.**—The Administration for Children and Families shall make grants

under this section to enable States to establish and administer programs to support and facilitate noncustodial parents' access to and visitation of their children, by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements.

"(b) **AMOUNT OF GRANT.**—The amount of the grant to be made to a State under this section for a fiscal year shall be an amount equal to the lesser of—

"(1) 90 percent of State expenditures during the fiscal year for activities described in subsection (a); or

"(2) the allotment of the State under subsection (c) for the fiscal year.

"(c) **ALLOTMENTS TO STATES.**—

"(1) **IN GENERAL.**—The allotment of a State for a fiscal year is the amount that bears the same ratio to \$10,000,000 for grants under this section for the fiscal year as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States.

"(2) **MINIMUM ALLOTMENT.**—The Administration for Children and Families shall adjust allotments to States under paragraph (1) as necessary to ensure that no State is allotted less than—

"(A) \$50,000 for fiscal year 1997 or 1998; or

"(B) \$100,000 for any succeeding fiscal year.

"(d) **NO SUPPLANTATION OF STATE EXPENDITURES FOR SIMILAR ACTIVITIES.**—A State to which a grant is made under this section may not use the grant to supplant expenditures by the State for activities specified in subsection (a), but shall use the grant to supplement such expenditures at a level at least equal to the level of such expenditures for fiscal year 1995.

"(e) **STATE ADMINISTRATION.**—Each State to which a grant is made under this section—

"(1) may administer State programs funded with the grant, directly or through grants to or contracts with courts, local public agencies, or nonprofit private entities;

"(2) shall not be required to operate such programs on a statewide basis; and

"(3) shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary."

Subtitle J—Effective Dates and Conforming Amendments

SEC. 396. EFFECTIVE DATES AND CONFORMING AMENDMENTS.

(a) **IN GENERAL.**—Except as otherwise specifically provided (but subject to subsections (b) and (c))—

(1) the provisions of this title requiring the enactment or amendment of State laws under section 466 of the Social Security Act, or revision of State plans under section 454 of such Act, shall be effective with respect to periods beginning on and after October 1, 1996; and

(2) all other provisions of this title shall become effective upon the date of the enactment of this Act.

(b) **GRACE PERIOD FOR STATE LAW CHANGES.**—The provisions of this title shall become effective with respect to a State on the later of—

(1) the date specified in this title, or

(2) the effective date of laws enacted by the legislature of such State implementing such provisions, but in no event later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of

such session shall be deemed to be a separate regular session of the State legislature.

(c) **GRACE PERIOD FOR STATE CONSTITUTIONAL AMENDMENT.**—A State shall not be found out of compliance with any requirement enacted by this title if the State is unable to so comply without amending the State constitution until the earlier of—

(1) 1 year after the effective date of the necessary State constitutional amendment; or

(2) 5 years after the date of the enactment of this Act.

(d) **CONFORMING AMENDMENTS.**—

(1) The following provisions are amended by striking "absent" each place it appears and inserting "noncustodial":

(A) Section 451 (42 U.S.C. 651).

(B) Subsections (a)(1), (a)(8), (a)(10)(E), (a)(10)(F), (f), and (h) of section 452 (42 U.S.C. 652).

(C) Section 453(f) (42 U.S.C. 653(f)).

(D) Paragraphs (8), (13), and (21)(A) of section 454 (42 U.S.C. 654).

(E) Section 455(e)(1) (42 U.S.C. 655(e)(1)).

(F) Section 458(a) (42 U.S.C. 658(a)).

(G) Subsections (a), (b), and (c) of section 463 (42 U.S.C. 663).

(H) Subsections (a)(3)(A), (a)(3)(C), (a)(6), and (a)(8)(B)(ii), the last sentence of subsection (a), and subsections (b)(1), (b)(3)(B), (b)(3)(B)(i), (b)(6)(A)(i), (b)(9), and (e) of section 466 (42 U.S.C. 666).

(2) The following provisions are amended by striking "an absent" each place it appears and inserting "a noncustodial":

(A) Paragraphs (2) and (3) of section 453(c) (42 U.S.C. 653(c)).

(B) Subparagraphs (B) and (C) of section 454(g) (42 U.S.C. 654(g)).

(C) Section 456(a)(3) (42 U.S.C. 656(a)(3)).

(D) Subsections (a)(3)(A), (a)(6), (a)(8)(B)(i), (b)(3)(A), and (b)(3)(B) of section 466 (42 U.S.C. 666).

(E) Paragraphs (2) and (4) of section 469(b) (42 U.S.C. 669(b)).

TITLE IV—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

SEC. 400. STATEMENTS OF NATIONAL POLICY CONCERNING WELFARE AND IMMIGRATION.

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the United States that—

(A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits

In this title, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.

Subtitle A—Eligibility for Federal Benefits
SEC. 401. ALIENS WHO ARE NOT QUALIFIED ALIENS INELIGIBLE FOR FEDERAL PUBLIC BENEFITS.

(a) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in subsection (b), an alien who is not a qualified alien (as defined in section 431) is not eligible for any Federal public benefit (as defined in subsection (c)).

(b) **EXCEPTIONS.**—

(1) Subsection (a) shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act, supplemental security income benefits under title XVI of such Act, or a State supplementary payment).

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Public health assistance (not including any assistance under title XIX of the Social Security Act) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949, or any assistance under section 306C of the Consolidated Farm and Rural Development Act, to the extent that the alien is receiving such a benefit on the date of the enactment of this Act.

(2) Subsection (a) shall not apply to any benefit payable under title II of the Social Security Act to an alien who is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act, to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act, or to any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before the month in which this Act becomes law.

(c) **FEDERAL PUBLIC BENEFIT DEFINED.**—

(1) Except as provided in paragraph (2), for purposes of this title the term "Federal public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States; or

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State.

SEC. 402. LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR CERTAIN FEDERAL PROGRAMS.

(a) **LIMITED ELIGIBILITY FOR SPECIFIED FEDERAL PROGRAMS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 431) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) **EXCEPTIONS.**—

(A) **TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.**—Paragraph (1) shall not apply to an alien until 5 years after the date—

(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

(ii) an alien is granted asylum under section 208 of such Act; or

(iii) an alien's deportation is withheld under section 243(h) of such Act.

(B) **CERTAIN PERMANENT RESIDENT ALIENS.**—Paragraph (1) shall not apply to an alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435, and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403) during any such period.

(C) **VETERAN AND ACTIVE DUTY EXCEPTION.**—Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii).

(D) **TRANSITION FOR ALIENS CURRENTLY RECEIVING BENEFITS.**—

(1) **SSI.**—

(I) **IN GENERAL.**—With respect to the specified Federal program described in paragraph

(3)(A), during the period beginning on the date of the enactment of this Act and ending on the date which is 1 year after such date of enactment, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of the date of the enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) **REDETERMINATION CRITERIA.**—With respect to any redetermination under subclause (I), the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under such program.

(III) **GRANDFATHER PROVISION.**—The provisions of this subsection and the redetermination under subclause (I), shall only apply with respect to the benefits of an individual described in subclause (I) for months beginning on or after the date of the redetermination with respect to such individual.

(IV) **NOTICE.**—Not later than March 31, 1997, the Commissioner of Social Security shall notify an individual described in subclause (I) of the provisions of this clause.

(i) **FOOD STAMPS.**—

(I) **IN GENERAL.**—With respect to the specified Federal program described in paragraph (3)(B), during the period beginning on the date of enactment of this Act and ending on the date which is 1 year after the date of enactment, the State agency shall, at the time of the recertification, recertify the eligibility of any individual who is receiving benefits under such program as of the date of enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) **RECERTIFICATION CRITERIA.**—With respect to any recertification under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) **GRANDFATHER PROVISION.**—The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on the date of enactment of this Act the alien is lawfully residing in any State and is receiving benefits under such program on such date of enactment.

(3) **SPECIFIED FEDERAL PROGRAM DEFINED.**—For purposes of this title, the term "specified Federal program" means any of the following:

(A) **SSI.**—The supplemental security income program under title XVI of the Social Security Act, including supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

(B) **FOOD STAMPS.**—The food stamp program as defined in section 3(h) of the Food Stamp Act of 1977.

(b) **LIMITED ELIGIBILITY FOR DESIGNATED FEDERAL PROGRAMS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in section 403 and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in section 431) for any designated Federal program (as defined in paragraph (3)).

(2) **EXCEPTIONS.**—Qualified aliens under this paragraph shall be eligible for any designated Federal program.

(A) **TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.**—

(I) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act until 5

years after the date of an alien's entry into the United States.

(i) An alien who is granted asylum under section 208 of such Act until 5 years after the date of such grant of asylum.

(ii) An alien whose deportation is being withheld under section 243(b) of such Act until 5 years after such withholding.

(B) CERTAIN PERMANENT RESIDENT ALIENS.—An alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435, and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403) during any such period.

(C) VETERAN AND ACTIVE DUTY EXCEPTION.—An alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage.

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii).

(D) TRANSITION FOR THOSE CURRENTLY RECEIVING BENEFITS.—An alien who on the date of the enactment of this Act is lawfully residing in any State and is receiving benefits under such program on the date of the enactment of this Act shall continue to be eligible to receive such benefits until January 1, 1997.

(3) DESIGNATED FEDERAL PROGRAM DEFINED.—For purposes of this title, the term "designated Federal program" means any of the following:

(A) TEMPORARY ASSISTANCE FOR NEEDY FAMILIES.—The program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act.

(B) SOCIAL SERVICES BLOCK GRANT.—The program of block grants to States for social services under title XX of the Social Security Act.

(C) MEDICAID.—A State plan approved under title XIX of the Social Security Act, other than medical assistance described in section 401(b)(1)(A).

SEC. 403. FIVE-YEAR LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR FEDERAL MEANS-TESTED PUBLIC BENEFIT.

(a) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subsections (b), (c), and (d), an alien who is a qualified alien (as defined in section 431) and who enters the United States on or after the date of the enactment of this Act is not eligible for any Federal means-tested public benefit for a period of five years beginning on the date of the alien's entry into the United States with a status within the meaning of the term "qualified alien".

(b) EXCEPTIONS.—The limitation under subsection (a) shall not apply to the following aliens:

(1) EXCEPTION FOR REFUGEES AND ASYLEES.—

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act.

(B) An alien who is granted asylum under section 208 of such Act.

(C) An alien whose deportation is being withheld under section 243(h) of such Act.

(2) VETERAN AND ACTIVE DUTY EXCEPTION.—An alien who is lawfully residing in any State and is—

(A) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage.

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B).

(c) APPLICATION OF TERM FEDERAL MEANS-TESTED PUBLIC BENEFIT.—

(1) The limitation under subsection (a) shall not apply to assistance or benefits under paragraph (3).

(2) Assistance and benefits under this paragraph are as follows:

(A) Medical assistance described in section 401(b)(1)(A).

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Assistance or benefits under the National School Lunch Act.

(D) Assistance or benefits under the Child Nutrition Act of 1966.

(E) Public health assistance (not including any assistance under title XIX of the Social Security Act) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(F) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act for a parent or a child who would, in the absence of subsection (a), be eligible to have such payments made on the child's behalf under such part, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 431).

(G) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(H) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act.

(I) Means-tested programs under the Elementary and Secondary Education Act of 1965.

(J) Benefits under the Head Start Act.

(K) Benefits under the Job Training Partnership Act.

(d) SPECIAL RULE FOR REFUGEE AND ENTRANT ASSISTANCE FOR CUBAN AND HAITIAN ENTRANTS.—The limitation under subsection (a) shall not apply to refugee and entrant assistance activities, authorized by title IV of the Immigration and Nationality Act and section 501 of the Refugee Education Assistance Act of 1980, for Cuban and Haitian entrants as defined in section 501(e)(2) of the Refugee Education Assistance Act of 1980.

SEC. 404. NOTIFICATION AND INFORMATION REPORTING.

(a) NOTIFICATION.—Each Federal agency that administers a program to which section 401, 402, or 403 applies shall, directly or through the States, post information and provide general notification to the public and to program recipients of the changes re-

garding eligibility for any such program pursuant to this subtitle.

(b) INFORMATION REPORTING UNDER TITLE IV OF THE SOCIAL SECURITY ACT.—Part A of title IV of the Social Security Act is amended by inserting the following new section after section 411:

"SEC. 411A. STATE REQUIRED TO PROVIDE CERTAIN INFORMATION.

"Each State to which a grant is made under section 403 shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States."

(c) SSI.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended—

(1) by redesignating the paragraphs (6) and (7) inserted by sections 206(d)(2) and 206(f)(1) of the Social Security Independence and Programs Improvement Act of 1994 (Public Law 103-296; 108 Stat. 1514, 1515) as paragraphs (7) and (8), respectively; and

(2) by adding at the end the following new paragraph:

"(9) Notwithstanding any other provision of law, the Commissioner shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this paragraph referred to as the 'Service'), furnish the Service with the name and address of, and other identifying information on, any individual who the Commissioner knows is unlawfully in the United States, and shall ensure that each agreement entered into under section 1616(a) with a State provides that the State shall furnish such information at such times with respect to any individual who the State knows is unlawfully in the United States."

(d) INFORMATION REPORTING FOR HOUSING PROGRAMS.—Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

"SEC. 27. PROVISION OF INFORMATION TO LAW ENFORCEMENT AND OTHER AGENCIES.

"Notwithstanding any other provision of law, the Secretary shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this section referred to as the 'Service'), furnish the Service with the name and address of, and other identifying information on, any individual who the Secretary knows is unlawfully in the United States, and shall ensure that each contract for assistance entered into under section 6 or 8 of this Act with a public housing agency provides that the public housing agency shall furnish such information at such times with respect to any individual who the public housing agency knows is unlawfully in the United States."

Subtitle B—Eligibility for State and Local Public Benefits Programs

SEC. 411. ALIENS WHO ARE NOT QUALIFIED ALIENS OR NONIMMIGRANTS INELIGIBLE FOR STATE AND LOCAL PUBLIC BENEFITS.

(a) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subsections (b) and (d), an alien who is not—

(1) a qualified alien (as defined in section 431),

(2) a nonimmigrant under the Immigration and Nationality Act, or

(3) an alien who is paroled into the United States under section 212(d)(5) of such Act for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c)).

(b) EXCEPTIONS.—Subsection (a) shall not apply with respect to the following State or local public benefits:

(1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of the Social Security Act) of the alien involved and are not related to an organ transplant procedure.

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(4) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(c) STATE OR LOCAL PUBLIC BENEFIT DEFINED.—

(1) Except as provided in paragraphs (2) and 3, for purposes of this subtitle the term "State or local public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States; or

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General.

(3) Such term does not include any Federal public benefit under section 4001(c).

(d) STATE AUTHORITY TO PROVIDE FOR ELIGIBILITY OF ILLEGAL ALIENS FOR STATE AND LOCAL PUBLIC BENEFITS.—A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after the date of the enactment of this Act which affirmatively provides for such eligibility.

SEC. 412. STATE AUTHORITY TO LIMIT ELIGIBILITY OF QUALIFIED ALIENS FOR STATE PUBLIC BENEFITS.

(a) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subsection (b), a State is authorized to determine the eligibility for any State public benefits of an alien who is a qualified alien (as defined in section 431), a nonimmigrant under the Immigration and Nationality Act, or an alien who is paroled into the United

States under section 212(d)(5) of such Act for less than one year.

(b) EXCEPTIONS.—Qualified aliens under this subsection shall be eligible for any State public benefits.

(1) TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.—

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act until 5 years after the date of an alien's entry into the United States.

(B) An alien who is granted asylum under section 208 of such Act until 5 years after the date of such grant of asylum.

(C) An alien whose deportation is being withheld under section 243(h) of such Act until 5 years after such withholding.

(2) CERTAIN PERMANENT RESIDENT ALIENS.—An alien who—

(A) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(B)(i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435, and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403) during any such period.

(3) VETERAN AND ACTIVE DUTY EXCEPTION.—An alien who is lawfully residing in any State and is—

(A) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage,

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B).

(4) TRANSITION FOR THOSE CURRENTLY RECEIVING BENEFITS.—An alien who on the date of the enactment of this Act is lawfully residing in any State and is receiving benefits on the date of the enactment of this Act shall continue to be eligible to receive such benefits until January 1, 1997.

Subtitle C—Attribution of Income and Affidavits of Support

SEC. 421. FEDERAL ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIEN.

(a) IN GENERAL.—Notwithstanding any other provision of law, in determining the eligibility and the amount of benefits of an alien for any Federal means-tested public benefits program (as provided under section 403), the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act (as added by section 423) on behalf of such alien.

(2) The income and resources of the spouse (if any) of the person.

(b) DURATION OF ATTRIBUTION PERIOD.—Subsection (a) shall apply with respect to an alien until such time as the alien—

(1) achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act; or

(2)(A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435, and (B) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403) during any such period.

(c) REVIEW OF INCOME AND RESOURCES OF ALIEN UPON REAPPLICATION.—Whenever an alien is required to reapply for benefits under any Federal means-tested public benefits program, the applicable agency shall review the income and resources attributed to the alien under subsection (a).

(d) APPLICATION.—

(1) If on the date of the enactment of this Act, a Federal means-tested public benefits program attributes a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning on the day after the date of the enactment of this Act.

(2) If on the date of the enactment of this Act, a Federal means-tested public benefits program does not attribute a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning 180 days after the date of the enactment of this Act.

SEC. 422. AUTHORITY FOR STATES TO PROVIDE FOR ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO THE ALIEN WITH RESPECT TO STATE PROGRAMS.

(a) OPTIONAL APPLICATION TO STATE PROGRAMS.—Except as provided in subsection (b), in determining the eligibility and the amount of benefits of an alien for any State public benefits (as defined in section 412(c)), the State or political subdivision that offers the benefits is authorized to provide that the income and resources of the alien shall be deemed to include—

(1) the income and resources of any individual who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act (as added by section 423) on behalf of such alien, and

(2) the income and resources of the spouse (if any) of the individual.

(b) EXCEPTIONS.—Subsection (a) shall not apply with respect to the following State public benefits:

(1) Assistance described in section 411(b)(1).

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Programs comparable to assistance or benefits under the National School Lunch Act.

(4) Programs comparable to assistance or benefits under the Child Nutrition Act of 1966.

(5) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(6) Payments for foster care and adoption assistance.

(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General of a State, after consultation with appropriate agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

SEC. 423. REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act is amended by inserting after section 213 the following new section:

"REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT

"SEC. 213A. (a) **ENFORCEABILITY.**—(1) No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge under section 212(a)(4) unless such affidavit is executed as a contract—

"(A) which is legally enforceable against the sponsor by the sponsored alien, the Federal Government, and by any State (or any political subdivision of such State) which provides any means-tested public benefits program, but not later than 10 years after the alien last receives any such benefit;

"(B) in which the sponsor agrees to financially support the alien, so that the alien will not become a public charge; and

"(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (e)(2).

"(2) A contract under paragraph (1) shall be enforceable with respect to benefits provided to the alien until such time as the alien achieves United States citizenship through naturalization pursuant to chapter 2 of title III.

"(b) **FORMS.**—Not later than 90 days after the date of enactment of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Health and Human Services, shall formulate an affidavit of support consistent with the provisions of this section.

"(c) **REMEDIES.**—Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of title 28, United States Code, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section in accordance with the provisions of subchapter II of chapter 37 of title 31, United States Code.

"(d) **NOTIFICATION OF CHANGE OF ADDRESS.**—

"(1) **IN GENERAL.**—The sponsor shall notify the Attorney General and the State in which the sponsored alien is currently resident within 30 days of any change of address of the sponsor during the period specified in subsection (a)(2).

"(2) **PENALTY.**—Any person subject to the requirement of paragraph (1) who fails to satisfy such requirement shall be subject to a civil penalty of—

"(A) not less than \$250 or more than \$2,000, or

"(B) if such failure occurs with knowledge that the alien has received any means-tested public benefit, not less than \$2,000 or more than \$5,000.

"(e) **REIMBURSEMENT OF GOVERNMENT EXPENSES.**—(1)(A) Upon notification that a sponsored alien has received any benefit under any means-tested public benefits program, the appropriate Federal, State, or local official shall request reimbursement by the sponsor in the amount of such assistance.

"(B) The Attorney General, in consultation with the Secretary of Health and Human Services, shall prescribe such regulations as may be necessary to carry out subparagraph (A).

"(2) If within 45 days after requesting reimbursement, the appropriate Federal, State, or local agency has not received a response from the sponsor indicating a willingness to commence payments, an action may be brought against the sponsor pursuant to the affidavit of support.

"(3) If the sponsor fails to abide by the repayment terms established by such agency,

the agency may, within 60 days of such failure, bring an action against the sponsor pursuant to the affidavit of support.

"(4) No cause of action may be brought under this subsection later than 10 years after the alien last received any benefit under any means-tested public benefits program.

"(5) If, pursuant to the terms of this subsection, a Federal, State, or local agency requests reimbursement from the sponsor in the amount of assistance provided, or brings an action against the sponsor pursuant to the affidavit of support, the appropriate agency may appoint or hire an individual or other person to act on behalf of such agency acting under the authority of law for purposes of collecting any moneys owed. Nothing in this subsection shall preclude any appropriate Federal, State, or local agency from directly requesting reimbursement from a sponsor for the amount of assistance provided, or from bringing an action against a sponsor pursuant to an affidavit of support.

"(f) **DEFINITIONS.**—For the purposes of this section—

"(1) **SPONSOR.**—The term 'sponsor' means an individual who—

"(A) is a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;

"(B) is 18 years of age or over;

"(C) is domiciled in any of the 50 States or the District of Columbia; and

"(D) is the person petitioning for the admission of the alien under section 204."

(b) **CLERICAL AMENDMENT.**—The table of contents of such Act is amended by inserting after the item relating to section 213 the following:

"Sec. 213A. Requirements for sponsor's affidavit of support."

(c) **EFFECTIVE DATE.**—Subsection (a) of section 213A of the Immigration and Nationality Act, as inserted by subsection (a) of this section, shall apply to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days (and not later than 90 days) after the date the Attorney General formulates the form for such affidavits under subsection (b) of such section.

(d) **BENEFITS NOT SUBJECT TO REIMBURSEMENT.**—Requirements for reimbursement by a sponsor for benefits provided to a sponsored alien pursuant to an affidavit of support under section 213A of the Immigration and Nationality Act shall not apply with respect to the following:

(1) Medical assistance described in section 401(b)(1)(A) or assistance described in section 411(b)(1).

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Assistance or benefits under the National School Lunch Act.

(4) Assistance or benefits under the Child Nutrition Act of 1966.

(5) Public health assistance for immunizations (not including any assistance under title XIX of the Social Security Act) with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(6) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act for a parent or a child, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 431).

(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney Gen-

eral's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(8) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act.

(9) Benefits under the Head Start Act.

(10) Means-tested programs under the Elementary and Secondary Education Act of 1965.

(11) Benefits under the Job Training Partnership Act.

Subtitle D—General Provisions**SEC. 431. DEFINITIONS.**

(a) **IN GENERAL.**—Except as otherwise provided in this title, the terms used in this title have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act.

(b) **QUALIFIED ALIEN.**—For purposes of this title, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,

(2) an alien who is granted asylum under section 208 of such Act,

(3) a refugee who is admitted to the United States under section 207 of such Act,

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act, or

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980.

SEC. 432. VERIFICATION OF ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS.

(a) **IN GENERAL.**—Not later than 18 months after the date of the enactment of this Act, the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall promulgate regulations requiring verification that a person applying for a Federal public benefit (as defined in section 401(c)), to which the limitation under section 401 applies, is a qualified alien and is eligible to receive such benefit. Such regulations shall, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1137 of the Social Security Act.

(b) **STATE COMPLIANCE.**—Not later than 24 months after the date the regulations described in subsection (a) are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this section.

SEC. 433. STATUTORY CONSTRUCTION.

(a) **LIMITATION.**—

(1) Nothing in this title may be construed as an entitlement or a determination of an individual's eligibility or fulfillment of the requisite requirements for any Federal, State, or local governmental program, assistance, or benefits. For purposes of this title, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage.

(2) Nothing in this title may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler v. Doe* (457 U.S. 202) (1982).

(b) **NOT APPLICABLE TO FOREIGN ASSISTANCE.**—This title does not apply to any Federal, State, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General.

(c) **SEVERABILITY.**—If any provision of this title or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 434. COMMUNICATION BETWEEN STATE AND LOCAL GOVERNMENT AGENCIES AND THE IMMIGRATION AND NATURALIZATION SERVICE.

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

SEC. 435. QUALIFYING QUARTERS.

For purposes of this title, in determining the number of qualifying quarters of coverage under title II of the Social Security Act an alien shall be credited with—

(1) all of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien while the alien was under age 18, and

(2) all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

No such qualifying quarter of coverage that is creditable under title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien under paragraph (1) or (2) if the parent or spouse (as the case may be) of such alien received any Federal means-tested public benefit (as provided under section 403) during the period for which such qualifying quarter of coverage is so credited.

Subtitle E—Conforming Amendments Relating to Assisted Housing

SEC. 441. CONFORMING AMENDMENTS RELATING TO ASSISTED HOUSING.

(a) **LIMITATIONS ON ASSISTANCE.**—Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) is amended—

(1) by striking "Secretary of Housing and Urban Development" each place it appears and inserting "applicable Secretary";

(2) in subsection (b), by inserting after "National Housing Act," the following: "the direct loan program under section 502 of the Housing Act of 1949 or section 502(c)(5)(D), 504, 521(a)(2)(A), or 542 of such Act, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act.";

(3) in paragraphs (2) through (6) of subsection (d), by striking "Secretary" each place it appears and inserting "applicable Secretary";

(4) in subsection (d), in the matter following paragraph (6), by striking "the term 'Secretary'" and inserting "the term 'applicable Secretary'"; and

(5) by adding at the end the following new subsection:

"(h) For purposes of this section, the term 'applicable Secretary' means—

"(1) the Secretary of Housing and Urban Development, with respect to financial assistance administered by such Secretary and

financial assistance under subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act; and

"(2) the Secretary of Agriculture, with respect to financial assistance administered by such Secretary.".

(b) **CONFORMING AMENDMENTS.**—Section 501(h) of the Housing Act of 1949 (42 U.S.C. 1471(h)) is amended—

(1) by striking "(1)";

(2) by striking "by the Secretary of Housing and Urban Development"; and

(3) by striking paragraph (2).

Subtitle F—Earned Income Credit Denied to Unauthorized Employees

SEC. 451. EARNED INCOME CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.

(a) **IN GENERAL.**—Section 32(c)(1) of the Internal Revenue Code of 1986 (relating to individuals eligible to claim the earned income credit) is amended by adding at the end the following new subparagraph:

"(F) **IDENTIFICATION NUMBER REQUIREMENT.**—The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—

"(i) such individual's taxpayer identification number, and

"(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse."

(b) **SPECIAL IDENTIFICATION NUMBER.**—Section 32 of such Code is amended by adding at the end the following new subsection:

"(I) **IDENTIFICATION NUMBERS.**—Solely for purposes of subsections (c)(1)(F) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(1) of the Social Security Act)."

(c) **EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.**—Section 6213(g)(2) of such Code (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting a comma, and by inserting after subparagraph (E) the following new subparagraphs:

"(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return, and

"(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to returns the due date for which (without regard to extensions) is more than 30 days after the date of the enactment of this Act.

TITLE V—CHILD PROTECTION

SEC. 501. AUTHORITY OF STATES TO MAKE FOSTER CARE MAINTENANCE PAYMENTS ON BEHALF OF CHILDREN IN ANY PRIVATE CHILD CARE INSTITUTION.

Section 472(c)(2) of the Social Security Act (42 U.S.C. 672(c)(2)) is amended by striking "nonprofit".

SEC. 502. EXTENSION OF ENHANCED MATCH FOR IMPLEMENTATION OF STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEMS.

Section 13713(b)(2) of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 674 note;

107 Stat. 657) is amended by striking "1996" and inserting "1997".

SEC. 303. NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE.

Part B of title IV of the Social Security Act (42 U.S.C. 620-628a) is amended by adding at the end the following:

"SEC. 429A. NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE.

"(a) **IN GENERAL.**—The Secretary shall conduct a national study based on random samples of children who are at risk of child abuse or neglect, or are determined by States to have been abused or neglected.

"(b) **REQUIREMENTS.**—The study required by subsection (a) shall—

"(1) have a longitudinal component; and

"(2) yield data reliable at the State level for as many States as the Secretary determines is feasible.

"(c) **PREFERRED CONTENTS.**—In conducting the study required by subsection (a), the Secretary should—

"(1) carefully consider selecting the sample from cases of confirmed abuse or neglect; and

"(2) follow each case for several years while obtaining information on, among other things—

"(A) the type of abuse or neglect involved;

"(B) the frequency of contact with State or local agencies;

"(C) whether the child involved has been separated from the family, and, if so, under what circumstances;

"(D) the number, type, and characteristics of out-of-home placements of the child; and

"(E) the average duration of each placement.

"(d) **REPORTS.**—

"(1) **IN GENERAL.**—From time to time, the Secretary shall prepare reports summarizing the results of the study required by subsection (a).

"(2) **AVAILABILITY.**—The Secretary shall make available to the public any report prepared under paragraph (1), in writing or in the form of an electronic data tape.

"(3) **AUTHORITY TO CHARGE FEE.**—The Secretary may charge and collect a fee for the furnishing of reports under paragraph (2).

"(e) **APPROPRIATION.**—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary for each of fiscal years 1996 through 2002 \$6,000,000 to carry out this section."

SEC. 504. REDESIGNATION OF SECTION 1123.

The Social Security Act is amended by redesignating section 1123, the second place it appears (42 U.S.C. 1320a-1a), as section 1123A.

SEC. 305. KINSHIP CARE.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

(1) by striking "and" at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting "; and"; and

(3) by adding at the end the following:

"(18) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."

TITLE VI—CHILD CARE

SEC. 601. SHORT TITLE AND REFERENCES.

(a) **SHORT TITLE.**—This title may be cited as the "Child Care and Development Block Grant Amendments of 1996".

(b) **REFERENCES.**—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Child Care and Development

SUBTITLE I—ENHANCING RESPONSIBILITY AND OPPORTUNITY FOR NON-RESIDENTIAL PARENTS
48. GRANTS TO STATES FOR ACCESS AND VISITATION PROGRAMS

Present law

In 1988, Congress authorized the Secretary to fund for fiscal year 1990 and fiscal year 1991 demonstration projects by States to help divorcing or never-married parents cooperate with each other, especially in arranging for visits between the child and the nonresident parent.

House bill

This proposal authorizes grants to States for access and visitation programs including mediation, counseling, education, development of parenting plans, and visitation enforcement. Visitation enforcement can include monitoring, supervision, neutral drop-off and pick-up, and development of guidelines for visitation and alternative custody agreements. An annual entitlement of \$10 million is appropriated for these grants.

The amount of the grant to a State is equal to either 90 percent of the State expenditures during the year for access and visitation programs or the allotment for the State for the fiscal year. The allotment to the State bears the same ratio to the amount appropriated for the fiscal year as the number of children in the State living with one biological parent divided by the national number of children living with one biological parent. The Administration for Children and Families must adjust allotments to ensure that no State is allotted less than \$50,000 for fiscal years 1997 or 1998 or less than \$100,000 for any year after 1998. Projects are required to supplement rather than supplant State funds. States may use the money to create their own programs or to fund grant programs with courts, local public agencies, or nonprofit organizations. The programs do not need to be Statewide. States must monitor, evaluate, and report on their programs in accord with regulations issued by the Secretary.

Senate amendment

Same, except delays the effective date for 1 year.

Conference agreement

The conference agreement follows the House bill and the Senate amendment except that the House effective date is followed.

SUBTITLE J—EFFECTIVE DATES AND CONFORMING AMENDMENTS

49. EFFECTIVE DATES AND CONFORMING AMENDMENTS

Present law

No provision.

House bill

Except as noted in the text of the House proposal for specific provisions, the general effective date for provisions in the proposal is October 1, 1996. However, given that many of the changes required by this proposal must be approved by State Legislatures, the proposal contains a grace period tied to the meeting schedule of State Legislatures. In any given State, the proposal becomes effective either on October 1, 1996 or on the first day of the first calendar quarter after the close of the first regular session of the State Legislature that begins after the date of enactment of the proposal. In the case of States that require a constitutional amendment to comply with the requirements of the proposal, the grace period is extended either for one year after the effective date of the necessary State constitutional amendment or five years after the date of enactment of the proposal. This section contains several conforming amendments to title IV-D of the Social Security Act. This section also re-

places the term "absent parent" with "non-custodial parent" each place it occurs in title IV-D.

Senate amendment

Same.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

TITLE IV: RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

1. STATEMENTS OF NATIONAL POLICY CONCERNING WELFARE AND IMMIGRATION

Present law

No provision.

House bill

The Congress makes several statements concerning national policy with respect to welfare and immigration. These include the affirmation that it continues to be the immigration policy of the United States that noncitizens within the Nation's borders not depend on public resources, that noncitizens nonetheless have been applying for and receiving public benefits at increasing rates, and that it is a compelling government interest to enact new eligibility and sponsorship rules to assure that noncitizens become self-reliant and to remove any incentive for illegal immigration.

Senate amendment

Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

Subtitle A—Eligibility for Federal Benefits

2. ALIENS WHO ARE NOT QUALIFIED ALIENS INELIGIBLE FOR FEDERAL PUBLIC BENEFITS

Present law

Current law limits alien eligibility for most major Federal assistance programs, including restrictions on, among other programs, Supplemental Security Income, Aid to Families with Dependent Children, housing assistance, and Food Stamps programs. Current law is silent on alienage under, among other programs, school lunch and nutrition, the Special Supplemental Food Program for Women, Infants, and Children (WIC), Head Start, migrant health centers, and the earned income credit. Under the programs with restrictions, benefits are generally allowed for permanent resident aliens (also referred to as immigrants and green card holders), refugees, asylees, and parolees, but benefits (other than emergency Medicaid) are denied to nonimmigrants (or aliens lawfully admitted temporarily as, for example, tourists, students, or temporary workers) and illegal aliens. Benefits are permitted under AFDC, SSI, unemployment compensation, and nonemergency Medicaid to other aliens permanently residing in the United States under color of law (PRUCOL).

House bill

Noncitizens who are "not qualified aliens" (generally, illegal immigrants and nonimmigrants such as students) are ineligible for all Federal public benefits, with limited exceptions for emergency medical services, emergency disaster relief, immunizations and testing and treatment of symptoms of communicable diseases, community programs necessary for the protection of life or safety, certain housing benefits (only for current recipients), licenses and benefits directly related to work for which a non-immigrant has been authorized to enter the U.S. and certain Social Security retirement benefits protected by treaty or statute.

Federal public benefits include: any grant, contract, loan, professional license or commercial license, and any retirement, welfare, health, disability, food assistance, unem-

ployment or similar benefit provided by an agency or appropriated funds of the United States.

Senate amendment

Similar to House, except that the exception for communicable diseases is limited to treatment of the disease itself and must be triggered by a finding by HHS that testing and treatment of a particular disease is necessary to prevent its spread.

Conference agreement

The conference agreement follows the House bill.

The allowance for treatment of communicable diseases is very narrow. The conferees intend that it only apply where absolutely necessary to prevent the spread of such diseases. This is only a stop-gap measure until the deportation of a person or persons unlawfully here. It is not intended to provide authority for continued treatment of such diseases for a long term.

The allowance for emergency medical services under Medicaid is very narrow. The conferees intend that it only apply to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein.

The intent of the conferees is that title I, part A of the Elementary and Secondary Education Act would not be affected by section 401 because the benefit is not provided to an individual, household, or family eligibility unit.

3. LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR CERTAIN FEDERAL PROGRAMS

Present law

With the exception of certain buy-in rights under Medicare, immigrants (or aliens) lawfully admitted for permanent residence are eligible for major Federal benefits, but the ability of some immigrants to meet the needs tests for SSI, AFDC, and food stamps may be affected by the sponsor-to-alien deeming provisions discussed below. Refugees, asylees, and parolees also generally are eligible. Benefits are permitted under AFDC, SSI, unemployment compensation, and non-emergency Medicaid to other aliens permanently residing in the United States under color of law (PRUCOL).

House bill

Legal noncitizens who are "qualified aliens" (i.e., permanent resident aliens, refugees, asylees, aliens paroled into the United States for a period of at least 1 year, and aliens whose deportation has been withheld) are ineligible for SSI, Medicaid, and food stamp benefits until they attain citizenship, with exceptions noted below. States are given the option of similarly restricting Federal cash welfare and Title XX benefits for qualified aliens, with the exception of those who are receiving benefits on the date of enactment as described below.

Refugees, asylees, and aliens whose deportation has been withheld are excepted for 5 years after being granted their respective statuses. Also excepted are legal permanent residents who have worked (in combination with their spouse and parents) for at least 10 years, and noncitizens who are veterans or on active duty or their spouse or unmarried child.

To allow individuals time to adjust to the revised policy, otherwise restricted aliens who are receiving SSI, food stamps, cash welfare, Medicaid or Title XX benefits on the date of enactment would remain eligible for at most 1 year after enactment. However, if

a review determines the noncitizen would be ineligible if enrolling under the revised standards for SSI, Medicaid, and food stamps (for example, because the noncitizen failed to qualify under the refugee or work exemptions) such benefits would cease immediately. States have the option of ending cash welfare and social services benefits for current recipients after January 1, 1997.

Senate amendment

Similar to House bill, except that Medicaid is included among the programs subject to State option rather than a blanket bar.

Conference agreement

The conference agreement follows the Senate amendment.

4. FIVE-YEAR LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR FEDERAL MEANS-TESTED PUBLIC BENEFIT

Present law

See above.

House bill

The proposal restricts most Federal means-tested benefits (including SSI, food stamps, cash welfare, Medicaid, and title XX social services benefits) for permanent resident aliens who arrive after the date of enactment for their first 5 years in the United States. Programs that are not restricted to legal noncitizens arriving in the future include emergency medical services, non-cash emergency disaster relief, school lunch and child nutrition benefits, immunizations and testing and treatment for symptoms of communicable diseases, foster care and adoption payments under parts B and E of Title IV of the Social Security Act, community programs for the protection of life or safety, certain elementary and secondary education programs, Head Start, the Job Training Partnership Act, and higher education grants and loans.

Exceptions are made for refugees, asylees, aliens whose deportation is being withheld, and noncitizens who are veterans, on active duty, or the spouse or unmarried child of such an individual.

Senate amendment

Excepted programs are similar to the House with the following differences:

(1) benefits under Head Start Act and the Job Training Partnership Act are not excepted;

(2) the exception for foster care and adoption assistance is limited to Part E of Title IV of the Social Security Act;

(3) the exception for testing and treatment of communicable diseases is more limited and must be triggered by a finding by HHS that detection and treatment of a particular disease is necessary to prevent its spread; and

(4) includes an exception for education assistance under titles III, VII, and VIII of the Public Health Service Act.

Excepted classes are similar to House bill.

Conference agreement

The conference agreement follows the House bill and Senate amendment as follows.

(1) The definition of Federal Means Tested Public Benefit (defined as "a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit") was deleted due to the Byrd rule. It is the intent of conferees that this definition be presumed to be in place for purposes of this title. (2) Regarding excepted programs, the conference agreement follows the House bill on testing and

treatment of communicable diseases and by adding Head Start and the Job Training Partnership Act as excepted programs; the conference agreement adds refugee and entrant assistance as an excepted program; and the conference agreement follows the Senate amendment by adding education assistance under titles III, VII, and VIII of the Public Health Services Act as an excepted program.

5. NOTIFICATION AND INFORMATION REPORTING

Present law

Notification. Under regulation, individual advance written notice must be given of an intent to suspend, reduce, or terminate SSI benefits.

Information Reporting. AFDC and SSI restrict the use or disclosure of information concerning applicants and recipients to purposes connected to the administration of needs-based Federal programs.

House bill

Each Federal agency that administers an affected program shall post information and provide general notification to the public and to program recipients of changes regarding eligibility.

Agencies that administer SSI, housing assistance programs under the United States Housing Act of 1937, or block grants for temporary assistance for needy families (the successor program to AFDC) are required to furnish information about aliens they know to be unlawfully in the United States to the Immigration and Naturalization Service (INS) at least four times annually and upon INS request.

Senate amendment

Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

Subtitle B—Eligibility for State and Local Public Benefits Programs

6. ALIENS WHO ARE NOT QUALIFIED ALIENS OR NONIMMIGRANTS INELIGIBLE FOR STATE AND LOCAL PUBLIC BENEFITS

Present law

Under *Plyler vs. Doe* (457 U.S. 202 (1982)), States may not deny illegal alien children access to a public elementary education without authorization from Congress. However, the narrow 5-4 Supreme Court decision may imply that illegal aliens may be denied at least some State benefits and that Congress may influence the eligibility of illegal aliens for State benefits. Many, but not all, State general assistance laws currently deny illegal aliens means-tested general assistance.

House bill

Illegal aliens are ineligible for all State and local public benefits, with limited exceptions for emergency medical services, emergency disaster relief, immunizations and testing and treatment for symptoms of communicable diseases, and programs necessary for the protection of life or safety. States may, however, pass laws after the date of enactment that specify that illegal aliens may be eligible for certain State or local benefits that otherwise would be denied under this section.

Senate amendment

Similar to House bill, except that the exception for communicable diseases is more limited and must be triggered by a finding by HHS that testing and treatment of a particular disease is necessary to prevent its spread.

Conference agreement

The conference agreement follows the House bill.

No current State law, State constitutional provision, State executive order or decision

of any State or Federal court shall provide a sufficient basis for a State to be relieved of the requirement to deny benefits to illegal aliens. Laws, ordinances, or executive orders passed by county, city or other local officials will not allow those entities to provide benefits to illegal aliens. Only the affirmative enactment of a law by a State legislature and signed by the Governor after the date of enactment of this Act, that references this provision, will meet the requirements of this section.

The phrase "affirmatively provides for such eligibility" means that the State law enacted must specify that illegal aliens are eligible for State or local benefits. Persons residing under color of law shall be considered to be aliens unlawfully present in the United States and are prohibited from receiving State or local benefits, as defined, regardless of the enactment of any State law.

The conference agreement provides that no State or local government entity shall prohibit, or in any way restrict, any entity or official from sending to or receiving from the INS information regarding the immigration status of an alien or the presence, whereabouts, or activities of illegal aliens. It does not require, in and of itself, any government agency or law enforcement official to communicate with the INS.

The conferees intend to give State and local officials the authority to communicate with the INS regarding the presence, whereabouts, or activities of illegal aliens. This provision is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS. The conferees believe that immigration law enforcement is as high a priority as other aspects of Federal law enforcement, and that illegal aliens do not have the right to remain in the United States undetected and unapprehended.

7. STATE AUTHORITY TO LIMIT ELIGIBILITY OF QUALIFIED ALIENS FOR STATE PUBLIC BENEFITS

Present law

Under *Graham v. Richardson* (403 U.S. 365 (1971)), States may not deny legal permanent residents State-funded assistance that is provided to equally needy citizens without authorization from Congress.

Currently, there is no Federal law barring legal temporary residents (i.e., nonimmigrants) from State and local needs-based programs. In general, States are restricted in denying assistance to nonimmigrants where the denial is inconsistent with the terms under which the nonimmigrants were admitted. Where a denial of benefits is not inconsistent with Federal immigration law, however, States have broader authority to deny benefits and States often do deny certain benefits to nonimmigrants. Also, aliens in most nonimmigrant categories generally may have difficulty qualifying for many State and local benefits because of requirements that they be State "residents."

House bill

States are authorized to determine the eligibility of "qualified aliens," nonimmigrants, and aliens paroled into the United States for less than 1 year for any State or local means-tested public benefit program. Noncitizens receiving State and local benefits on the date of enactment would remain eligible for benefits until January 1, 1997.

Exceptions to State authority to deny benefits are made for refugees, asylees and aliens whose deportation has been withheld (for 5 years), permanent resident aliens who

have worked in the United States (in combination with their spouse or parents) for at least 10 years, and noncitizens who are veterans or on active duty or their spouse or unmarried child.

Senate amendment

Similar to House bill, except that under Byrd rule the definition of "State public benefits" (sec. 2412(c)) is deleted.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. The conference agreement does not include a definition of State public benefits in this section because the definition was dropped due to the Byrd rule. However, it is the intent of House and Senate conferees that the following definition be used by States in carrying out the authority granted by this section: "STATE PUBLIC BENEFITS DEFINED.—The term 'State public benefits' means any means-tested public benefits of a State or political subdivision of a State under which the State or political subdivision specifies the standards for eligibility, and does not include any Federal public benefit."

Subtitle C—Attribution of Income and Affidavits of Support

8. FEDERAL ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIEN

Present law

Federal Benefits. In determining whether an alien meets the means test for AFDC, SSI (except in cases of blindness or disability occurring after entry), and food stamps, the resources and income of an individual who filed an affidavit of support ("sponsor") for the alien (and the income and resources of the individual's spouse) are taken into account during a designated period after entry. Sponsor-to-alien deeming provisions were added to these three programs in part because several courts have found that affidavits of support, under current practice, do not obligate sponsors to reimburse government agencies for benefits provided to sponsored aliens. See below.

Amounts of Income and Resources Deemed. While the offset formulas vary among the programs, the amount of income and resources deemed under AFDC, SSI, and Food Stamps is reduced by certain offsets to provide for some of the sponsor's own needs.

Length of Deeming Period. For AFDC and Food Stamps, sponsor-to-alien deeming applies to a sponsored alien seeking assistance within 3 years of entry. Through September 1996, sponsor-to-alien deeming applies to a sponsored alien seeking SSI within 5 years of entry, after which the deeming period reverts to 3 years.

Review Upon Reapplication. Regulations implementing the food stamp program expressly require providing information on a sponsor's resources as part of recertification. Application. No provision.

House bill

Federal Benefits. During the applicable deeming period (see "Length of Deeming Period" below), the income and resources of a sponsor and the sponsor's spouse are to be taken into account under all Federally-funded means-tested programs (with the exception of the programs below) in determining the sponsored individual's neediness. Excepted programs are emergency medical services, emergency disaster relief, school lunch and child nutrition assistance, immunizations and testing and treatment for symptoms of communicable diseases, certain programs that protect life, safety, or public health, certain foster care and adoption assistance, Head Start, Job Training Partnership Act programs, certain elementary and secondary education programs, and higher education grants and loans.

Amounts of Income and Resources Deemed. The full income and resources of the sponsor and the sponsor's spouse are deemed to be that of the sponsored alien.

Length of Deeming Period. Deeming extends until citizenship, unless the noncitizen has worked for at least 10 years in the United States (either individually or in combination with the noncitizen's spouse and parents).

Review Upon Reapplication. Whenever a sponsored noncitizen is required to reapply for benefits under any Federal means-tested public benefits program, the agency must review the income and resources deemed to the sponsored noncitizen.

Application. For programs that already deem income and resources on the date of enactment, the changes in this section apply immediately; other programs must implement changes required within 180 days after the date of enactment.

Senate amendment

Federal Benefits. Under the Byrd rule, the definition of "Federal means-tested program" (sec. 2403(c)(1)) is deleted.

Otherwise similar to House bill, with differences in exceptions to Federal means-tested programs noted above for the 5-year bar.

Amounts of Income and Resources Deemed. Similar to House bill.

Length of Deeming Period. Similar to House bill.

Review Upon Reapplication. Similar to House bill.

Application. Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with the modification of certain additional excepted programs as noted in item 4 above.

The allowance for treatment of communicable diseases is very narrow. The conferees intend that it only apply where absolutely necessary to prevent the spread of such diseases. This is only a stop-gap measure until the deportation of a person or persons unlawfully here. It is not intended to provide authority for continued treatment of such diseases for a long term.

The allowance for emergency medical services under Medicaid is very narrow. The conferees intend that it only apply to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein.

9. AUTHORITY FOR STATES TO PROVIDE FOR ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO THE ALIEN WITH RESPECT TO STATE PROGRAMS

Present law

The highest courts of at least two States have held that the Supreme Court decision barring State discrimination against legal aliens in providing State benefits without Federal authorization (*Graham v. Richardson*, 403 U.S. 365 (1971)) prohibits State sponsor-to-alien deeming requirements for State benefits.

House bill

State and local governments may, for the deeming period that applies to Federal benefits, deem a sponsor's income and resources (and those of the sponsor's spouse) to a sponsored individual in determining eligibility for and the amount of needs-based benefits. State and local governments may not require deeming for the following State public benefits: emergency medical services, emergency disaster relief, school lunch and child nutrition assistance, immunizations and

testing and treatment for symptoms of communicable diseases, foster care and adoption payments, and certain programs to protect life and safety.

Senate amendment

Similar to House bill, except that the exception for communicable diseases is limited to testing and treatment of the disease itself and must be triggered by a finding by the chief State health official that it is necessary to prevent spread of the disease.

Conference agreement

The conference agreement follows the House bill.

10. REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT

Present law

In General. Administrative authorities may request an affidavit of support on behalf of an alien seeking permanent residency pursuant to regulation. Requirements for affidavits of support are not specified by statute.

Under the Immigration and Nationality Act, an alien who is likely to become a public charge may be excluded from entry unless this restriction is waived, as is the case for refugees. By regulation and administrative practice, the State Department and the Immigration and Naturalization Service permit a prospective permanent resident alien (also immigrant or green card holder) who otherwise would be excluded as a public charge (i.e., because of insufficient means or prospective income) to overcome exclusion through an affidavit of support or similar document executed by an individual in the United States commonly called a "sponsor." It has been reported that roughly one-half of the aliens who obtain legal permanent resident status have had affidavits of support filed on their behalf.

Various State court decisions and decisions by immigration courts have held that the affidavits of support, as currently constituted, do not impose a binding obligation on the sponsor to reimburse State agencies providing aid to the sponsored alien.

Forms. No statutory provision. The Department of Justice issues a form (Form I-134) that complies with current sponsorship guidelines.

Notification of Change of Address. There is no express requirement under current administrative practice that sponsors inform welfare agencies of a change in address. However, a sponsored alien who applies for benefits for which deeming is required must provide various information regarding the alien's sponsor.

Reimbursement of Government Expenses. Various State court decisions and decisions by immigration courts have held that these affidavits, as currently constituted, do not impose a binding obligation on the sponsor to reimburse State agencies providing aid to the sponsored alien.

Definitions. There are no firm administrative restrictions on eligibility to execute an affidavit of support. There is no definition of "Means-tested Public Benefits Program".

Effective Date. No provision.

Benefits Not Subject to Reimbursement. No provision.

House bill

In General. The proposal provides that when affidavits of support are required, they must comply with the following:

Affidavits of support must be executed as contracts that are legally enforceable against sponsors by Federal, State, and local agencies with respect to any means-tested benefits (with exceptions noted below) paid to sponsored aliens before they become citizens.

Affidavits of support must be enforceable against the sponsor by the sponsored alien.

Reimbursement shall be requested for all Federal, State or local need-based programs with the exceptions noted below.

To qualify to execute an affidavit of support, an individual must meet the revised definition of sponsor below.

Governmental entities that provide benefits may seek reimbursement up to 10 years after a sponsored alien last receives benefits.

Sponsorship extends until the alien becomes a citizen.

Forms. The Attorney General, in consultation with the Secretary of State and the Secretary of HHS, shall formulate an affidavit of support within 90 days after enactment, consistent with this section.

Notification of Change of Address. Until they no longer are potentially liable for reimbursement of benefits paid to sponsored individuals, sponsors must notify the Attorney General and the State, district, territory or possession in which the sponsored individual resides of any change of their address within 30 days of moving. Failure to notify may result in a civil penalty of up to \$2,000 or, if the failure occurs after knowledge that the sponsored individual has received a reimbursable benefit, of up to \$5,000.

Reimbursement of Government Expenses. If a sponsored alien receives any benefit under any means-tested public assistance program, the appropriate Federal, State, or local official shall request reimbursement by the sponsor in the amount of such assistance. Thereafter the official may seek reimbursement in court if the sponsor fails to respond within 45 days of the request that the sponsor is willing to begin repayments. The official also may seek reimbursement through the courts within 60 days after a sponsor fails to comply with the terms of repayment. The Attorney General in consultation with the Secretary of HHS, shall prescribe regulations on requesting reimbursement. No action may be brought later than 10 years after the alien last received benefits.

Definitions. A "sponsor" is a citizen or an alien lawfully admitted to the United States for permanent residence who petitioned for immigration preference for the sponsored alien, is at least 18 years of age, and resides in any State.

A "Means-Tested Public Benefits Program" is a program of public benefits of the Federal, State or local government in which eligibility for or the amount of, benefits or both are determined on the basis of income, resources, or financial need.

Effective Date. The changes regarding affidavits of support shall apply to affidavits of support executed no earlier than 60 days or later than 90 days after the Attorney General promulgates the form.

Benefits Not Subject to Reimbursement. Governmental entities cannot seek reimbursement with respect to:

- emergency medical services;
- emergency disaster relief;
- school lunch and child nutrition assistance;
- payments for foster care and adoption assistance;
- immunizations and testing for and treatment of communicable diseases;
- certain programs that protect life, safety, or public health;
- postsecondary education benefits;
- means-tested elementary and secondary education programs;
- Head Start; and
- Job Training Partnership Act programs.

Senate amendment

In General. Under the Byrd rule, the definition of "means-tested public benefits program" (sec. 2423(a)) is deleted. Otherwise similar to House bill.

Forms. Similar to House bill.

Notification of Change of Address. Similar to House bill.

Reimbursement of Government Expenses. Similar to House bill.

Definitions. Similar to House bill. Definition for "Means-tested public benefits program" deleted under the Byrd rule.

Effective Date. Similar to House bill.

Benefits Not Subject to Reimbursement. Similar to House bill except:

does not add Head Start and Job Training Partnership Act programs to the list of excepted programs;

the exception for foster care and adoption assistance is limited to part E of Title IV of the Social Security Act;

the exception for testing and treatment of a communicable disease is more limited and must be triggered by a finding by HHS that it is necessary to prevent the disease's spread; and

adds exception for education assistance under titles III, VII, and VIII of the Public Health Service Act.

Conference agreement

The conference agreement generally follows the House bill and Senate amendment. The definition of Means-Tested Public Benefits Program (defined as "a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government or of a State or political subdivision of a State in which the eligibility of an individual, household, or family eligibility unit for benefits under the program, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit") for purposes of this section was deleted due to the Byrd rule. It is the intent of conferees that this definition be presumed to be in place for purposes of this title. With regard to excepted programs, the conference agreement follows the House bill on testing and treatment of communicable diseases and by adding Head Start and Job Training Partnership Act as excepted programs; the conference agreement follows the Senate amendment by adding education assistance under titles III, VII, and VIII of the Public Health Services Act as an excepted program.

Subtitle D—General Provisions

11. DEFINITIONS

Present law

In General. Federal assistance programs that have alien eligibility restrictions generally reference specific classes defined in the Immigration and Nationality Act.

Qualified Alien. Some programs allow benefits for otherwise eligible aliens who are "permanently residing under color of law (PRUCOL)." This term is not defined under the Immigration and Nationality Act, and there has been some inconsistency in determining which classes of aliens fit within the PRUCOL standard.

House bill

In General. Unless otherwise provided, the terms used in this title have the same meaning as defined in Section 101(a) of the Immigration and Nationality Act.

Qualified Alien. An alien who is a lawful permanent resident, refugee, asylee, or an alien who has been paroled into the United States for at least 1 year.

Senate amendment

In General. Similar to House bill.

Qualified Alien. Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

12. VERIFICATION OF ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS

Present law

State agencies that administer most major Federal programs with alienage restrictions

generally use the SAVE (Systematic Alien Verification for Entitlements) system to verify the immigration status of aliens applying for benefits.

House bill

The Attorney General must adopt regulations to verify the lawful presence of applicants for Federal benefits no later than 18 months after enactment. States must have a verification system that complies with these regulations within 24 months of their adoption, and must authorize necessary appropriations.

Senate amendment

Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

13. STATUTORY CONSTRUCTION

Present law

No provision.

House bill

This title addresses only program eligibility based on alienage and does not address whether any individual meets other eligibility criteria. This title does not address alien eligibility for basic education or for any program of foreign assistance.

Senate amendment

Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

14. COMMUNICATION BETWEEN STATE AND LOCAL GOVERNMENT AGENCIES AND THE IMMIGRATION AND NATURALIZATION SERVICE

Present law

The confidentiality provisions of various State statutes may prohibit disclosure of immigration status obtained under them. Some Federal laws, including the Family Education Rights and Protection Act, may deny funds to certain State and local agencies that disclose a protected individual's immigration status. Various localities have enacted laws preventing local officials from disclosing the immigration status of individuals to INS.

House bill

No State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

Senate amendment

Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

15. QUALIFYING QUARTERS

Present law

No provision.

House bill

In determining whether an alien may qualify for benefits under the exception for individuals who have worked at least 40 quarters while in the United States (see sections 402 and 421 above), work performed by parents and spouses may be credited to aliens under certain circumstances. Each quarter of work performed by the parent while an alien was under the age of 18 is credited to the alien, provided the parent did not receive any Federal public benefits during the quarter. Similarly, each quarter of work performed by a spouse of an alien during their marriage is credited to the alien, if the spouse did not receive any Federal public benefits during the quarter.

Senate amendment

Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

Subtitle E—Conforming Amendments

16. CONFORMING AMENDMENTS RELATING TO ASSISTED HOUSING

Present law

No provision.

House bill

This section consists of a series of technical and conforming amendments.

Senate amendment

Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

Subtitle F—Earned Income Credit Denied to Unauthorized Employees

17. EARNED INCOME CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES

[NOTE.—For further description of this and additional earned income credit provisions, see Title IX: Miscellaneous below.]

Present law

Certain eligible low-income workers are entitled to claim a refundable credit of up to \$3,556 in 1996 on their income tax return. The amount of the credit an eligible individual may claim depends upon whether the individual has one, more than one, or no qualifying children and is determined by multiplying the credit rate by the taxpayer's earned income up to an earned income amount. The maximum amount of the credit is the product of the credit rate and the earned income amount. For taxpayers with earned income (or adjusted gross income (AGI), if greater) in excess of the beginning of the phaseout range, the maximum credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed.

In order to claim the credit, an individual must either have a qualifying child or meet other requirements. A qualifying child must meet a relationship test, an age test, an identification test, and a residence test. In order to claim the credit without a qualifying child, an individual must not be a dependent and must be over age 24 and under age 65.

To satisfy the identification test, individuals must include on their tax return the name and age of each qualifying child. For returns filed with respect to tax year 1996, individuals must provide a taxpayer identification number (TIN) for all qualifying children born on or before November 30, 1996. For returns filed with respect to tax year 1997 and all subsequent years, individuals must provide TINs for all qualifying children, regardless of their age. An individual's TIN is generally that individual's social security number.

The Internal Revenue Service may summarily assess additional tax due as a result of a mathematical or clerical error without sending the taxpayer a notice of deficiency and giving the taxpayer an opportunity to petition the Tax Court. Where the IRS uses the summary assessment procedure for mathematical or clerical errors, the taxpayer must be given an explanation of the asserted error and a period of 60 days to request that the IRS abate its assessment. The IRS may not proceed to collect the amount of the assessment until the taxpayer has

agreed to it or has allowed the 60-day period for objecting to expire. If the taxpayer files a request for abatement of the assessment specified in the notice, the IRS must abate the assessment. Any reassessment of the abated amount is subject to the ordinary deficiency procedures. The request for abatement of the assessment is the only procedure a taxpayer may use prior to paying the assessed amount in order to contest an assessment arising out of a mathematical or clerical error. Once the assessment is satisfied, however, the taxpayer may file a claim for refund if he or she believes the assessment was made in error.

House bill

Individuals are not eligible for the credit if they do not include their taxpayer identification number (and, if married, their spouse's taxpayer identification number) on their tax return. Solely for these purposes and for purposes of the present-law identification test for a qualifying child, a taxpayer identification number is defined as a social security number issued to an individual other than a number issued under section 205(c)(2)(B)(1)(II) (or that portion of sec. 205(c)(2)(B)(1)(III) relating to it) of the Social Security Act (regarding the issuance of a number to an individual applying for or receiving Federally funded benefits).

If an individual fails to provide a correct taxpayer identification number, such omission will be treated as a mathematical or clerical error. If an individual who claims the credit with respect to net earnings from self-employment fails to pay the proper amount of self-employment tax on such net earnings, the failure will be treated as a mathematical or clerical error for purposes of the amount of credit allowed.

Senate amendment

Similar to House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

TITLE V: CHILD PROTECTION BLOCK GRANT PROGRAMS AND FOSTER CARE, ADOPTION ASSISTANCE, AND INDEPENDENT LIVING PROGRAMS

Subtitle A—Child Protection Block Grant Program and Foster Care, Adoption Assistance, and Independent Living Programs

Present law

Under current law, there are at least 36 programs designed to help children who are victims of abuse or neglect. These programs address the child protection issue by supporting abuse reporting and investigation; abuse prevention; child and family assessment, preservation, and support; foster care; adoption; and training of social workers, foster parents, judges, and others. These programs can be divided into two general categories. The first are entitlement programs under jurisdiction of the Committee on Ways and Means and the Finance Committee, nearly all of which provide unlimited funding for foster and adoption maintenance payments, administrative costs, and training. The two exceptions are the Family Preservation and Support Program which provides capped entitlement funds to help States provide services that keep families together and prevent abuse, and the Independent Living program which provides capped entitlement funds to help children in foster care make the transition to living on their own. The second group of programs are appropriated programs. These programs are smaller and, except the Child Welfare Services Program, are generally under the jurisdiction of the Economic and Educational Opportunities Committee and the Labor and Human Resources Committee.

House bill

The House provision retains all the open-ended entitlement programs to ensure that States have adequate resources to help abused children that must be removed from their homes. The provision also combines the two capped entitlement programs and many of the smaller programs into two block grants that will simplify administration, promote flexibility, and increase efficiency. Working in conjunction with the Committee on Economic and Educational Opportunity, the Ways and Means Committee has created a block grant that is identical to a block grant created by the Opportunities Committee. Across the two Committees, a total of 11 programs are combined into the new block grant structure. Programs under jurisdiction of the Opportunities Committee are mentioned briefly below to clarify the structure of the overall Federal program for helping abused children and their families.

Senate amendment

The Senate amendment does not include the block grant; the amendment makes no changes in current law.

Conference agreement

The conference agreement follows the Senate amendment.

Chapter 1—Block Grants to States for the Protection of Children

1. PURPOSE

Present law

Child Welfare Services, now provided for in Title IV-B of the Social Security Act, are designed to help States provide child welfare services, family preservation, and community-based family support services.

House bill

The proposed Child Protection Block Grant would replace current law under Title IV-B. The purpose of the Child Protection Block Grant is to:

- (1) identify and assist families at risk of abusing or neglecting their children;
- (2) operate a system for receiving reports of abuse or neglect of children;
- (3) improve the intake, assessment, screening, and investigation of reports of abuse and neglect;
- (4) enhance the general child protective system by improving risk and safety assessment tools and protocols;
- (5) improve legal preparation and representation, including procedures for appealing and responding to appeals of substantiated reports of abuse and neglect;
- (6) provide support, treatment, and family preservation services to families which are, or are at risk of, abusing or neglecting their children;
- (7) support children who must be removed from or who cannot live with their families;
- (8) make timely decisions about permanent living arrangements for children who must be removed from or who cannot live with their families;
- (9) provide for continuing evaluation and improvement of child protection laws, regulations, and services;
- (10) develop and facilitate training protocols for individuals mandated to report child abuse or neglect; and
- (11) develop and enhance the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level.

Senate amendment

The amendment does not change current law.

Conference agreement

The conference agreement follows the Senate amendment.

the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.

CHAPTER 1—ELIGIBILITY FOR FEDERAL BENEFITS

SEC. 401. ALIENS WHO ARE NOT QUALIFIED ALIENS INELIGIBLE FOR FEDERAL PUBLIC BENEFITS.

(a) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in subsection (b), an alien who is not a qualified alien (as defined in section 4431) is not eligible for any Federal public benefit (as defined in subsection (c)).

(b) EXCEPTIONS.—

(1) Subsection (a) shall not apply with respect to the following Federal public benefits:

(A) Emergency medical services under title XIX of the Social Security Act.

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949, or any assistance under section 306C of the Consolidated Farm and Rural Development Act, to the extent that the alien is receiving such a benefit on the date of the enactment of this Act.

(2) Subsection (a) shall not apply to any benefit payable under title II of the Social Security Act to an alien who is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act, to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act, or to any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before the month in which this Act becomes law.

(c) FEDERAL PUBLIC BENEFIT DEFINED.—

(1) Except as provided in paragraph (2), for purposes of this subtitle the term "Federal public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States; or

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State.

SEC. 402. LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR CERTAIN FEDERAL PROGRAMS.

(a) LIMITED ELIGIBILITY FOR SPECIFIED FEDERAL PROGRAMS.—

(1) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 4431) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) EXCEPTIONS.—

(A) **TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.**—Paragraph (1) shall not apply to an alien until 5 years after the date—

(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

(ii) an alien is granted asylum under section 208 of such Act; or

(iii) an alien's deportation is withheld under section 243(h) of such Act.

(B) **CERTAIN PERMANENT RESIDENT ALIENS.**—Paragraph (1) shall not apply to an alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435, and (II) did not receive any Federal means-tested public benefit (as defined in section 4403(c)) during any such quarter.

(C) **VETERAN AND ACTIVE DUTY EXCEPTION.**—Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii).

(D) TRANSITION FOR ALIENS CURRENTLY RECEIVING BENEFITS.—

(1) SSI.—

(I) **IN GENERAL.**—With respect to the specified Federal program described in paragraph (3)(A), during the period beginning on the date of the enactment of this Act and ending on the date which is 1 year after such date of enactment, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of the date of the enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) **REDETERMINATION CRITERIA.**—With respect to any redetermination under subclause (I), the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under such program.

(III) **GRANDFATHER PROVISION.**—The provisions of this subsection and the redetermination under subclause (I), shall only apply with respect to the benefits of an individual

described in subclause (I) for months beginning on or after the date of the redetermination with respect to such individual.

(IV) **NOTICE.**—Not later than January 1, 1997, the Commissioner of Social Security shall notify an individual described in subclause (I) of the provisions of this clause.

(1) FOOD STAMPS.—

(I) **IN GENERAL.**—With respect to the specified Federal program described in paragraph (3)(B), during the period beginning on the date of enactment of this Act and ending on the date which is 1 year after the date of enactment, the State agency shall, at the time of the recertification, recertify the eligibility of any individual who is receiving benefits under such program as of the date of enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) **RECERTIFICATION CRITERIA.**—With respect to any recertification under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) **GRANDFATHER PROVISION.**—The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on the date of enactment of this Act the alien is lawfully residing in any State and is receiving benefits under such program on such date of enactment.

(iii) MEDICAID.—

(I) **IN GENERAL.**—With respect to the specified Federal program described in paragraph (3)(C), during the period beginning on the date of enactment of this Act and ending on the date which is 1 year after the date of enactment, the State agency shall, at the time of the redetermination, redetermine the eligibility of any individual who is receiving benefits under such program as of the date of enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) **REDETERMINATION.**—With respect to any redetermination under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) **GRANDFATHER PROVISION.**—The provisions of this subsection and the redetermination under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of redetermination, if on the date of enactment of this Act the alien is lawfully residing in any State and is receiving benefits under such program on such date of enactment.

(3) **SPECIFIED FEDERAL PROGRAM DEFINED.**—For purposes of this subtitle, the term "specified Federal program" means any of the following:

(A) **SSI.**—The supplemental security income program under title XVI of the Social Security Act, including supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

(B) **FOOD STAMPS.**—The food stamp program as defined in section 3(h) of the Food Stamp Act of 1977.

(C) **MEDICAID.**—A State plan approved under title XIX of the Social Security Act.

(b) LIMITED ELIGIBILITY FOR DESIGNATED FEDERAL PROGRAMS.—

(1) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in section 4403 and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in

there will no longer be any mechanism for guaranteeing a national safety net for our poorest families.

I am concerned that the work requirements in the bill can not be met. States that do not meet employment goals will lose part of their block grants. Penalties would rise from 5 percent in the first year to 21 percent in the ninth year. The Congressional Budget Office has already reported that most States will be unable to meet the work requirements. This legislation lacks the necessary commitment or resources to help people move from poverty to meaningful employment. It does not provide any specific funding for States to help people find or train themselves for better-paying jobs. Rather than moving people off welfare and onto work, this bill emphasizes cutting off welfare.

While I support reform that promotes personal responsibility and community initiatives, I cannot support legislation which undermines the national safety net and reduces resources for hungry families.

Mr. GRAHAM. Mr. President, during consideration of the Senate reconciliation bill, two definitions regarding immigrants, section 2403(c)(1), and in section 2423, section 213(A)(f)(2), were stricken because they contained material that was not under the jurisdiction of the Finance Committee. Specifically the definitions denied all means-tested benefits to immigrants including benefits subject to appropriations.

The Parliamentarian also agreed that the provisions violated another section of the Byrd rule, section 313(b)(1)(D). Section 313(b)(1)(D) prohibits language in a reconciliation bill or conference report if the deficit reduction is merely incidental to the larger policy changes contained within the provision. The Parliamentarian agreed that since the reconciliation process is confined to mandatory spending, expanding the scope of provisions to include benefits provided by discretionary spending was a violation of the Byrd rule.

The conferees were certainly notified about these rulings and the offending provisions were not included in the conference report.

Moreover, would the Senator agree that, when the Senate struck these sections as violating the Byrd rule, the Senate's intent was to prevent the denial of services in appropriated programs such as those that provide services to victims of domestic violence and child abuse, the maternal and child health block grant, social services block grant, community health centers and migrant health centers? Does the Senator agree that recipients of appropriated funds are not forced to conduct checks on citizenship and immigration status when providing community services?

Mr. KENNEDY. Yes. Under the Byrd rule, the budget reconciliation process cannot be used to change discretionary spending programs. Only mandatory spending is affected.

Mr. GRAHAM. Is this consistent with the understanding of the Senator from Nebraska as well?

Mr. EXON. Yes. As ranking minority member of the Budget Committee, I have been concerned to ensure that the budget reconciliation process is limited to affecting mandatory spending and is not misused to achieve other objectives. Budget reconciliation's departure from ordinary Senate rules of debate must be carefully limited to its original and proper purpose. Our colleagues on the other side of the aisle shared this view when they agreed to strike the offending provisions from the Senate bill.

Mr. GRAHAM. Would the Senator agree that the version of the bill recommended in this conference report is consistent with this understanding?

Mr. EXON. Yes. These provisions stayed out of the bill in conference, as the conferees sought to avoid another challenge on the Senate floor that these provisions violated the Byrd rule. This manifests our intent to keep this bill within the proper parameters of budget reconciliation.

Mr. President, changes in discretionary programs on a reconciliation bill, such as the ones mentioned by the Senator from Florida and the Senator from Massachusetts, result in no direct budgetary savings and are therefore extraneous under the Byrd rule.

During floor consideration of this legislation, we struck section 2403(c)(1), and in section 2423, section 213(A)(f)(2) because they contained material that was not under the jurisdiction of the Finance Committee, namely many discretionary programs, because they violated section 313(b)(1)(C) of the Budget Act. These provisions also provide no budgetary savings, and violating the intent of section 313(b)(1)(A) of the Budget Act, but because they were cleverly embedded in language which did provide direct budgetary savings, it was difficult to fully enforce the Byrd rule. Nonetheless, it is clear that this bill should not be used to make changes in discretionary programs, and those who look to interpret the action of the Congress should take this into account.

Mr. President, the purpose of the Byrd rule is to prevent reconciliation bills from being loaded up with provisions, such as these, that have no budgetary impact. This is important because reconciliation bills move in the Senate under special rules which limit amendment and time for debate. Without the protections provided by the Byrd rule, it would be far too easy to take advantage of the privileged nature of reconciliation to enact controversial items without proper consideration in the Senate. Allowing reconciliation to be used in this manner fundamentally undermines the basic nature of the Senate's rules which protect the voice of the minority and damages the Senate as an institution.

For this reason, I feel it is important to bring these provisions to the atten-

tion of the Senate, and I thank the Senators for their efforts.

Mr. LEVIN. Mr. President, today, the Senate will reach a milestone in the long and sometimes twisting journey of welfare reform legislation. The Senate will pass this bill, as the House of Representatives did yesterday. The President has told the Nation that he will sign it, and soon it will become law. I will vote in favor of this bill because it is a step toward ending the present system which simply does not work and replacing it with a system which requires and rewards work. I wish, however, that we had before us a reform bill which I could wholeheartedly, without reservation, endorse and support. I would greatly prefer a bill, for example, like the work first legislation which contained a Federal safety net for children and which I cosponsored with Senator DASCHLE and many of my colleagues or even like the bipartisan Biden-Specter approach which I voted for in the Senate.

The bill before us is an improvement over the legislation which I opposed last year and which the President vetoed because, among other things, it provides more support for child care, retains needed child protection programs and services, includes my amendment strengthening the work requirement, does not block grant food stamp assistance, requires a greater maintenance of effort from the States, and doubles the contingency fund to help States in times of economic downturn. However, it contains a number of serious flaws. That is why it is a milestone and not a final destination. It will need repairs. As the President has indicated, there are aspects of this legislation which the Congress will be required to revisit. And beyond that, I believe that this kind of sweeping reform involves an element of risk. Although our efforts are directed toward improving the system, recognizing within the welfare system the principle of the value of work, assuring the protection of children and reasserting the responsibility of absent parents to their children, we cannot possibly be sure that all the effects of such sweeping reform will be those intended. For that reason, the Congress must remain vigilant in its oversight and monitoring of the impacts of this legislation. We must stand ready to address negative impacts. If critics are fully correct and there is a large increase in the numbers of American children who find themselves impoverished, we must stand ready to remedy quickly the defects in this bill.

For a number of years, I have been working toward reform of the welfare system. The existing system has failed. It does not serve families and children well. It does not serve the American taxpayer well. It was created to meet the needs of families in hard times. Unfortunately, for far too many, what was intended as a safety net has too often become a way of life, a cycle of dependency. It is wrong to allow such a system to continue.

actual amount of such resources and the allowable resource level established under the State plan.

(iii) In determining the amount of erroneous excess payments for medical assistance to an individual or family under clause (i)(II), the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment on behalf of the individual or family, or (II) the difference between the actual amount incurred for medical care by the individual or family and the amount which should have been incurred in order to establish eligibility for medical assistance.

(iv) In determining the amount of erroneous excess payments, there shall not be included any error resulting from a failure of an individual to cooperate or give correct information with respect to third-party liability as required under section 1396k(a)(1)(C) or 602(a)(26)(C) of this title or with respect to payments made in violation of section 1396e of this title.

(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1396r-1(b)(1) of this title).

(E) For purposes of subparagraph (D), there shall be excluded, in determining both erroneous excess payments for medical assistance and total expenditures for medical assistance—

(i) payments with respect to any individual whose eligibility therefor was determined exclusively by the Secretary under an agreement pursuant to section 1383c of this title and such other classes of individuals as the Secretary may by regulation prescribe whose eligibility was determined in part under such an agreement; and

(ii) payments made as the result of a technical error.

(2) The State agency administering the plan approved under this subchapter shall, at such times and in such form as the Secretary may specify, provide information on the rates of erroneous excess payments made (or expected, with respect to future periods specified by the Secretary) in connection with its administration of such plan, together with any other data he requests that are reasonably necessary for him to carry out the provisions of this subsection.

(3)(A) If a State fails to cooperate with the Secretary in providing information necessary to carry out this subsection, the Secretary, directly or through contractual or such other arrangements as he may find appropriate, shall establish the error rates for that State on the basis of the best data reasonably available to him and in accordance with such techniques for sampling and estimating as he finds appropriate.

(B) In any case in which it is necessary for the Secretary to exercise his authority under subparagraph (A) to determine a State's error rates for a fiscal year, the amount that would otherwise be payable to such State under this subchapter for quarters in such year shall be reduced by the costs incurred by the Secretary in making (directly or otherwise) such determination.

(4) This subsection shall not apply with respect to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, or American Samoa.

* (v) **Medical assistance to aliens not lawfully admitted for permanent residence**

(1) Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this subchapter (other than the requirement of the receipt of aid or assistance under subchapter IV of this chapter, supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment), and

(C) such care and services are not related to an organ transplant procedure.

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 of this chapter, or a State supple-

an organ transplant procedure.

(3) For purposes of this subsection, the term "emergency medical condition" means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

- (A) placing the patient's health in serious jeopardy,
- (B) serious impairment to bodily functions, or
- (C) serious dysfunction of any bodily organ or part.

(w) Reduction in amount expended under State plan

(1)(A) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State (as defined in paragraph (7)(D)) under subsection (a)(1) of this section for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during the fiscal year—

- (i) from provider-related donations (as defined in paragraph (2)(A)), other than—
 - (I) bona fide provider-related donations (as defined in paragraph (2)(B)), and
 - (II) donations described in paragraph (2)(C);
- (ii) from health care related taxes (as defined in paragraph (3)(A)), other than broad-based health care related taxes (as defined in paragraph (3)(B));
- (iii) from a broad-based health care related tax, if there is in effect a hold harmless provision (described in paragraph (4)) with respect to the tax; or
- (iv) only with respect to State fiscal years (or portions thereof) occurring on or after January 1, 1992, and before October 1, 1995, from broad-based health care related taxes to the extent the amount of such taxes collected exceeds the limit established under paragraph (5).

(B) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State under subsection (a)(7) of this section for all quarters in a Federal fiscal year (beginning with fiscal year 1993), the total amount expended during the fiscal year for administrative expenditures under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during such quarters from donations described in paragraph (2)(C), to the extent the amount of such donations exceeds 10 percent of the amounts expended under the State plan under this subchapter during the fiscal year for purposes described in paragraphs (2), (3), (4), (6), and (7) of subsection (a) of this section.

(C)(i) Except as otherwise provided in clause (ii), subparagraph (A)(i) shall apply to donations received on or after January 1, 1992.

(ii) Subject to the limits described in clause (iii) and subparagraph (E), subparagraph (A)(i) shall not apply to donations received before the effective date specified in subparagraph (F) if such donations are received under programs in effect or as described in State plan amendments or related documents submitted to the Secretary by September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date.

(iii) In applying clause (ii) in the case of donations received in State fiscal year 1993, the maximum amount of such donations to which such clause may be applied may not exceed the total amount of such donations received in the corresponding period in State fiscal year 1992 (or not later than 5 days after the last day of the corresponding period).

(D)(i) Except as otherwise provided in clause (ii), subparagraphs (A)(ii) and (A)(iii) shall apply to taxes received on or after January 1, 1992.

(ii) Subparagraphs (A)(ii) and (A)(iii) shall not apply to impermissible taxes (as defined in clause (iii)) received before the effective date specified in subparagraph (F) to the extent the taxes (including the tax rate or base) were in effect, or the legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

(iii) In this subparagraph and subparagraph (E), the term "impermissible tax" means a health care related tax for which a reduction may be made under clause (ii) or (iii) of subparagraph (A).

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Pub.L. 100-119, Title I,
 12(a)(10), 13207(a)(1)(E),

101-508, § 13303(d)(2),

100-119, § 106(e)(1), in
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L. 99-177, §§ 201(b),
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Subsec. (b). Pub.L. 99-177 substituted provi-
 sions setting forth exceptions in the House of
 Representatives for certain bills, etc., under sub-
 sec. (a) of this section, for provisions relating to
 determination of outlays and revenues.

Subsec. (c). Pub.L. 99-177 added subsec. (c).

Effective Date of 1990 Amendment

Amendment by section 13303 of Pub.L.
 101-508 applicable with respect to fiscal years
 beginning on or after Oct. 1, 1990, see section
 13306 of Pub.L. 101-508, set out as a note under
 section 632 of this title.

Effective Date of 1985 Amendment

Amendment by Pub.L. 99-177 effective Dec.
 12, 1985, to apply to fiscal years beginning after
 Sept. 30, 1985, see section 275(a)(1), of Pub.L.
 99-177, set out as a note under section 900 of
 this title.

Appeal of Rulings of the Chair

An affirmative vote of three-fifths of the
 Members of the Senate, duly chosen and sworn,
 shall be required in the Senate to sustain an
 appeal of the ruling of the Chair on a point of
 order raised under subsec. (a) of this section, see
 section 271(c) of Pub.L. 99-177, set out as a note
 under section 900 of this title.

[Section 271(c) of Pub.L. 99-177 to expire
 Sept. 30, 1993, pursuant to section 275(b)(1) and
 (2)(D) of Pub.L. 99-177, as amended by Pub.L.
 100-119, Title I, § 106(c), Title II, § 210(b),
 Sept. 29, 1987, 101 Stat. 780, 787, set out as a
 note under section 900 of this title.]

Legislative History

For legislative history and purpose of Pub.L.
 99-177, see 1985 U.S. Code Cong. and Adm.
 News, p. 979. See, also, Pub.L. 100-119, 1987
 U.S. Code Cong. and Adm. News, p. 739; Pub.L.
 101-508, 1990 U.S. Code Cong. and Adm. News,
 p. 2017.

LAW REVIEW COMMENTARIES

Rewriting the fiscal constitution: The case of
 Gramm-Rudman-Hollings. Kate Stith, 76 Cal.
 L.Rev. 593 (1988).

§ 643. Effects of points of order

(a) Points of order in the Senate against amendments between the Houses

Each provision of this Act that establishes a point of order against an amendment also
 establishes a point of order in the Senate against an amendment between the Houses.
 If a point of order under this Act is raised in the Senate against an amendment between
 the Houses, and the Presiding Officer sustains the point of order, the effect shall be the
 same as if the Senate had disagreed to the amendment.

(b) Effect of a point of order on a bill in the Senate

In the Senate, if the Chair sustains a point of order under this Act against a bill, the
 Chair shall then send the bill to the committee of appropriate jurisdiction for further
 consideration.

(Pub.L. 93-344, Title III, § 312, as added Pub.L. 101-508, Title XIII, § 13207(b)(1), Nov. 5, 1990, 104
 Stat. 1388-618.)

HISTORICAL AND STATUTORY NOTES

References in Text

"This Act", referred to in text, means Pub.L.
 93-344, July 12, 1974, 88 Stat. 297, as amended,
 known as the Congressional Budget and Im-
 poundment Control Act of 1974. For complete
 classification of this Act to the Code, see Short
 Title note set out under section 621 of this title
 and Tables.

Codification

Letter designation "(a)" has been editorially
 supplied.

Legislative History

For legislative history and purpose of Pub.L.
 101-508, see 1990 U.S. Code Cong. and Adm.
 News, p. 2017.

§ 644. Extraneous matter in reconciliation legislation

(a) In general

When the Senate is considering a reconciliation bill or a reconciliation resolution
 pursuant to section 641 of this title, (whether that bill or resolution originated in the
 Senate or the House) or section 907d of this title, upon a point of order being made by
 any Senator against material extraneous to the instructions to a committee which is
 contained in any title or provision of the bill or resolution or offered as an amendment to
 the bill or resolution, and the point of order is sustained by the Chair, any part of said
 title or provision that contains material extraneous to the instructions to said Committee
 as defined in subsection (b) of this section shall be deemed stricken from the bill and
 may not be offered as an amendment from the floor.

(b) Extraneous provisions

(1) (A) Except as provided in paragraph (2), a provision of a reconciliation bill or reconciliation resolution considered pursuant to section 641 of this title shall be considered extraneous if such provision does not produce a change in outlays or revenues, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph); (B) any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions; (C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous; (D) a provision shall be considered extraneous if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision; (E) a provision shall be considered to be extraneous if it increases, or would increase, net outlays, or if it decreases, or would decrease, revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution, and such increases or decreases are greater than outlay reductions or revenue increases resulting from other provisions in such title in such year; and (F) a provision shall be considered extraneous if it violates section 641(g) of this title.

(2) A Senate-originated provision shall not be considered extraneous under paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that: (A) the provision mitigates direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit; (B) the provision will result in a substantial reduction in outlays or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution; (C) a reduction of outlays or an increase in revenues is likely to occur as a result of the provision, in the event of new regulations authorized by the provision or likely to be proposed, court rulings on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision, other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; or (D) such provision will be likely to produce a significant reduction in outlays or increase in revenues but, due to insufficient data, such reduction or increase cannot be reliably estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if (A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or (B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

(c)¹ Point of order

When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution pursuant to section 641 of this title, upon—

(1) a point of order being made by any Senator against extraneous material meeting the definition of subsections (b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F) of this section, and

(2) such point of order being sustained;

such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for two hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from

reconciliation bill or title shall be changed in outlays or reduced by changes in the provisions are required to be increased exactly offset by changes in outlays or decrease in provisions reported by the committee. If the committee fails to exercise the jurisdiction of the provisions considered extraneous; changes in outlays or provisions of the provision; increases, or would increase, a fiscal year after the resolution, and such increases resulting therefrom shall be considered

extraneous under paragraph (c) of this section. The committee on the Budget shall determine which reported the increase is primarily attributable to a net reduction in outlays for fiscal years covered by the resolution of outlays or an increase, in the event of new court rulings on stipulated statutory provisions, court rulings or office for scorekeeping significant reduction in reduction or increase

red extraneous under this section or title, which if the committee, and the provision of the provisions that were (A) or (B) the provision of the provision or title of which the bill or resolution would

amendment between the provisions on pursuant to section

extraneous material under (b)(1)(D), (b)(1)(E), or

ent shall be deemed a point of order, or motion, to consider the amendment, and to concur with a majority of the members of the committee that portion of the amendment shall be stricken. Any such amendment in which such point of order or motion derived from

such conference report by operation of this subsection) no further amendment shall be in order.

(c) ¹ Extraneous materials

Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 641 of this title in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

(d) General point of order

Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

(e) Determination of levels

For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(Pub.L. 93-344, Title III, § 313, formerly Pub.L. 99-272, Title XX, § 20001, April 7, 1986, 100 Stat. 390; Pub.L. 99-509, Title VII, § 7006, Oct. 21, 1986, 100 Stat. 1949; Pub.L. 100-119, Title II, § 205(a), (b), Sept. 29, 1987, 101 Stat. 784; renumbered and amended Pub.L. 101-508, Title XIII, § 13214(a)-(b)(4), Nov. 5, 1990, 104 Stat. 1388-621, 1388-622.)

¹ So in original. Section as amended by Pub.L. 101-508 contains two subsecs. "(c)".

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Heading. Pub.L. 101-508, § 13214(b)(2)(A), substituted "Extraneous matter in reconciliation legislation" for "Miscellaneous provisions" as the section heading.

Subsec. (a). Pub.L. 101-508, § 13214(a)(1)(A), inserted the subsec. (a) heading: "In general".

Pub.L. 101-508, § 13214(a)(1)(B), inserted "(whether that bill or resolution originated in the Senate of the House) or section 907d of this title".

Pub.L. 101-508, § 13214(b)(4)(A), struck out reference to the Congressional Budget Act of 1974, thereby accommodating the transfer of this section from the Consolidated Omnibus Budget Reconciliation Act of 1985 to the Congressional Budget Act of 1974.

Pub.L. 101-508, § 13214(b)(4)(B), substituted "subsection (b) of this section shall be deemed" for "subsection (d) of this section shall be deemed".

Pub.L. 101-508, § 13214(b)(2)(B), struck out sentence: "An affirmative vote of three-fifths of

the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section, as well as to waive or suspend the provisions of this subsection."

Subsec. (b). Pub.L. 101-508, § 13214(b)(2)(B), (C), redesignated former subsec. (d) as (b) and struck out former subsec. (b) which had directed that no motion to waive or suspend the requirement of section 636(b)(2) of this title, as it related to germaneness with respect to a reconciliation bill or resolution, could be agreed to unless supported by an affirmative vote of three-fifths of the Members, duly chosen and sworn, which super-majority was to be required to successfully appeal the ruling of the Chair on a point of order raised under that section, as well as to waive or suspend the provisions of this subsection.

Pub.L. 101-508, § 13214(a)(2), inserted the subsection heading "Extraneous provisions".

Subsec. (b)(1)(A). Pub.L. 101-508, § 13214(b)(1)(A), struck out reference to the Congressional Budget Act of 1974, thereby ac-

individual referred to in subparagraph (a) would be entitled to payment under

transmit to the individual making the request as reported by the employer, regarding the individual's wages and benefits or the person on whose wages and benefits the claim of entitlement is based.

of this title, expenses incurred in this section shall be deemed to be expenses of subchapter II of this chapter.

appropriated to the Federal Old-Age and Survivors Insurance Trust Funds each fiscal year (commencing with the fiscal year 1981) shall be deemed to be additional administrative expenses of subsection (a) of this section.

STATUTORY NOTES

Reports must be filed

DECISIONS

Regulation defining criteria used by Department of Health and Human Services (HHS) for providing claims for reimbursement under provisions of the Social Security Act for assistance and Child Welfare Act for income maintenance expenses incurred by state in implementing foster care programs, creating reasonable presumption against retroactive adjustments, did not conflict with statute requiring HHS to consider any claim filed within two years of period requested. Colvin v. Sullivan, 939 F.2d 153 (Md.) 1991.

Adjustments to prior costs

Health Care Financing Administration (HCFA) was not required to explain decision for denying audit exception treatment for upward adjustment in Medicaid reimbursement sought by State, as the decision to be reviewed was that of the Departmental Appeals Board (DAB) of the Department of Health and Human Services, not the decision of the HCFA. State of New York v. Sullivan, N.D.N.Y.1992, 802 F.Supp. 752.

Rate methodology

Systems for the payment of hospitals and health care services which may be applied for reimbursement under this chapter or under a State plan

the development of such system or

Selection of providers

the Senate Committee on Finance and the House of Representatives, proposals for

legislation which would provide that hospitals, skilled nursing facilities, and, to the extent feasible, other providers, would be reimbursed under subchapter XVIII of this chapter on a prospective basis. The Secretary shall report such proposals to such committees not later than December 31, 1982.

(d) Prospective payment methodology for outpatient hospital services

(1) The Secretary shall develop a fully prospective payment system for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis.

(2) The system shall, to the extent practicable, provide for an all-inclusive payment rate for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis, which rate encompasses payment for facility services and all medical and other health services, other than physicians' services, commonly furnished in connection with such procedures.

(3) The system shall provide for appropriate payment rates with respect to such procedures. In establishing such rates, the Secretary shall consider whether a differential payment rate is appropriate for specialty hospitals.

(4) Such rates shall take into account at least the following considerations:

(A) The costs of hospitals providing ambulatory surgical procedures.

(B) The costs under this subchapter of payment for such procedures performed in ambulatory surgical centers.

(C) The extent to which any differences in such costs are justifiable.

(5) The Secretary shall submit to Congress—

(A) an interim report on the development of the system by April 1, 1988, and

(B) a final report on such system by April 1, 1989.

The report under subparagraph (B) shall include recommendations concerning the implementation of the payment system for ambulatory surgical procedures performed on or after October 1, 1989.

(6) Repealed. Pub.L. 103-432, Title I, § 147(c)(2)(A), Oct. 31, 1994, 108 Stat. 4429

(7) The Secretary shall solicit the views of the Prospective Payment Assessment Commission in developing the system under paragraph (1), and shall include in the Secretary's reports under this subsection any views the Commission may submit with respect to such system.

(Aug. 14, 1935, c. 531, Title XI, § 1135, as added Aug. 13, 1981, Pub.L. 97-35, Title XXI, § 2173(c), 96 Stat. 809, and amended Sept. 3, 1982, Pub.L. 97-248, Title I, § 101(b)(3), 96 Stat. 335; Oct. 21, 1986, Pub.L. 99-509, Title IX, § 9343(f), 100 Stat. 2041; Dec. 22, 1987, Pub.L. 100-203, Title IV, § 4068(b), 101 Stat. 1330-114; July 1, 1988, Pub.L. 100-360, Title IV, § 411(g)(6), 102 Stat. 785; Oct. 31, 1994, Pub.L. 103-432, Title I, § 147(c)(2), 108 Stat. 4429.)

HISTORICAL AND STATUTORY NOTES

Effective Dates

1994 Acts. Amendment of subsec. (d)(6), (7) by section 147(c)(2) of Pub.L. 103-432 effective 103-508, 104 Stat. 1388, which was approved Nov. 5, 1990, see section 147(g) of Pub.L. 103-432, set out as a note under section 1320a-3a of this title.

§ 1320b-7. Income and eligibility verification system

(a) Requirements of State eligibility systems

In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system which meets the requirements of subsection (d) of this section and under which—

(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b) of this section, that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of Title 26, wage information

reported pursuant to paragraph (3) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(l)(7) of Title 26, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b) of this section, as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the food stamp program, by the Secretary of Agriculture);

(3) employers in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2);

(4) the State agencies administering the programs listed in subsection (b) of this section adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying eligibility or benefit amounts under any other such program;

(B) such information shall be made available to assist in the child support program under part D of subchapter IV of this chapter, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under subchapters II and XVI of this chapter, but subject to the safeguards and restrictions established by the Secretary of the Treasury with respect to information released pursuant to section 6103(l) of Title 26; and

(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility of all recipients;

(5) adequate safeguards are in effect so as to assure that—

(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(l) of Title 26 is only exchanged with agencies authorized to receive such information under such section 6103(l); and

(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture, or¹ in the case of information released pursuant to section 6103(l) of Title 26, the Secretary of the Treasury;

(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and

(7) accounting systems are utilized which assure that programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

(b) Applicable programs

The programs which must participate in the income and eligibility verification system are—

(1) the aid to families with dependent children program under part A of subchapter IV of this chapter;

(2) the medicaid program under subchapter XIX of this chapter;

(3) the unemployment compensation program under section 3304 of Title 26;

(4) the food stamp program under the Food Stamp Act of 1977 [7 U.S.C.A. § 2011 et seq.]; and

subsection, and wage, income, and other administration and the Internal Revenue Code (7) of Title 26, shall be requested and may be useful in verifying eligibility for, or program listed in subsection (b) of of Health and Human Services (or, in on program, by the Secretary of Labor, am, by the Secretary of Agriculture); l, effective September 30, 1988, to make which may be the agency administering r) except that the Secretary of Labor (in nd Human Services and the Secretary of is paragraph if he determines that the which is as effective and timely for d income and eligibility data for the

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(5) any State program under a plan approved under subchapter I, X, XIV, or XVI of this chapter.

(c) Protection of applicants from improper use of information

(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b) of this section, or under the supplemental security income program under subchapter XVI of this chapter, from the improper use of information obtained from the Secretary of the Treasury under section 6103(l)(7)(B) of Title 26, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—

(A) the amount of the asset or income involved,

(B) whether such individual actually has (or had) access to such asset or income for his own use, and

(C) the period or periods when the individual actually had such asset or income.

(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(d) Citizenship or immigration status requirements; documentation; verification by Immigration and Naturalization Service; denial of benefits; hearing

The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under a program listed in subsection (b) of this section, a declaration in writing, under penalty of perjury—

(i) by the individual,

(ii) in the case in which eligibility for program benefits is determined on a family or household basis, by any adult member of such individual's family or household (as applicable), or

(iii) in the case of an individual born into a family or household receiving benefits under such program, by any adult member of such family or household no later than the next redetermination of eligibility of such family or household following the birth of such individual,

stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

(B) In this subsection—

(i) in the case of the program described in subsection (b)(1) of this section, any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 602(a)(7) of this title,

(ii) in the case of the program described in subsection (b)(4) of this section—

(I) any reference to the State shall be considered a reference to the State agency, and

(II) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

(III) the term "satisfactory immigration status" means an immigration status which does not make the individual ineligible for benefits under the applicable program.

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the State—

(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

(i) the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(e) Erroneous State citizenship or immigration status determinations; penalties not required

Each Federal agency responsible for administration of a program described in subsection (b) of this section shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the State, under subsection (d)(4)(A)(ii) of this section, was required to provide a reasonable opportunity to submit documentation,

(3) because the State, under subsection (d)(4)(B)(ii) of this section, was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

(4) because of a fair hearing process described in subsection (d)(5)(B) of this section.

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(f) Medical assistance to aliens for treatment of emergency conditions

Subsections (a)(1) and (d) of this section shall not apply with respect to aliens seeking medical assistance for the treatment of an emergency medical condition under section 1396b(v)(2) of this title.

(Aug. 14, 1935, c. 531, Title XI, § 1137, as added July 18, 1934, Pub.L. 93-369, Div. B, Title VI, § 2651(a), 98 Stat. 1147, and amended Oct. 21, 1986, Pub.L. 99-509, Title IX, § 9101, 100 Stat. 1972; Nov. 6, 1986, Pub.L. 99-603, Title I, § 121(a)(1), 100 Stat. 3384; July 1, 1988, Pub.L. 100-360, Title IV, § 411(k)(15)(A), 102 Stat. 799; Oct. 31, 1994, Pub.L. 103-432, Title II, § 231, 108 Stat. 4462.)

¹ So in original. Probably should be followed by a comma.

§ 1320b-8. Hospital protocols for organ procurement and standards for organ procurement agencies

(a)(1) The Secretary shall provide that a hospital or rural primary care hospital meeting the requirements of subchapter XVIII or XIX of this chapter may participate in the program established under such subchapter only if—

(A) the hospital or rural primary care hospital establishes written protocols for the identification of potential organ donors that—

(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

(iii) require that such hospital's designated organ procurement agency (as defined in paragraph (3)(B)) is notified of potential organ donors;

(B) in the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 274 of this title (in this section referred to as the "Network"); and

(C) the hospital or rural primary care hospital has an agreement (as defined in paragraph (3)(A)) only with such hospital's designated organ procurement agency.

(2)(A) The Secretary shall grant a waiver of the requirements under subparagraphs (A)(iii) and (C) of paragraph (1) to a hospital or rural primary care hospital desiring to enter into an agreement with an organ procurement agency other than such hospital's designated organ procurement agency if the Secretary determines that—

(i) the waiver is expected to increase organ donation; and

(ii) the waiver will assure equitable treatment of patients referred for transplants within the service area served by such hospital's designated organ procurement agency and within the service area served by the organ procurement agency with which the hospital seeks to enter into an agreement under the waiver.

(B) In making a determination under subparagraph (A), the Secretary may consider factors that would include, but not be limited to—

(i) cost effectiveness;

(ii) improvements in quality;

(iii) whether there has been any change in a hospital's designated organ procurement agency due to a change made on or after December 28, 1992, in the definitions for metropolitan statistical areas (as established by the Office of Management and Budget); and

(iv) the length and continuity of a hospital's relationship with an organ procurement agency other than the hospital's designated organ procurement agency; except that nothing in this subparagraph shall be construed to permit the Secretary to grant a waiver that does not meet the requirements of subparagraph (A).

(C) Any hospital or rural primary care hospital seeking a waiver under subparagraph (A) shall submit an application to the Secretary containing such information as the Secretary determines appropriate.

(D) The Secretary shall—

(i) publish a public notice of any waiver application received from a hospital or rural primary care hospital under this paragraph within 30 days of receiving such application; and

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(4) UNDER CERTAIN TERRITORIAL ASSISTANCE PROGRAMS.—Sections 3(a)(4), 1003(a)(3), 1403(a)(3), and 1603(a)(4) of the Social Security Act (as in effect without regard to section 301 of the Social Security Amendments of 1972) are each amended by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph:

"(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus".

(5) UNDER THE FOOD STAMP PROGRAM.—Section 16 of the Food Stamp Act of 1977 (7 U.S.C. 2025) is amended by adding at the end the following new subsection:

"(h) The Secretary is authorized to pay to each State agency an amount equal to 100 per centum of the costs incurred by the State agency in implementing and operating the immigration status verification system described in section 1137(d) of the Social Security Act."

(6) UNDER HOUSING ASSISTANCE PROGRAMS.—The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

"PAYMENT FOR IMPLEMENTATION OF IMMIGRATION STATUS VERIFICATION SYSTEM

"SEC. 20. The Secretary is authorized to pay to each public housing authority an amount equal to 100 percent of the costs incurred by the authority in implementing and operating the immigration status verification system under section 214(c) of the Housing and Community Development Act of 1980 with respect to financial assistance made available pursuant to this Act."

(7) UNDER TITLE IV EDUCATIONAL ASSISTANCE.—Section 489(a) of the Higher Education Act of 1965 (20 U.S.C. 1096) is amended by adding at the end the following: "In addition, the Secretary shall provide for payment to each institution of higher education an amount equal to 100 percent of the costs incurred by the institution in implementing and operating the immigration status verification system under section 484(c)."

(c) EFFECTIVE DATES.—

(1) IMMIGRATION AND NATURALIZATION SERVICE ESTABLISHING VERIFICATION SYSTEM BY OCTOBER 1, 1987.—The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act (as amended by this section) so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved.

(2) HIGHER MATCHING EFFECTIVE IN FISCAL YEAR 1988.—The amendments made by subsection (b) take effect on October 1, 1987.

(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) take effect on October 1, 1988. States

42 USC 303,
1203, 1353, 1383
note.

42 USC
1381-1383c.

State and local
governments.

42 USC 1320b-7.

42 USC 1437r.

42 USC 1436a.

Ante, p. 1491.

20 USC 1091,
State and local
governments.
42 USC 1320b-7
note.

42 USC 1320b-7.
Discrimination,
prohibition.

42 USC 502 note.

Effective date.
42 USC 1320b-7
note.

BILLING CODE: 4410-01

DEPARTMENT OF JUSTICE

[AG Order No.]

Specification of Community Programs Necessary for
Protection of Life or Safety under Welfare Reform Legislation

AGENCY: Department of Justice.

ACTION: Notice.

EFFECTIVE DATE: August 23, 1996.

FOR FURTHER INFORMATION OR TO PROVIDE COMMENT CONTACT: Lisalyn
R. Jacobs, Counsel, Office of Policy Development, Department of
Justice, 10th Street & Constitution Avenue, N.W., Washington,
D.C. 20530, telephone (202) 514-9114.

SUPPLEMENTARY INFORMATION:

The Personal Responsibility and Work Opportunity Reconcilia-
tion Act of 1996, H.R. 3734, which the President signed on
August 22, 1996, vests in the Attorney General the authority to
designate the kinds of government-funded community programs,
services or assistance that are necessary for protection of life
or safety and for which all aliens will continue to be eligible.
This Order implements that authority.

Background

Section 401 provides a new rule that an alien who is not a "qualified alien," as defined in § 431 of the Act, is not eligible for any "Federal public benefit" -- which, in general, means

- (a) any grant, contract, loan, professional license, or commercial license provided by a federal agency or through appropriated federal funds; or
- (b) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to individuals, households or families by a federal agency or through appropriated federal funds.

Section 411 also makes certain non-qualified aliens ineligible for state and local public benefits unless the state enacts new legislation after August 22, 1996 that affirmatively provides for such eligibility. In addition, § 403 of the Act makes qualified aliens ineligible for specific means-tested federal benefit programs for a five-year period after their entry into the United States as a qualified alien.

In addition to certain statutory exceptions, the Act authorizes the Attorney General to establish limited exceptions to these provisions for the following kinds of benefits:

Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

This authority appears in several places in the Act, including: § 401(b)(1)(D), with respect to federal public benefits; § 403(c)(2)(G), with respect to the five-year limited eligibility for federal means-tested public benefits; and § 411(b)(4), with respect to state and local public benefits. (This authority also appears in § 423(d)(7) in the context of new requirements with regard to individuals who execute an affidavit of support on behalf of a sponsored alien.)

Attorney General Review

As required by the statute, the Department of Justice has conducted preliminary consultations with other federal agencies regarding the scope and interpretation of these provisions and their proper application. Given the great variety of federal, state and local programs conducted or supported at the community level, including those administered by private non-profit organizations, and the limited time available, the Department's consultation process is still ongoing. At my direction, the Department is seeking additional, more specific recommendations from all appropriate federal agencies, from representatives of state and local governments, and from the public.

Given the immediate effective date of provisions of the Act, I have decided to provide a "provisional specification" of programs, services and assistance that will be exempt from the limitations on alien eligibility discussed above, based upon preliminary consultations with appropriate federal agencies and departments. This "provisional specification" is effective

immediately and will continue in effect pending adoption of a revised specification, if necessary, after further consultations. Should ongoing consultations indicate that further refinements in this specification are appropriate under the Act, I will revise it accordingly.

Specification

Therefore, by virtue of the authority vested in me as Attorney General by law, including Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, I hereby specify that:

1. I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services or assistance. It is not the purpose of this Order, however, to define more specifically the scope of the public benefits that Congress intended to deny certain aliens either altogether or absent my specification and nothing herein should be so construed.

2. The government-funded programs, services or assistance specified in this Order are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; serve purposes of the type described in paragraph 3, below, for the protection of life and safety; and do not condition the

assistance according to the individual recipient's income or resources, as discussed in paragraph 4, below.

3. Included within the specified programs, services or assistance determined to be necessary for the protection of life and safety are:

- (a) Crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse;
- (b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children;
- (c) Programs, services or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;
- (d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;
- (e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety;
- (f) Activities designed to protect the life and safety of workers, children and youths, or community residents; and
- (g) Any other programs, services, or assistance necessary for the protection of life or safety.

4. The community-based programs, services or assistance specified in paragraphs 2 and 3 of this Order are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services or assistance delivered at the community level, even if they serve purposes of the type described in paragraph 3 above, are not within this specification

if they condition (a) the provision of assistance, (b) the amount of assistance provided, or (c) the cost of the assistance provided on the individual recipient's income or resources.

August 23, 1986
Date

Janet Reno
Janet Reno,
Attorney General

Medicaid File

THE WHITE HOUSE
WASHINGTON

September 23, 1996

MEMORANDUM TO THE PRESIDENT

FROM: Carol Rasco and Chris Jennings

SUBJECT: Decline in the Medicaid Growth Rate and Baseline

Largely unnoticed, Medicaid baseline reductions have made a significant contribution to the decline in the Federal deficit. In fact, in their recently-released budget outlook report that reduced the 1996 Federal deficit to \$116 billion, the Congressional Budget Office (CBO) stated that "the largest single re-estimate is a (1 year) \$4 billion reduction in Medicaid outlays." The reduction in expenditures has produced an aggregate Medicaid growth rate of 3 percent between 1995 and 1996, the lowest growth rate in over 20 years. This translates into an astounding 1 to 2 percent per capita (or per person) increase in spending -- well below the 20-year average annual Medicaid per capita growth rate of 11 percent.

Since you unveiled your balanced budget last year, the CBO Medicaid baseline has declined by \$52 billion. The comparable reduction in the Administration Medicaid baseline is about \$20 billion; (it is less because OMB started with a lower spending base, has been assuming lower growth rates, and has integrated more accurate economic assumptions all along.) This trend will continue as we fully expect this winter's baseline adjustments (off both the CBO and OMB baselines) to produce tens of billions of dollars of additional savings. As a result, without enacting a single Medicaid cut, you will preside over a program whose CBO baseline (after this winter's adjustment) will have been reduced in the budget window by as much as (if not more than) \$80 billion since 1995, and more than \$50 billion off of the OMB baseline during that same period.

Many factors have contributed to the decline in the Medicaid baseline. They include: (1) increased utilization of managed care and other cost-cutting initiatives implemented by the states; (2) an improved economy with much lower inflation; and (3) reduced use of "creative" Disproportionate Share and provider donation financing mechanisms by states.

The fact that Medicaid's growth has slowed so rapidly is good news. It mirrors the positive news about health care inflation in the private sector you occasionally cite. However, we must be cautious about heralding it too much because it tends to undermine our criticism of the magnitude of the Republicans' Medicare cuts. For example, we appropriately criticized the Republicans' Medicare cuts, but their proposal (at the time of the veto) would have allowed for a 4.9 percent per person growth rate -- above what the 1995 to 1996 per capita Medicaid growth rate was by 2 to 3 percentage points. In short, when we highlight the success of the private and Medicaid sectors in constraining costs, we risk someone charging that we are being inconsistent in not suggesting that Medicare be held to the same standard.

Most health economists are dubious that last year's low growth rate can be extended for a prolonged period. They believe that much of the savings represent a one-time constriction of excess capacity and inefficiency in the health care system. Moreover, because of historically high health inflation (recall the 11 percent average per capita over the last 20 years), CBO and OMB estimators are extremely weary of lowering their projected Medicaid growth rates, particularly in the out-years. While they may lower their budget window per capita growth rates from 7 percent to 6 percent or at most 5 percent (which is probably the range that they will assume private sector growth rates will be), the estimators will not lower their projected growth rates to anywhere near last year's unofficial Medicaid per capita number of between 1 and 2 percent.

Regardless of the final projections, it is clear that our current Medicaid 5 percent per capita cap proposal will not score significant savings off the downsized CBO Medicaid 5 to 6 percent average per capita baseline. If we do need or want additional savings, we will need to tighten up the allowable average growth rates to probably no more than 4 percent over the budget window. The primary outstanding question is: Can this program sustain this level of constraint without undermining the care it provides to its population?

Clearly, medical and general health inflation have significantly moderated. Very few health care analysts would have projected two years ago that health inflation would be running as low as it is. If current trends are sustained, holding the Medicaid program to a 4 percent average per capita growth rate is conceivable.

Having said this, since Medicaid would have to grow 20-30 percent below what will likely be the revised CBO average private sector per capita rate (of 5-6 percent), we probably could not get many health care economists to validate such a low, sustained growth rate. This is particularly the case because of the increasing numbers of high-cost elderly and disabled populations served by Medicaid.

More importantly, we might re-open the door to another serious block grant debate, since states would be more likely than ever to reject such reductions in Federal support without the elimination of virtually all Federal strings. Coverage expansion through or with Medicaid would have to be put off for a while, since no or few states would have the appetite and the resources to take it on. And lastly, reducing Federal financing might place overwhelming pressures on the states to demand that their waivers (old or new) be exempted from changes in financing. If this occurred, we would have even a greater rush to grant and grandfather-in politically-charged state waiver applicants. If this happened, Medicaid savings would be much more difficult to achieve.

We still believe that the Medicaid flexibility reforms you have proposed can achieve savings for the states (and the Federal Government) and are good policy. Moreover, we probably could get some limited savings from a slightly tighter per capita cap, as well as some additional contributions from DSH. Having said this, as we continue to witness billions of dollars of additional Medicaid baseline reductions help lower the deficit, we may want to start lowering our expectations of how much savings we can or should include in our next budget proposal.

LINK BETWEEN MEDICAID AND SSI UNDER WELFARE REFORM

Under the new law, the definition of childhood disability is no longer linked to the definition of disability for adults. The reference to "comparable severity" in the old law has been deleted.

The new definition says: (1) an individual under the age of 18 shall be considered to be disabled under SSI if that child has a medically determinable physical or mental disability, which results in marked and severe functional limitation, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least twelve months. (2) no individual under the age of 18 who engages in substantial gainful activity may be considered disabled.

In addition to the new definition of disability for children, the law mandates two changes to current evaluation criteria in SSA's regulations. SSA must: (1) discontinue the individualized functional assessment (IFA) for children and (2) eliminate maladaptive behavior in the domain of personal/behavioral function in determining whether a child is disabled.

Since, in many States, Medicaid eligibility accrues directly from SSI eligibility, the above changes to SSI will cause a loss of Medicaid eligibility for many children. However, since Medicaid also covers certain poverty-related children irrespective of their SSI status, many of the children who lose SSI will still continue to be covered under Medicaid.

The law provides that SSI payments may only begin as of the first day of the month following (1) the date the application is filed, or if later, (2) the date the person first meets all eligibility factors. This is a delay in SSI eligibility in comparison with the old law.

SSA is required to redetermine the eligibility of recipients under age 18 by August 22, 1997. No SSI eligible child may lose benefit by reason of a redetermination of disability using the new definition earlier than July 1, 1997.

SSA is required to send notices to all affected recipients no later than January 1, 1997.

-we had a proposal in our bill to get rid of the IFA too

300,000 get MA thru IFA; many will requalify under medical conditions.

HCFA Actuaries say 50,000 to 60,000 will permanently lose MA

-many of these kids have multiple disabilities, but not one that is severe enough to qualify

-these kids may fall thru the cracks

-tend to have worse mental than physical conditions

Welfare Reform Bill : Summary, excerpts

FOOD STAMPS & CHILD NUTRITION

Food Stamp Program	Maintains national nutritional safety net. Does not allow states to block grant Food Stamps and does not impose a national cap on Food Stamp spending.
	Caps the excess shelter deduction, which was set to expire next year, at near its current level until FY2001. The President wants Congress to fix this provision because over time it will hurt working families.
	Limits food stamp eligibility for childless 18- to 50-year-olds to 3 months every 3 years, with a 3-month extension for laid-off workers.
School Lunch Program	Maintains the current national school lunch program. Drops the school lunch block grant that was in the vetoed bill.

LEGAL IMMIGRANTS

Bans	Over the Administration's objections, imposes 5-year ban on SSI, AFDC and Food Stamps for most legal immigrants, with some exceptions.
Medicaid	Over the Administration's objections, prohibits future immigrants from receiving Medicaid for 5 years. Drops the retroactive ban on current Medicaid recipients, which was included in the House bill.
	The President has said that immigrant children and the disabled should be able to get medical care and the help they need, and is determined to get Congress to fix these provisions.

HHS FACT SHEET

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

August 1996

Contact: HHS Press Office
(202) 690-6343

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

On August 22, President Clinton signed into law "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996," a comprehensive bipartisan welfare reform plan that will dramatically change the nation's welfare system into one that requires work in exchange for time-limited assistance. The bill contains strong work requirements, a performance bonus to reward states for moving welfare recipients into jobs, state maintenance of effort requirements, comprehensive child support enforcement, and supports for families moving from welfare to work -- including increased funding for child care and guaranteed medical coverage.

Highlights of "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996" follow.

MAKING WELFARE A TRANSITION TO WORK

- o **Work requirements.** Under the new law, recipients must work after two years on assistance, with few exceptions. Twenty-five percent of all families in each state must be engaged in work activities or have left the rolls in fiscal year (FY) 1997, rising to 50 percent in FY 2002. Single parents must participate for at least 20 hours per week the first year, increasing to at least 30 hours per week by FY 2000. Two-parent families must work 35 hours per week by July 1, 1997.
- o **Supports for families transitioning into jobs.** The new welfare law provides \$14 billion in child care funding -- an increase of \$3.5 billion over current law -- to help more mothers move into jobs. The new law also guarantees that women on welfare continue to receive health coverage for their families, including at least one year of transitional Medicaid when they leave welfare for work.
- o **Work Activities.** To count toward state work requirements, recipients will be required to participate in unsubsidized or subsidized employment, on-the-job training, work experience, community service, 12 months of vocational training, or provide child care services to individuals who are participating in community service. Up to 6 weeks of job search (no more than 4 consecutive weeks) would count toward the work requirement. However, no more than 20 percent of each state's caseload may count toward the work requirement solely by participating in vocational training or by being a teen-parent in secondary school. Single parents with a child under 6 who cannot find child care cannot be penalized for failure to meet the work requirements. States can exempt from the work requirement single parents with children under age one and disregard these individuals in the calculation of participation rates for up to 12 months.

- o **A five-year time limit.** Families who have received assistance for five cumulative years (or less at state option) will be ineligible for cash aid under the new welfare law. States will be permitted to exempt up to 20 percent of their caseload from the time limit, and states will have the option to provide non-cash assistance and vouchers to families that reach the time limit using Social Services Block Grant or state funds.
- o **Personal employability plans.** Under the new plan, states are required to make an initial assessment of recipients' skills. States can also develop personal responsibility plans for recipients identifying the education, training, and job placement services needed to move into the workforce.
- o **State maintenance of effort requirements.** The new welfare law requires states to maintain their own spending on welfare at at least 80 percent of FY 1994 levels. States must also maintain spending at 100 percent of FY 1994 levels to access a \$2 billion contingency fund designed to assist states affected by high population growth or economic downturn. In addition, states must maintain 100 percent of FY 1994 or FY 1995 spending on child care (whichever is greater) to access additional child care funds beyond their initial allotment.
- o **Job subsidies.** The law also allows states to create jobs by taking money now used for welfare checks and using it to create community service jobs or to provide income subsidies or hiring incentives for potential employers.
- o **Performance bonus to reward work.** \$1 billion will be available through FY 2003 for performance bonuses to reward states for moving welfare recipients into jobs. The Secretary of HHS, in consultation with the National Governors' Association (NGA) and American Public Welfare Association (APWA), will develop criteria for measuring state performance.
- o **State flexibility.** Under the new law, states which receive approval for welfare reform waivers before July 1, 1997 have the option to operate their cash assistance program under some or all of these waivers. For states electing this option, some provisions of the new law which are inconsistent with the waivers would not take effect until the expiration of the applicable waivers in the geographical areas covered by the waivers.

PROMOTING RESPONSIBILITY

Comprehensive child support enforcement. The new law includes the child support enforcement measures President Clinton proposed in 1994 -- the most sweeping crackdown on non-paying parents in history. These measures could increase child support collections by \$24 billion and reduce federal welfare costs by \$4 billion over 10 years. Under the new law, each state must operate a child support enforcement program meeting federal requirements in order to be eligible for Temporary Assistance to Needy Families (TANF) block grants. Provisions include:

- o **National new hire reporting system.** The law establishes a Federal Case Registry and National Directory of New Hires to track delinquent parents across state lines. It also requires that employers report all new hires to state agencies for transmittal of new hire information to the National Directory of New Hires. This builds on President Clinton's June 1996 executive action to track delinquent parents across state lines. The law also expands and streamlines procedures for direct withholding of child support from wages.

- o **Streamlined paternity establishment.** The new law streamlines the legal process for paternity establishment, making it easier and faster to establish paternities. It also expands the voluntary in-hospital paternity establishment program, started by the Clinton Administration in 1993, and requires a state form for voluntary paternity acknowledgement. In addition, the law mandates that states publicize the availability and encourage the use of voluntary paternity establishment processes. Individuals who fail to cooperate with paternity establishment will have their monthly cash assistance reduced by at least 25 percent.
- o **Uniform interstate child support laws.** The new law provides for uniform rules, procedures, and forms for interstate cases.
- o **Computerized state-wide collections.** The new law requires states to establish central registries of child support orders and centralized collection and disbursement units. It also requires expedited state procedures for child support enforcement.
- o **Tough new penalties.** Under the new law, states can implement tough child support enforcement techniques. The new law will expand wage garnishment, allow states to seize assets, allows states to require community service in some cases, and enable states to revoke drivers and professional licenses for parents who owe delinquent child support.
- o **"Families First."** Under a new "Family First" policy, families no longer receiving assistance will have priority in the distribution of child support arrears. This new policy will bring families who have left welfare for work about \$1 billion in support over the first six years.
- o **Access and visitation programs.** In an effort to increase noncustodial parents' involvement in their children's lives, the new law includes grants to help states establish programs that support and facilitate noncustodial parents' visitation with and access to their children.

Teen Parent Provisions

- o **Live at home and stay in school requirements.** Under the new law, unmarried minor parents will be required to live with a responsible adult or in an adult-supervised setting and participate in educational and training activities in order to receive assistance. States will be responsible for locating or assisting in locating adult-supervised settings for teens.
- o **Teen Pregnancy Prevention.** Starting in FY 1998, \$50 million a year in mandatory funds would be added to the appropriations of the Maternal and Child Health (MCH) Block Grant for abstinence education. In addition, the Secretary of HHS will establish and implement a strategy to (1) prevent non-marital teen births, and (2) assure that at least 25 percent of communities have teen pregnancy prevention programs. No later than January 1, 1997, the Attorney General will establish a program that studies the linkage between statutory rape and teen pregnancy, and that educates law enforcement officials on the prevention and prosecution of statutory rape.

IMPROVEMENTS OVER THE VETOED BILL

President Clinton vetoed the previous welfare reform bill (H.R. 4) submitted by Congress because it did too little to move people into jobs and failed to provide the supports -- like child care and health care -- that families need to move from welfare to work. "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996" includes several improvements over the vetoed bill, including:

- o **Guaranteed medical coverage.** The new law preserves the national guarantee of health care for poor children, the disabled, pregnant women, the elderly, and people on welfare. H.R. 4 would have ended the guarantee of Medicaid coverage for cash assistance recipients.
- o **Increased child care funding and mandatory child care maintenance of effort.** The new law provides \$14 billion in child care funding -- an increase of \$3.5 billion over 6 years -- allowing more mothers to leave welfare for work. States will receive an initial allotment each year from a fund of approximately \$1.2 billion. To access additional funds, states must maintain their own spending at 100 percent of their FY 1994 or 1995 spending on child care (whichever is higher). By contrast, H.R. 4 increased child care funding by just \$300 million over current law, and did not require states to meet child care maintenance of effort requirements to access additional federal child care funding, allowing states to lower their own spending.
- o **Incentives for states to move people into jobs.** The new law includes a \$1 billion performance bonus to reward states that meet performance targets. H.R. 4 did not contain a cash performance bonus.
- o **Preservation of nutrition programs.** H.R. 4 would have given states the option of block granting food stamp benefits. The bill would have also capped federal food stamp program expenditures, limiting maximum benefit increases to 2 percent per year, regardless of growth in need for assistance. The new law maintains the national nutritional safety net by eliminating the block grant option as well as the food stamp cap.
- o **Current law child protection and adoption.** Unlike H.R. 4, the new plan maintains current law on child protection and adoption, and does not reduce funds for child welfare, child abuse, foster care and adoption services.
- o **Improved contingency fund.** The new law includes a \$2 billion contingency fund to protect states in times of population growth or economic downturn. H.R. 4 included a \$1 billion contingency fund.
- o **Current law child care health and safety standards.** The new law protects children by maintaining health and safety standards for day care. H.R. 4 would have eliminated health and safety protections.
- o **Protection of disabled children.** H.R. 4 would have cut SSI by 25 percent for many disabled children. The new law eliminates this proposed two-tier system.
- o **Optional family cap.** Under the new law, states have the option to implement a family cap. H.R. 4 required states to deny cash benefits to children born to welfare recipients unless the state legislature explicitly voted to provide benefits.

NECESSARY IMPROVEMENTS

President Clinton has stated that the new law requires several improvements. Specifically, he has pledged to fix two provisions of the welfare bill which he believes have nothing to do with welfare reform.

- o **Food Stamps.** According to President Clinton, the new law cuts deeper than it should in Food Stamps, mostly for working families who have high shelter costs.
- o **Legal Immigrants.** The law includes provisions that would deny most forms of public assistance to most legal immigrants for five years or until they attain citizenship. The President has said that legal immigrants who fall on hard times through no fault of their own and need help should get it, although their sponsors should take additional responsibility for them.

BUILDING ON THE PRESIDENT'S WORK TO END WELFARE AS WE KNOW IT

Even before Congress passed welfare reform legislation acceptable to President Clinton, states were acting to try new approaches. With encouragement, support, and cooperation from the Clinton Administration, 43 states have moved forward with 78 welfare reform experiments. The Clinton Administration has also required teen mothers to stay in school, required federal employees to pay their child support, and cracked down on people who owe child support and cross state lines. As a result of these efforts and President Clinton's efforts to strengthen the economy, child support collections have increased by 40 percent to \$11 billion in FY 1995, and there are 1.6 million fewer people on welfare today than when President Clinton took office. "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996" will build on these efforts by allowing states flexibility to reform their welfare systems and to build on demonstrations initiated under the Clinton Administration.

→ You may be asked why the President did not address these issues in the immigration bill — HHS has responded there was no time to make these changes.

Q: Some Democrats have said that this legislation is just the beginning of needed reforms to the welfare system. Do you agree? What do you plan to do to build on this, and when?

A: This welfare legislation is a critical step in transforming our broken welfare system into one that requires work and promotes parental responsibility. The new law will make sweeping changes to the welfare system -- through time limits, work requirements, child care resources, and the toughest ever child support enforcement. When combined with an increased minimum wage and the EITC, we expect that it will make a fundamental difference in moving people from welfare to work. In Colorado, for example, a young mother with two children now receives only \$8,000 a year in welfare and Food Stamps, and she may never be encouraged to look for work and become independent. But with our new strategy, she will increase her income by more than 50 percent -- to \$12,600 -- even if she only works part-time at the minimum wage. She'll still receive health care for herself and her children. She'll still receive Food Stamps. She'll get help collecting child support. And she'll get help with child care if she needs it.

The President is also planning to take other steps to increase the availability of jobs for welfare recipients, which he will announce soon.

Q: Did you speak with the people who will be affected most by these changes?

A: The President and other members of the Administration have met with welfare recipients to discuss their experiences and ways to best change the system. The President also met with welfare recipients at the Blair House meeting on welfare reform last year. As the President said in his 1995 State of the Union Address, "I may be the only President who has had the opportunity to sit in a welfare office, who's actually spent hours and hours talking to people on welfare. And I am telling you, the people who are trapped on it know it doesn't work."

Q: For those who have not completed high school, lack sufficient language skills and are functionally illiterate, what kind of work can they expect to get?

A: The new law requires that adults be engaged in work activities within two years, but allows states some flexibility in defining those activities. Private sector jobs, volunteer activities, and community service jobs all count as "work," and welfare recipients initially have to work only 20 hours per week to meet the requirements. We strongly believe that work is better than welfare. In Colorado, for example, a young mother with two children now receives only \$8,000 a year in welfare and Food Stamps, and may never be encouraged to look for work and become independent. But with our new strategy that includes the EITC and minimum wage increase won by this Administration, she will increase her income by more than 50 percent -- to \$12,600 -- even if she only works part-time at the minimum wage. She'll still receive health care for herself and her children. She'll still receive Food Stamps. She'll get help collecting child support. And she'll get help with child care if she needs it.

Q: Will children of legal immigrants be denied school lunches under the new law?

A: All children, including those of legal immigrants, who are eligible for public school will continue to receive free school breakfasts and lunches under the new law.

Q: One hundred and twenty-three Democratic members of Congress supported this package. Did they understand the impact of the provisions affecting legal immigrants, and did they support these provisions, or did they support the bill in spite of those provisions?

A: Democrats and Republicans voted for this legislation because they know that the current welfare system is broken and must be fixed. Like the President, many members of Congress are concerned about the provisions affecting legal immigrants, and they are supportive of the Administration's plan to fix this flaw in the law. Let's remember that this bill is much better than what the President vetoed. That legislation was soft on work and tough on children. It failed to provide adequate child care and health care. It imposed deep and unacceptable cuts in school lunches, child welfare, and help for disabled children. The bill came to President Clinton twice and he vetoed it twice. This new legislation is much improved. Congress has removed many of the worst elements the President objected to, and has included many of the improvements the President called for.

Q: What specifically is the Administration planning to do to address the flaws in the legislation? And when? What about the AFDC portion of the legislation?

A: The President has said that he will work to fix the Food Stamp and legal immigrant problems in the bill, and the Administration is working on legislative proposals to remedy these flaws. We do not have a timeline yet for this process, but we'll work with Congress and the states to get it done. In terms of the AFDC provisions, states will be able to use their block grant funds, which initially provide most states with more resources than they currently receive, to move people into jobs and help employers create new positions for welfare recipients. Additional child care funding, new resources from child support enforcement, and the guarantee of nutrition assistance, foster care and adoption services, and health care coverage will work together to help families move from dependence to self-sufficiency. We will closely monitor the states to be sure that they are rewarding work and meeting the goals of the legislation. This new law gives states powerful performance incentives to place people in jobs. We also know that 43 states are already promoting work and protecting children under welfare waivers granted by the Clinton Administration.

Remember, the minimum wage and EITC improvements we've won for will make work pay. In Colorado, for example, a young mother with two children receives only \$8,000 a year in welfare and Food Stamps, and may never be encouraged to look for work and become independent. But with our new strategy, she will increase her income by more than 50 percent -- to \$12,600 -- even if she only works part-time at the minimum wage. She'll still receive health care for herself and her children. She'll still receive Food Stamps. She'll get help collecting child support. And she'll get help with child care if she needs it.

Q: When does the new welfare system take effect?

A: The new law goes into effect on July 1, 1997. States are required to submit plans by that date detailing how they will meet the law's provisions, and these plans will be reviewed for completeness by HHS. Upon completion of their plans, states will be able to draw down block grant funds.

Q: How does the exemption from the time limit work? Is it 20 percent over a year or at any one time?

A: The law states that the number of exempt families for a fiscal year may not exceed 20 percent of the average monthly caseload. HHS will issue further guidance on calculation of this limit in the future. However, it is important to note that the welfare bill vetoed by the President contained only a 15 percent exemption, and the Administration worked very hard to ensure that the welfare legislation included adequate exemptions from the time limit. We believe that the 20 percent exemption in the new law is adequate.

Q: Do you have any estimates on how many states will make use of the domestic violence exemption? Does this exemption apply to the work requirements as well as to the time limit?

A: We do not have estimates on how many states will make use of the time-limit exemption, which is optional. We will have that information when the states submit their plans.

The law does not include a specific exemption from the work requirements. However, the bill does allow states to waive program requirements for victims of domestic violence, and allows states to exempt 20 percent of welfare recipients from the time limit. States may also take this factor into consideration in developing individual responsibility plans and in making decisions about how to reach the participation rates specified in the bill.

Q: Now that Medicaid will be separate from AFDC, how will the Medicaid eligibility be determined? What will happen to the families who are no longer eligible for AFDC under the new system?

A: President Clinton insisted that welfare reform not end guaranteed health care coverage for pregnant women, poor children, the disabled, and the elderly -- and the new law preserves the Medicaid guarantee. In general, individuals who would have been eligible for Medicaid before welfare reform will still be eligible for Medicaid under the new law. In addition, families that lose cash assistance eligibility due to the time limit will remain eligible for Medicaid. The new law also provides one year of transitional Medicaid for families that leave welfare because of increased earnings, and maintains the current law provision of four months of transitional Medicaid for families who leave welfare due to increased child support.

States do have the option to end Medicaid coverage for some adults -- except pregnant women -- who lose their cash assistance eligibility because they failed to meet work requirements. (This is similar to current law, which denies Medicaid to adult recipients who refuse to cooperate with paternity establishment). However, children will retain Medicaid eligibility even if their mother is deemed ineligible.

Q: In the past, SSI has been the gateway for certain individuals to receive Medicaid and Food Stamps. Will those deemed ineligible for SSI under the new legislation still be eligible for Medicaid or Food Stamps?

A: For current legal immigrants, states have the option to eliminate Medicaid assistance along with SSI, but we don't expect states to do so. Immigrants who arrive in the future will be barred from Medicaid for five years. The President opposes these provisions, and will work to change them. As the President said, "This provision has nothing to do with welfare reform; it is simply a budget-saving measure, and it is not right ... I am convinced when we send legislation to Congress

MEMORANDUM

TO: Bruce Vladeck
Administrator, Health Care Financing Administration

FROM: National Association of Public Hospitals and Health Systems

DATE: September 17, 1996

RE: Impact of Welfare Reform Legislation on the Health Care Safety Net

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 President Clinton signed into law on August 22 will jeopardize the health care infrastructure in many urban communities, with a particularly severe impact on safety net providers, and immigrants across the country. The National Association of Public Hospitals and Health Systems (NAPH) believes that the threat arises from the broad changes the Act makes to the link between welfare and Medicaid eligibility processes, and the limitations the Act places on benefits for immigrants.

NAPH was pleased that Congress adopted and the Administration supported provisions ensuring that most U.S. citizens would not lose Medicaid coverage as a consequence of welfare reform by ensuring continued coverage for current and future welfare recipients who meet the July 16, 1996 eligibility rules. There are, however, unintended consequences that could result in the loss of Medicaid coverage for many individuals if states choose to establish separate eligibility processes for Medicaid outside of their eligibility processes for the new welfare block grant program (the Temporary Aid to Needy Families, or TANF program). Under current law, individuals are automatically enrolled in Medicaid when they enroll in the AFDC program. Under the Act, however, individuals may no longer obtain Medicaid coverage at the time they apply for TANF.

In states with capitated Medicaid programs, this bifurcated eligibility process is likely to exacerbate problems of adverse selection. More individuals will enroll for Medicaid coverage at a point of service—where they will be sick and requiring care. Such adverse selection is likely to have the greatest impact on the safety net providers and their plans who enroll these individuals. Obviously, states with capitated Medicaid programs will have strong financial incentives to enroll individuals at points of service, not as part of the TANF application process.

With regard to immigrants, NAPH applauds President Clinton's strong stand against these provisions, and commends him for calling on all involved to "work together in good spirits and good faith to remedy what is wrong."

As the Administration and federal agencies request input and comment in the process of promulgating regulations under the Act, NAPH looks forward to

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September 17, 1996
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working with federal officials to provide whatever assistance may prove helpful. In that spirit, we offer the following observations and recommendations:

- 1) States must be encouraged to carry out a unified eligibility process for both new welfare programs and Medicaid. HCFA should create financial incentives for states to adopt a unified process.
- 2) The Administration should issue guidance clarifying that legal immigrants already in the U.S. remain eligible for Medicaid and other public benefits until the state affirmatively exercises its obligation to disqualify them.
- 3) The Department of Justice included medical and public health services on the provisional list of programs, services, and assistance the Attorney General has exempted from the Immigrant eligibility limitations. We urge the Administration to make this exemption permanent.
- 4) The Administration should issue guidance clarifying that the immigrant eligibility limitations in the Act apply *only* to public assistance and benefits provided under mandatory spending authority.
- 5) We recommend that the Administration clarify that the definitions of "emergency medical condition" in the Act and in Section 1903(v) of Medicaid have the same meaning.
- 6) As hospitals experience a reduction in Medicaid utilization because of the Act's requirements, they may also see their Medicare and Medicaid DSH payments go down. The Administration should take steps to offset the loss of DSH funding.
- 7) The Administration's regulations governing verification of eligibility status should include current law protections, and should not impose new administrative burdens on health care providers or require public hospital officials to disclose identifying information to the INS.

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**IMPACT OF WELFARE REFORM LEGISLATION
ON THE HEALTH CARE SAFETY NET**

1. *Bifurcated Eligibility Processes for Welfare and Medicaid Could Create Adverse Selection Problems*

Since the inception of the Medicaid program in 1965, the receipt of welfare benefits under the AFDC program (or, in the case of medically-needy persons, the link to a welfare category) was an eligibility category under Medicaid. Consequently, AFDC recipients were automatically provided with Medicaid coverage when they applied for welfare; no separate application for Medicaid was required.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 severs the historic relationship between AFDC and Medicaid by repealing the AFDC program (for all citations of the Act, see Tab 1). States are required to continue Medicaid coverage for cash assistance recipients who would have been eligible under the AFDC eligibility rules in effect on July 16, 1996, even if the individual does not qualify for cash assistance under the state's new welfare program. Section 114(a)-(b). But the Act does not require states to continue the historic link between the application processes for welfare and Medicaid. States are given the option to link the application processes, but also have the option of conducting separate eligibility determinations for the two programs.

NAPH is concerned that de-linking the welfare and Medicaid eligibility determination processes will have a damaging impact on Medicaid enrollment and on safety net providers. The experience of the Medicaid program over the past 30 years, as well as several studies, show that when eligible individuals have to go through a separate eligibility process for Medicaid instead of automatically enrolling when they apply for AFDC or SSI, they have a lower rate of enrollment in Medicaid. Moreover, enrollment for these eligible individuals tends to happen at the point when they need medical care (i.e., they are ill or injured), instead of when they are healthy and can benefit from preventive and primary care provided through Medicaid. As a result, these individuals will experience more serious, and therefore more expensive, illnesses.

Encouraging eligible individuals to enroll in Medicaid at the point of medical service, a will exacerbate an adverse selection problem already facing managed care plans operated by safety net providers. These plans already tend to have sicker, costlier patient populations because of the historic relationship between these patient populations and safety net providers. A bifurcated eligibility process will result in even more Medicaid eligible individuals enrolling in safety net plans when they need more expensive care. Furthermore, adverse selection gives states with capitated Medicaid programs an incentive to enroll Medicaid eligible individuals at the point of service. The state will be paying plans a capitated rate based on the prior year's case mix, which will generally be a healthier population. But plans will be providing more, and more costly, services than anticipated by the capitation rate because its patient population will be sicker.

NAPH believes that states must be encouraged to carry out a unified eligibility process for both TANF and Medicaid, and urges HCFA to create financial incentives for states to adopt a process that enrolls eligible individuals in TANF and Medicaid at the time the

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individual enrolls in TANF. The Act already provides for a \$500 million pool of funding to cover additional administrative costs that states might incur because of the transition to the new welfare program (see Section 114H). This pool could be utilized to structure incentives.

2. ***It Is Uncertain If Current Legal Residents Remain Eligible for Medicaid In the Absence of State Disqualification***

The Act gives states authority to disqualify certain legal immigrants already present in the U.S. from eligibility (for those legal immigrants who are not disqualified from Medicaid through termination of their SSI coverage). Section 402(b). It is unclear, however, whether the Act automatically terminates Medicaid coverage for current legal immigrants if a state has not enacted legislation disqualifying current legal immigrants. For example, California Governor Pete Wilson has interpreted the state option in the Act as requiring the state to drop current legal immigrants from Medicaid unless and until the state affirmatively decides to retain eligibility for this population. This uncertainty is exacerbated by Section 402(b)(2)(D), entitled "transition for those currently receiving benefits," which states that current legal residents receiving benefits on August 22, 1996 "shall continue to be eligible to receive such benefits until January 1, 1997." This provision can be read to imply that current legal aliens lose their benefits by default on January 1, 1997.

In this situation, the meaning of the statute is not clear from the language, and it is therefore inappropriate to rely solely on the statutory language to interpret the statute. Caminetti v. United States, 242 U.S. 470, 490 (1917); Church of The Holy Trinity v. United States, 143 U.S. 457, 457 (1892). Here, the Act's legislative history and other evidence make it clear that Congress intended that legal residents already residing in the U.S. would remain eligible for public benefits until a state affirmatively exercised its authority under Section 402(b) to disqualify them.

Support for this conclusion comes from the conference history of the Act. The Act as passed by the House would have extended the bar on eligibility for benefits to legal immigrants already in the U.S. The statutory language specifically stated that "an alien who is not a qualified alien . . . is not eligible for any specified Federal program (as defined in paragraph (3))." H.R. 3437, 104th Cong., 2d Sess., § 4402(a)(1) (see Tab 3). Paragraph (3) listed three programs: SSI, food stamps, and Medicaid. H.R. 3437, § 4402(3).

The House leadership made this change shortly before floor debate on the Act began, as a way of obtaining additional federal savings from the bill. The Senate, however, did not make the same change in its bill. When the conference committee reconciled the two bills, it adopted the Senate provisions, which did not require states to cut off benefits received by current legal immigrants. The conference agreement, like the Senate-approved bill, only gave states the option of cutting off benefits. It did not *require* that they do so. In light of this conclusion, the provision regarding the transition for immigrants currently receiving benefits works as a protection for current legal immigrants, ensuring that states do not exercise their authority to cut off benefits before January 1, 1997.

Furthermore, other provisions in Title IV demonstrate that when Congress wanted to cut off benefits to immigrants *before* a state exercised its authority to do otherwise, it explicitly said so. For instance, in a provision denying state and local benefits for undocumented aliens,

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Congress gives states the option to provide these benefits to undocumented aliens. But Congress explicitly stated that states desiring to do so must enact a state law after the enactment of the federal welfare reform legislation. It is therefore reasonable to assume that had Congress intended for current legal immigrants to be disqualified from Medicaid until the state legislature affirmatively decided to continue coverage, Congress would have expressly said so.

Based on the foregoing, NAPH recommends that the Administration issue guidance clarifying that legal immigrants already in the U.S. remain eligible for Medicaid unless their state affirmatively changes its eligibility requirements for this population.

3. The Attorney General's Provisional Specification of Programs, Services, and Assistance Exempted from Limitations on Alien Eligibility Should Be Included in Future Permanent Regulations

Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act (the Act) provides that aliens who are not qualified aliens (as defined in Section 431 of the Act – i.e., undocumented aliens) are not eligible for any federal public benefits. Section 411 makes this same population of aliens ineligible for state and local public benefits unless the State enacts new legislation after August 22, 1996 that affirmatively extends such eligibility. In addition, Section 403 bars qualified legal aliens entering the U.S. after August 22, 1996 from eligibility for means-tested federal public benefits for a five year period.

The Act, however, grants the Attorney General authority to establish limited exceptions to these eligibility limitations for certain benefits. These benefits include:

Programs, services, or assistance . . . specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual's income or resources; and (C) are necessary for the protection of life or safety. Sections 401(b)(D), 403(c)(2)(G), 411(b)(4).

In a Notice issued August 23, 1996, the Department of Justice (DOJ) provided a preliminary "provisional specification" of programs, services, and assistance that will be exempt from the eligibility limitations, pending completion of the DOJ's ongoing consultations with other federal agencies regarding the scope and interpretation of the eligibility limitations in Sections 401, 403, and 411 (see Tab 9). The provisional specifications were effective immediately upon issuance of the DOJ Notice.

Included in the "provisional specifications" are "medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety." NAPH is encouraged by the inclusion of medical and public health services in the list of provisionally specified programs. As defined in the DOJ notice, these medical and public health services are a fundamental part of the life-saving assistance that public hospitals and other safety net providers offer to the

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most vulnerable populations in our nation's urban areas. ***We urge the Administration to include medical and public health services on the permanent list of programs, services, and assistance exempted from the immigrant eligibility limitations.***

4. *The Administration Should Clarify That the Eligibility Limitations Do Not Apply to Appropriated Health Programs Funded on a Discretionary Basis*

The statutory language is ambiguous on whether future legal immigrants entering the U.S. after August 22, 1996 should be barred from assistance provided under appropriated health programs as well as assistance provided through mandatory spending programs, such as Medicaid. In Section 403, the Act bars legal aliens entering the U.S. after August 22, 1996 from any "federal means-tested public benefit" for a five-year period. The term "federal means-tested public benefit," however, is not defined in the Act.

As the U.S. Supreme Court has stated many times, when the meaning of a statute is not clear, it is appropriate to look to the legislative history and other evidence to discern Congress' true intent in enacting the statute, and to avoid producing a result that is demonstrably inconsistent with clearly expressed congressional intent. See, e.g., Caminetti, 242 U.S. at 490 and Holy Trinity, 143 U.S. at 457. This is the converse of the plain meaning rule, which holds that if the meaning of a word or words is clear from the statutory language, there is no need to resort to legislative history or other extraneous sources. Mallard v. United States, 490 U.S. 296, 300 (1989).

Turning to the legislative history, the conference report notes that the definition of "federal means-tested public benefit" originally included in the bill was deleted on a Byrd rule challenge, but would have read:

a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit.

Joint Explanatory Statement of the Conference Committee, 142 Cong. Rec. H8,927 (daily ed. July 30, 1996) (see Tab 2).

The conference report further states that "It is the intent of the conferees that this definition be presumed to be in place for purposes of this title." *Id.* This conference language, however, is ineffective because of the Byrd rule and corresponding federal statutory requirements governing the Senate's budget reconciliation process.

Congress debated and enacted the Act as part of the FY 1996 budget reconciliation process. Under Section 313 of the Congressional Budget Act of 1974 (2 U.S.C. § 644 (1998)), commonly known as the Byrd Rule, reconciliation bills cannot contain matter that is extraneous to spending cuts on savings. "Extraneous" is defined under the Byrd Rule, relevant to the Act, as "a provision that is not in the jurisdiction of the Committee with jurisdiction over said title." 2 U.S.C. § 644(b)(1)(C) (see Tab 6). If a point of order is made against an allegedly extraneous provision and 60 votes cannot be mustered to override it, the extraneous provision must be stricken from the bill. 2 U.S.C. § 644(a).

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As a colloquy among Sens. Exon, Graham, and Kennedy during Senate floor debate on the conference report explains, the definition of "federal means-tested benefit" was deleted during floor consideration of the Senate bill on a Byrd rule challenge because it contained material that related to *discretionary spending* programs that are outside the jurisdiction of the Senate Finance Committee (see Tab 4). Thus, it was subject to being stricken on a Byrd Rule challenge. Sen. Exon stated the point directly during the colloquy:

During floor consideration of this legislation, we struck [the provisions defining "federal means tested benefit"] because they contained material that was not under the jurisdiction of the Finance Committee, namely many discretionary programs . . . [I]t is clear that this bill should not be used to make changes in discretionary programs, and those who look to interpret the action of the Congress should take this into account.
142 Cong. Rec. S9,400 (daily ed. Aug. 1, 1996) (statement of Sen. Exon).

Because the Byrd Rule challenge was sustained, the Act applies immigrant eligibility limitations *only* to public assistance and benefits provided under mandatory spending authority. The definition contained in the report language should be considered only to the extent that it encompasses mandatory spending programs. ***We urge the Administration to issue guidance clarifying this matter.***

5. ***The Definition of Covered Emergency Medical Condition in the Act Should be Construed the Same as Under Medicaid***

Although the Act bars all undocumented aliens from Medicaid, and denies Medicaid eligibility to future legal aliens for five years, the Act exempts treatment and services for an emergency medical condition. Sections 401(b)(1)(A), 403(c)(2)(A). The Act uses the definition of emergency medical condition in current Medicaid law, at Section 1903(v) (see Tab 5).

Section 1903(v) defines an emergency medical condition as:

"a medical condition (*including labor and delivery*) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in--

- (A) placing the patient's health in serious jeopardy,
- (B) serious impairment to bodily functions; or
- (C) serious dysfunction of any bodily organ or part.

Section 1903(v) (codified at 42 U.S.C. 1396b(v) (emphasis added)).

The conference report notes that the bill's drafters intended this definition to be "very narrow," stating "the conferees intend that [the definition] only apply to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature." Joint Explanatory Statement at H8,926 (see Tab 2).

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Well-accepted principles of statutory interpretation, however, require that the 1903(v) definition of "emergency medical condition" be interpreted as having the same meaning under the Act as it does under Medicaid law (and through judicial interpretation thereof). The plain meaning rule specifically states that if the meaning of a word or words is clear from the statutory language, there is no need to resort to legislative history. Mallard, 490 U.S. at 300. It is clear from the statutory language in the Act that Congress intended "emergency medical condition" to have the same meaning in the Act as it does under Medicaid, since the relevant provision in the Act expressly cross-references Section 1903(v) of title XIX of the Social Security Act. "Emergency medical condition" as defined in 1903(v) encompasses every woman in active labor because a woman in active labor is in need of immediate medical attention. The conference report language is therefore irrelevant. *NAPH urges the Administration to clarify that the definitions of "emergency medical condition" in the Act and in 1903(v) have the same meaning.*

6. ***DSH Payments Should be Increased to Offset Hospitals' Increased Indigent Care Costs and the Impact of Fewer Medicaid Eligible Legal Immigrants on the Calculation of DSH Criteria and Payments***

The Congressional Budget Office estimates that by 2002, about 260,000 elderly legal immigrants, 65,000 disabled individuals, 175,000 other adults, and 140,000 children who would be eligible for Medicaid under current law will be denied coverage because of the Act. If an uninsured low income legal immigrant experiences an injury or illness, and the immigrant's sponsor is impoverished, it is unlikely that the hospital providing care to the immigrant will receive any reimbursement. This will greatly increase the uncompensated care burdens facing public hospitals, which serve a disproportionate number of immigrants.

Ironically, however, hospitals' Medicare disproportionate share hospital (DSH) payments will be decreased in the face of this additional uncompensated care burden. Although the Medicare DSH program is intended partly to help cover hospitals' uncompensated care burdens, it does so not directly but through the use of proxies for uncompensated care. Accordingly, Medicare DSH payments are based on two such proxies. First, they measure a hospital's Medicaid utilization. Because Medicaid days will decrease as immigrants lose coverage under the Act, the DSH payments will decrease accordingly. The second proxy used in the Medicare DSH formula is utilization by SSI beneficiaries. Since the Act bars most legal immigrants from SSI eligibility, Medicare DSH payments will be further reduced to reflect the decrease in SSI utilization. As a result, the significant increase in hospitals' uncompensated care burden imposed by the Act will be met with a corresponding reduction in reimbursement through the Medicare DSH program.

While the Health Care Financing Administration's (HCFA's) ability to modify the Medicare DSH formula is limited because the formula is written into the statute, there nevertheless are measures HCFA could take to interpret the current statutory formula more broadly. Such efforts would at least indirectly compensate hospitals for the losses they will experience upon implementation of the Act. For example, HCFA recently solicited comments on revising the Medicare DSH formula to better approximate actual uncompensated care burdens. 61 Fed. Reg. 27,444 (May 31, 1996). NAPH and several other organizations responded with a range of suggestions. HCFA's response to the comments received,

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however, was disappointing, as it rejected most of the ideas submitted. 61 Fed. Reg. 46,166 (Aug. 30, 1996). HCFA even rejected the most incremental suggestion offered by NAPH and others – that in measuring Medicaid utilization under the formula, it use Medicaid eligible days rather than days actually paid by Medicaid. The broader interpretation has been mandated by two federal courts of appeals which have considered the question. Yet HCFA is still refusing to implement the change outside of those circuits. ***We recommend that HCFA review the comments received on modifying Medicare DSH, particularly with regard to the measurement of Medicaid days, to implement a broader interpretation as a means of partially offsetting the additional burdens imposed by the Act.***

With respect to the Medicaid DSH program, the impact of the Act on these payments will vary by state. As a general matter, the additional uncompensated care burden will cause the hospital-specific DSH caps (section 1923(g) of the Social Security Act) to increase as they are partly based on the unreimbursed cost of providing care to the uninsured. Yet for hospitals in states in which overall DSH payments are at or near their statewide cap imposed by section 1923(f) of the Social Security Act, the increase in the hospital-specific DSH cap is not going to be helpful, unless the state agrees to reallocate DSH funding to assist hospitals burdened by a new immigrant-based uncompensated care burden. Moreover, if a state bases DSH payments on Medicaid utilization and not uncompensated care, the loss of immigrant eligibility for Medicaid will perversely reduce DSH payments to hospitals that need them the most. ***We therefore recommend that HCFA analyze the impact of the Act on hospitals' DSH payments.***

Moreover, we believe that the DSH program can and should be restructured or replaced with a program of more targeted payments directed at those hospitals that are truly in need of supplemental assistance. Part of the criteria for eligibility for such payments should be based on the level of uncompensated care, including care to legal immigrants, particularly in light of the recent passage of the Act. Although a comprehensive discussion of restructuring DSH is beyond the scope of this Memorandum, we look forward to working with HCFA and the Administration in more detail on this issue in the near future.

7. Requirements Governing Verification of Eligibility Status Should Include Current Law Protections and Should Not Impose New Administrative Burdens on Health Care Providers or Require They Disclose Identifying Information to the INS

The Act requires the Attorney General, after consultation with the Department of Health and Human Services, to issue regulations requiring verification of the alien and eligibility status of any individual applying for federal public benefits. The Attorney General must issue these regulations within 18 months of August 22, 1996, or no later than February 22, 1998. States must implement a verification system consistent with the federal regulations no later than 24 months following the issuance of the federal regulations.

The Act directs that the federal regulations "shall, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1137 of the Social Security Act." Section 432(a). Section 1137 sets out the requirements under current law for income and eligibility verification of immigration status. It is the authority under which the current verification system, the Systematic Alien Verification for Eligibility (SAVE) program, operates (see Tab 7).

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Many aliens apply for Medicaid when they visit an emergency room or public hospital clinic for treatment of a health problem. Requiring verification of alien status can strongly deter aliens from seeking care, since in practice it is often the hospital that must gather the necessary verifying information. In addition, verification requirements could jeopardize patient care because in order to administer verifications in a nondiscriminatory manner, hospitals would have to ascertain the immigration status of *every person who comes to the emergency department*. In a large urban public hospital emergency room, this might mean conducting verification checks on *over 1,000 patients a day*. Verification requirements also place hospitals in an ethical bind; as health care providers, they have an obligation to care for patients—indeed, it is their mission to provide care, not engage in law enforcement duties.

For these reasons, Section 1137, and related statutory provisions in the Immigration Reform and Control Act of 1986 (IRCA), include important protections designed to minimize this deterrent effect. Section 1137 exempts Medicaid emergency medical care from the verification requirements. Therefore, any alien seeking only treatment for an emergency medical condition does not have to disclose identifying information. In addition, the provisions in IRCA establishing the SAVE program prohibit the Immigration and Naturalization Service (INS) from using any information gathered through the SAVE program for enforcement purposes (e.g., deportation). That section states "[the SAVE system] shall not be used by the [INS] for administrative (noncriminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved." (see Tab 8)

NAPH recommends that rather than develop a new verification system under the Act, the Attorney General and INS continue operation of the SAVE system and issue regulations ensuring any necessary changes to the SAVE system as might be required under the Act are made. This approach would be the optimal way of ensuring that the regulations elicit and exchange information in a "form and manner" consistent with Section 1137. Should the Attorney General and INS discontinue the SAVE system and implement a new verification system, ***NAPH urges that the protections of Section 1137 be included in the implementing regulations.***

In addition to the requirement that states establish verification systems, the Act directs states to furnish the INS with "the name and address of, and any other identifying information on, any individual who the state knows is unlawfully in the United States." Section 404(b). NAPH is concerned that this requirement will be read as requiring public hospital officials to disclose to the INS any information they might obtain through care and treatment of patients. For all the reasons set out above, we maintain as a matter of sound health policy that public hospitals should not be required to conduct verifications of immigration status. ***We urge the Administration to clarify that public hospitals are not required to disclose identifying information to the INS.***

NACDS

National Association of Chain Drug Stores

Gerald Heller
Chairman of the Board

Ronald L. Ziegler
President & CEO

September 5, 1996

June Gibbs Brown
Inspector General
United States Department of Health and Human Services
Wilbur J. Cohen Office Building Room 5250
330 Independence Ave, S.W.
Washington, D.C. 20201

Dear Ms. Brown:

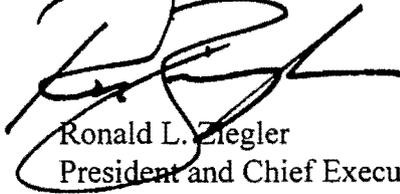
The National Association of Chain Drug Stores (NACDS) is writing to express serious reservations about a number of reviews being undertaken by your office concerning the relationship between state Medicaid payment levels for pharmaceutical product costs and pharmacy acquisition costs for prescription drugs. To date, two reviews have been released regarding the states of California and Montana. We believe that there are serious methodological flaws with these reviews, and request that no further reviews be released.

NACDS represents 135 chain companies in an industry that operates 30,000 pharmacies in the United States. Chain pharmacies dispense approximately 1.2 billion of the 2.2 billion prescriptions provided to Americans each year. NACDS members provide approximately 65 percent of all Medicaid prescriptions dispensed in the country.

Enclosed is a discussion of our concerns with these OIG reviews. In summary, we believe that the data are presented in a manner that is misleading and would result in an incorrect and inaccurate interpretation of the relationship between pharmacy's acquisition costs and Medicaid payment levels. In addition, we have serious questions about the data collection techniques that were used, and the impact on the results.

Once again, we request that no further reviews be released until we have had the opportunity to discuss the methodological and presentation issues about these reviews with you. HHS owes it to pharmacy providers and the public to be sure that HHS studies are methodologically sound and the data are presented in a fair and objective format. Thank you for your interest in this important matter for community retail pharmacy.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Eiegler', written over a circular stamp or mark.

Ronald L. Eiegler
President and Chief Executive Officer

cc: Bruce Vladeck, HCFA
Chris Jennings, White House

Enclosure

Methodological Issues

OIG Review of Pharmacy Acquisition Costs for Medicaid

September 1996

The Office of Inspector General, Department of Health and Human Services, published a report in May of 1996 reviewing pharmacy acquisition costs for drugs paid for by Medicaid. The objective of the review was to develop an estimate of the difference between average wholesale price (AWP) and pharmacy actual acquisition cost.

The report has some serious methodological problems. The results of the report may be used to justify Medicaid reimbursement reductions, and as a consequence, an inappropriate level of payment. This paper will discuss methodological issues raised by the report.

Summary

The OIG reports results that are misleading. The results are expressed as a percentage markup from invoice, producing percentages that are higher numbers than if they were expressed as a discount from AWP. In addition, the results are produced from a sample which is too small, and does not represent the universe of pharmacies which fill Medicaid prescriptions. The prices obtained were selected from the largest invoices of the month, which overrepresents large purchases (and volume discounts) which might be obtained by pharmacies. Finally, the product cost of filling prescriptions cannot be viewed in isolation, but must be taken jointly with reimbursement for other pharmacy costs (cost of dispensing). Medicaid dispensing fees are generally significantly less than community pharmacies' cost of dispensing, and any reduction in product reimbursement may endanger their very existence. In short, if the results of this report are used to reduce Medicaid reimbursement, they may jeopardize the participation of community pharmacy in the Medicaid program.

Reported Results are Misleading

Most states reimburse pharmacies for Medicaid prescriptions using a formula which discounts off the Average Wholesale Price (AWP). The OIG report concludes that AWP exceeds actual invoice prices for both brand and generic drugs. However, the numbers presented and conclusions drawn are inaccurate and misleading, and should not be used by state agencies which are considering the size of the discount off AWP which they should use in determining Medicaid reimbursement for pharmacies.

The review provides national estimates "of the extent that AWP exceeded invoice prices." The national estimates are 18.3% and 42.5% for brand and generic drugs, respectively. *However, Medicaid reimbursement for acquisition costs to pharmacies is generally expressed as a "discount off AWP."* The retailer's discount off AWP, based on the data collected and the methodology used by the OIG's office, is *substantially lower* than the figures reported.

If reported correctly, the numbers should be 15.3% for brand drugs and 29.8% for generic drugs. *OIG's estimates of 18.3% and 42.5% are misleading.*

For example, a product with a pharmacy invoice price of \$100.00 with an AWP of \$118.30 has an AWP that exceeds the invoice price by 18 percent. However, the \$18.30 spread between the AWP and the invoice price represents only a 15.3 percent discount off AWP ($\$18.30/\$118.30 = 15.3$ percent). Similarly, a product with an invoice price of \$100.00 with an AWP of \$142.50 has an AWP that exceeds the invoice price by 42.5 percent. However, the \$42.50 spread between the AWP and the invoice price represents only a 29.8 percent discount off AWP ($\$42.50/\$142.50 = 29.8$ percent). **Since Medicaid reimbursement is generally expressed as a discount off AWP, the results of the study should be expressed the same way.**

The expression of AWP discounts as a "percentage in excess of the invoice price" is highly questionable, and suggests that pharmacy acquisition costs for brand name and generic drugs are lower than they actually are. The presentation of the data, therefore, leads the reader to believe that since AWP was 18.3% higher than invoice price, state Medicaid programs should discount their branded drug reimbursement by some percentage at or around this amount.

In fact, even if there were no other problems with the methods used, the report should have presented the national figures as average AWP discounts of 15.3% for brand drugs and about 29.8% for generic drugs.

Based on the data collected by the OIG, any reimbursement which pays a rate of less than AWP minus 15.3% for branded Medicaid prescriptions will cause the average store to lose money on the product cost component of Medicaid prescription drug reimbursement. Similarly, pharmacy reimbursement of less than AWP minus 29.8% for generic drug product costs will be a money loser for the average pharmacy.

If the results of this review are expressed as "discounts off AWP", and compared with the OIG's two previous reports which expressed the discounts as "discounts off AWP", the average pharmacy discount from AWP was 15.9% in 1984 and 15.5% in 1989. Therefore, retail pharmacies' average discounts off AWP are estimated to be about the same as in the 1989 study and *reduced* from their 1984 level.

Pharmacy Sample is Too Small

OIG obtained information from pharmacies in selected groups: rural-chain, rural-independent, urban-chain, and urban-independent. The nationwide sample used responses from 315 stores for brand drugs and 314 stores for generics. Price responses from these stores were used to estimate the average discount obtained by the approximately 53,000 retail pharmacies in the United States.¹

The problem with the sample size is that the confidence we can place on the estimates is related to how many stores are included. The numbers from the report are the best estimates from the stores that responded--the *average*. The question is whether the average from the sample is a true representation of the average across the United States. This can best be answered by the size of the *confidence interval* - the range in which we can be relatively sure the real average discount lies.

According to this review, when the confidence interval for the national estimates as expressed as "discounts off AWP", the results are between 14.7% and 16.2%. That means, based on the small sample size, there is a 90 percent chance that the real discount lies somewhere between these two percentages. The difference between the lower limit and upper limit is 1.5% of AWP--and it should be noted that retail pharmacy earns net margins of only 2-3% of total sales. This range is too large for the average to be used for setting reimbursement rates.

Because pharmacy margins are so low already, a relatively small reduction in pharmacy reimbursement could have significant negative economic consequences for pharmacy providers. In order to have more confidence that the answer derived from this data analysis is correct, the pharmacy sample used has to be much larger. The range around the average should be less than .5%, because the margin for error, in terms of retail pharmacies going out of business, is just too small.

Sample Selection Not Representative of Marketplace

The national sample consisted of 315 pharmacies, categorized as shown in the table below:

	<u>Rural</u>	<u>Urban</u>	<u>Total</u>
Chain	73	73	146 (46%)
Independent	78	91	169 (54%)

This sample is not representative of the retail pharmacy market. According to IMS data for 1995, nearly 56 percent of retail outlets are chains and only 44 percent are independent (the remaining retail pharmacies are mail order outlets). This review used a sample that included 146 chain stores, or 46 percent of the sample size, and 169 independents, or 54 percent of the sample size. As is evident, the review's sample is almost reversed from the distribution of chains and independents in the marketplace.

¹ IMS Class-of-Trade Analysis 1995.

In addition, chain stores account for 61% of retail sales, independents approximately 27%, and mail order 12%. For Medicaid, chain pharmacies fill 66 percent of all Medicaid prescriptions by dollar, while independents fill 34 percent (few, if any Medicaid prescriptions are filled through mail order).²

While it is certainly the case that the sample used does not represent the distribution of independent and chain pharmacies in the marketplace, it is unclear whether the OIG accounted in its analysis for the distribution of Medicaid prescription expenditures in the marketplace. It does not appear that the sample used is a valid representation of Medicaid providers or transactions.

Invoice and Price File Selection May Skew Results

Price paid by pharmacies were based, for each pharmacy selected, on the largest invoice from each different source of supply for a particular month between January and September 1994. The "largest" invoice means the highest dollar volume purchase, which in and of itself may bias the prices chosen downward (and discounts upward).

These prices were compared to AWP based on a pricing file provided by the State of Missouri. The AWP from the State of Missouri's pricing file was not identified as to date, which could cause some errors (if, for example, the AWP was not selected for the same date as the invoice). AWP changes occur throughout the month, and if the invoice price was compared to the AWP for the beginning of the month when the price increased during the month, the estimated discount would be too high. Similarly, if the AWP decreased between the beginning of the month and the invoice date, the estimated discount would be too low.

Prices Were Not Weighted by Sales

Drug prices reviewed included 1,111 prices for brand products and 608 for generic products in California; 18,973 prices for brands and 9,075 prices for generics in the nationwide sample. However, the report does not specify how many drugs are included in this sample.

Since a total of 315 stores were included in the nationwide sample and a total of 29 in the California sample, we might expect that a substantial number of drugs would be included in the prices reviewed. However, the report does not specify or compare the number of drugs included in the comparisons.

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Because retailers, on average, are not being adequately reimbursed for their cost of dispensing, the extent to which payment on product acquisition costs can be reduced without jeopardizing community pharmacy is smaller than states might think.

Conclusion

The flaws of this report lead to results that NACDS believes overstate the percentage discounts that pharmacies are able to obtain on product purchases. The small, skewed sample and the selection of largest invoices lead to results that cannot be used as a basis for setting Medicaid reimbursement. In addition, since community pharmacy dispensing costs exceed the dispensing fee paid by Medicaid, any attempt to reduce product cost reimbursement based on this report may seriously jeopardize the financial position of individual pharmacies.

NACDS

National Association of Chain Drug Stores

Gerald Heller
Chairman of the Board

Ronald L. Ziegler
President & CEO

September 5, 1996

Bruce C. Vladeck, Ph.D.
Administrator
Health Care Financing Administration
Hubert H. Humphrey Building
200 Independence Ave S.W.
Washington, D.C. 20201

Dear Dr. Vladeck:

The National Association of Chain Drug Stores (NACDS) is writing to express our serious concerns with a series of reviews being released by the HHS Office of the Inspector General (OIG) examining the relationship between state Medicaid pharmacy payment levels for pharmaceutical product costs and pharmacy acquisition costs for these products.

NACDS represents 135 chain companies in an industry that operates 30,000 pharmacies in the United States. Chain pharmacies dispense approximately 1.2 billion of the 2.2 billion prescriptions provided to Americans. NACDS members provide approximately 65 percent of all Medicaid prescriptions dispensed in the country.

Enclosed is a letter and analysis we have sent to HHS Inspector General June Brown, asking that no additional reviews be released until we have had the chance to meet with her and the OIG staff to discuss the methodologies used in these reviews. To date, state reviews have been released for California and Montana. We understand that there are nine other such reviews pending. We are requesting that your office notify states of the issues we are raising with the presentation of the data and how the results might be incorrectly interpreted.

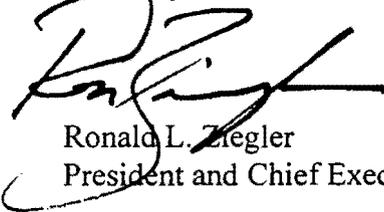
The enclosed document summarizes our concerns with the reviews. We have serious concerns that states will use these reviews as justification for reducing individual pharmacy reimbursement components. States should be reminded that they need to look at both the Medicaid product cost and dispensing fee components together, not in isolation, when determining the adequacy of Medicaid pharmacy reimbursement.

Moreover, we also believe that some states are not complying with an August 1994 memorandum sent by then Medicaid Director Sally Richardson. That memorandum requires states intending to change their pharmacy reimbursement to submit a state plan amendment (SPA) to HCFA that documents how such pharmacy reimbursement levels were established, and the impact of such changes on recipients' access to pharmacies.

We are aware that many states have made or are proposing to make such reimbursement changes, but have not provided the required justification in their SPAs. We are very disappointed that HCFA has not taken a more aggressive action in requesting such data from states, Massachusetts and Rhode Island in particular. These two states have implemented reimbursement changes which we believe are unjustified and inadequately reimburse pharmacies. We ask that HCFA once again strongly remind states that they have an obligation to Medicaid recipients, pharmacy providers, and your own agency to assure that they comply with requirements relating to changes in SPAs.

We believe that HCFA should assure that states operate by the rules, and that HHS studies on which states may rely in formulating reimbursement are methodologically sound and the data are presented in an objective and fair format. We thank you for your attention to these matters.

Sincerely,



Ronald L. Ziegler
President and Chief Executive Officer

cc: Chris Jennings, White House

Enclosure

Methodological Issues

OIG Review of Pharmacy Acquisition Costs for Medicaid

September 1996

The Office of Inspector General, Department of Health and Human Services, published a report in May of 1996 reviewing pharmacy acquisition costs for drugs paid for by Medicaid. The objective of the review was to develop an estimate of the difference between average wholesale price (AWP) and pharmacy actual acquisition cost.

The report has some serious methodological problems. The results of the report may be used to justify Medicaid reimbursement reductions, and as a consequence, an inappropriate level of payment. This paper will discuss methodological issues raised by the report.

Summary

The OIG reports results that are misleading. The results are expressed as a percentage markup from invoice, producing percentages that are higher numbers than if they were expressed as a discount from AWP. In addition, the results are produced from a sample which is too small, and does not represent the universe of pharmacies which fill Medicaid prescriptions. The prices obtained were selected from the largest invoices of the month, which overrepresents large purchases (and volume discounts) which might be obtained by pharmacies. Finally, the product cost of filling prescriptions cannot be viewed in isolation, but must be taken jointly with reimbursement for other pharmacy costs (cost of dispensing). Medicaid dispensing fees are generally significantly less than community pharmacies' cost of dispensing, and any reduction in product reimbursement may endanger their very existence. In short, if the results of this report are used to reduce Medicaid reimbursement, they may jeopardize the participation of community pharmacy in the Medicaid program.

Reported Results are Misleading

Most states reimburse pharmacies for Medicaid prescriptions using a formula which discounts off the Average Wholesale Price (AWP). The OIG report concludes that AWP exceeds actual invoice prices for both brand and generic drugs. However, the numbers presented and conclusions drawn are inaccurate and misleading, and should not be used by state agencies which are considering the size of the discount off AWP which they should use in determining Medicaid reimbursement for pharmacies.

The review provides national estimates "of the extent that AWP exceeded invoice prices." The national estimates are 18.3% and 42.5% for brand and generic drugs, respectively. *However, Medicaid reimbursement for acquisition costs to pharmacies is generally expressed as a "discount off AWP."* The retailer's discount off AWP, based on the data collected and the methodology used by the OIG's office, is *substantially lower* than the figures reported.

If reported correctly, the numbers should be 15.3% for brand drugs and 29.8% for generic drugs. *OIG's estimates of 18.3% and 42.5% are misleading.*

For example, a product with a pharmacy invoice price of \$100.00 with an AWP of \$118.30 has an AWP that exceeds the invoice price by 18 percent. However, the \$18.30 spread between the AWP and the invoice price represents only a 15.3 percent discount off AWP ($\$18.30/\$118.30 = 15.3$ percent). Similarly, a product with an invoice price of \$100.00 with an AWP of \$142.50 has an AWP that exceeds the invoice price by 42.5 percent. However, the \$42.50 spread between the AWP and the invoice price represents only a 29.8 percent discount off AWP ($\$42.50/\$142.50 = 29.8$ percent). **Since Medicaid reimbursement is generally expressed as a discount off AWP, the results of the study should be expressed the same way.**

The expression of AWP discounts as a "percentage in excess of the invoice price" is highly questionable, and suggests that pharmacy acquisition costs for brand name and generic drugs are lower than they actually are. The presentation of the data, therefore, leads the reader to believe that since AWP was 18.3% higher than invoice price, state Medicaid programs should discount their branded drug reimbursement by some percentage at or around this amount.

In fact, even if there were no other problems with the methods used, the report should have presented the national figures as average AWP discounts of 15.3% for brand drugs and about 29.8% for generic drugs.

Based on the data collected by the OIG, any reimbursement which pays a rate of less than AWP minus 15.3% for branded Medicaid prescriptions will cause the **average** store to lose money on the product cost component of Medicaid prescription drug reimbursement. Similarly, pharmacy reimbursement of less than AWP minus 29.8% for generic drug product costs will be a money loser for the average pharmacy.

If the results of this review are expressed as "discounts off AWP", and compared with the OIG's two previous reports which expressed the discounts as "discounts off AWP", the average pharmacy discount from AWP was 15.9% in 1984 and 15.5% in 1989. Therefore, retail pharmacies' average discounts off AWP are estimated to be about the same as in the 1989 study and *reduced* from their 1984 level.

Pharmacy Sample is Too Small

OIG obtained information from pharmacies in selected groups: rural-chain, rural-independent, urban-chain, and urban-independent. The nationwide sample used responses from 315 stores for brand drugs and 314 stores for generics. Price responses from these stores were used to estimate the average discount obtained by the approximately 53,000 retail pharmacies in the United States.¹

The problem with the sample size is that the confidence we can place on the estimates is related to how many stores are included. The numbers from the report are the best estimates from the stores that responded--the *average*. The question is whether the average from the sample is a true representation of the average across the United States. This can best be answered by the size of the *confidence interval* - the range in which we can be relatively sure the real average discount lies.

According to this review, when the confidence interval for the national estimates as expressed as "discounts off AWP", the results are between 14.7% and 16.2%. That means, based on the small sample size, there is a 90 percent chance that the real discount lies somewhere between these two percentages. The difference between the lower limit and upper limit is 1.5% of AWP--and it should be noted that retail pharmacy earns net margins of only 2-3% of total sales. This range is too large for the average to be used for setting reimbursement rates.

Because pharmacy margins are so low already, a relatively small reduction in pharmacy reimbursement could have significant negative economic consequences for pharmacy providers. In order to have more confidence that the answer derived from this data analysis is correct, the pharmacy sample used has to be much larger. The range around the average should be less than .5%, because the margin for error, in terms of retail pharmacies going out of business, is just too small.

Sample Selection Not Representative of Marketplace

The national sample consisted of 315 pharmacies, categorized as shown in the table below:

	<u>Rural</u>	<u>Urban</u>	<u>Total</u>
Chain	73	73	146 (46%)
Independent	78	91	169 (54%)

This sample is not representative of the retail pharmacy market. According to IMS data for 1995, nearly 56 percent of retail outlets are chains and only 44 percent are independent (the remaining retail pharmacies are mail order outlets). This review used a sample that included 146 chain stores, or 46 percent of the sample size, and 169 independents, or 54 percent of the sample size. As is evident, the review's sample is almost reversed from the distribution of chains and independents in the marketplace.

¹ IMS Class-of-Trade Analysis 1995.

In addition, chain stores account for 61% of retail sales, independents approximately 27%, and mail order 12%. For Medicaid, chain pharmacies fill 66 percent of all Medicaid prescriptions by dollar, while independents fill 34 percent (few, if any Medicaid prescriptions are filled through mail order).²

While it is certainly the case that the sample used does not represent the distribution of independent and chain pharmacies in the marketplace, it is unclear whether the OIG accounted in its analysis for the distribution of Medicaid prescription expenditures in the marketplace. It does not appear that the sample used is a valid representation of Medicaid providers or transactions.

Invoice and Price File Selection May Skew Results

Price paid by pharmacies were based, for each pharmacy selected, on the largest invoice from each different source of supply for a particular month between January and September 1994. The "largest" invoice means the highest dollar volume purchase, which in and of itself may bias the prices chosen downward (and discounts upward).

These prices were compared to AWP based on a pricing file provided by the State of Missouri. The AWP from the State of Missouri's pricing file was not identified as to date, which could cause some errors (if, for example, the AWP was not selected for the same date as the invoice). AWP changes occur throughout the month, and if the invoice price was compared to the AWP for the beginning of the month when the price increased during the month, the estimated discount would be too high. Similarly, if the AWP decreased between the beginning of the month and the invoice date, the estimated discount would be too low.

Prices Were Not Weighted by Sales

Drug prices reviewed included 1,111 prices for brand products and 608 for generic products in California; 18,973 prices for brands and 9,075 prices for generics in the nationwide sample. However, the report does not specify how many drugs are included in this sample.

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