HJR
29

BACKGROUND MATERIALS

RELATING TO

HJR 29: REQUESTING CONGRESS

TO

PERMIT WORKFARE PROGRAMS

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MEMO

WORKFARE PROGRAMS FOR AFDC ADULT RECIPIENTS

AND POTENTIAL BENEFITS TO ALASKA IF WORKFARE PROGRAMS

WERE PERMITTED UNDER FEDERAL LAW

The rising costs of welfare have been a source of concern for many Alaskan taxpayers. Welfare costs for cash, food, medical, and social assistance have more than tripled in the most recent eight-year time period. Workfare programs are an outgrowth of a desire by some taxpayers to require that needy able-bodied adult recipients be required to work in exchange for their welfare assistance.

The largest cash assistance program in Alaska is the Aid to Families With Dependent Children (AFDC) Program. AFDC is anticipated to provide over $23 million dollars in aid to over 6,000 needy eligible Alaskan families in Fiscal Year 1980. Each family is anticipated to receive an average of $325 a month to cover the costs of housing, fuel, clothing, utilities, and other life necessities. If one were to divide that total $23 million figure by the state's projected FY '80 population, an annual cost of more than $50 per Alaskan would result. That $50 reflects only the cost of the grants and does not include the cost of administration, eligibility determination, related social services, covered medical assistance, and food stamps. It must be kept in mind, though, that the $50 figure includes the 50 percent funding by the federal government. Alaskans are federal taxpayers too; thus federal dollars spent indirectly affect the individual Alaskan's pocketbook, as well.

Many taxpayers in Alaska and elsewhere have expressed a concern regarding the rising AFDC caseload and expenditures that are occurring in most states due to the high unemployment and high costs of living. Some of the taxpayers are asking that able-bodied AFDC adults be required to work in exchange for their welfare assistance. Many governmental units on state or local basis are seriously examining requiring adult recipients who are not employed or disabled to do public service work as a condition of receiving their welfare checks.

Other States and Workfare

Alaska is not the only state that has expressed an interest in imposing AFDC workfare requirements. In September of 1978, Jay Rowen of the U.S. Department of Labor prepared an informal memorandum on this topic. Mr. Rowen noted that the following 20 states, or communities within these states, have taken the initiative regarding AFDC workfare requirements.

They are:

1. Alaska
2. Colorado
3. Connecticut
4. Florida
5. Idaho
6. Kentucky
7. Maine
8. Massachusetts
9. Michigan
10. Mississippi
11. New Hampshire
12. New Jersey
13. New Mexico
14. New York
15. North Carolina
16. Oregon
17. Pennsylvania
18. Tennessee
19. Utah
20. Wisconsin

(The memorandum detailing each state's actions regarding workfare programs is included in the attached notebook.) These 20 states expressed an interest in mandatory "workfare" requirements be imposed on AFDC clients even though federal law does not presently allow this.

Workfare in Utah

Probably the most publicized workfare experiment is currently being conducted in Utah. Utah's Work Experience and Training (WEAT) Program was originally designed to be a "workfare" program where recipients would work off their grants at one hour for each $1 of aid to a specified maximum. Through time, and in response to federal pressures as well as actual program experience, it was found that the original approach was not effective. The make-work public projects, although keeping clients busy, did not provide them with the necessary job skills and work experience needed for future employability. People simply were not getting off assistance as a result of the WEAT participation. And since the WEAT jobs were seen as make-work, dead-end projects, resentment among the clients was high. Utah thus began to restructure its WEAT program to focus on sheltered work experiences. Thus, all persons who were required to register for WIN but for whom a WIN placement was not available were also required to register for WEAT. WEAT, unlike WIN, is entirely operated by the state welfare department. The eligibility workers develop WEAT project sponsors among public and private non-profit agencies. WEAT registrants are assigned to an available sponsor where they work for no pay three days a week with the remaining two days set aside for job search or job skill improvement activities. Failure to perform acceptably on the work project without a valid excuse could result in the mandatory registrants' ineligibility for assistance.

The welfare rights organization in Utah planned to sue the state over the mandatory features of the program. Participants voiced objections that they did not want to jeopardize the existence of the program and the suit was dropped. The organization now is working for improvements in WEAT. Similarly, the Tribal Council of the San Juan County Navajo Reservation also vigorously objected to federal attempts to have the WEAT program there removed. These clients found that WEAT was more successful for them than WIN, for WEAT could offer a more personal, less demanding environment, than the formal work and training program of WIN. This was especially true for clients with low skills or no job history.

The success of the WEAT program in Utah is due in large part to the uniform attitude found throughout the state. The recipients, the sponsors, the legislature, and the general population share a common work ethic that all able-bodied persons should work. State officials stress the importance of training or finding employment for welfare recipients as soon as possible after application. It is their experience that the greater the wait for WIN or WEAT placement, the less chance for success. Utah has a low unemployment rate (less than six percent) so that, once trained, the chances for employment are good. A major problem still remains in the inadequacy of appropriate long-term training and support services coupled with the fact that many welfare clients may, in fact, never be able to enter competitively into private sector employment. Also, lack of enough licensed day care facilities are also beginning to provide significant barriers to employment for welfare mothers.

Despite WEAT's apparent success in Utah, HEW officials have consistently opposed efforts toward similar programs in other states. Utah's program was implemented at a time when federal policies were unclear, and support within the state was nearly unanimous. These favorable conditions do not exist for other states.

WIN

The federal government currently permits only one job placement and training program for AFDC recipients that program is called WIN.

WIN stands for the Work Incentive Program and was instituted in Alaska in 1968. It is the principal manpower program aimed at assisting AFDC recipients to find and retain jobs. Under provisions of the Federal Social Security Act, any able-bodied member of an AFDC family who is 16 or more years of age, not in school and not otherwise needed to care for a disabled person in the home, must participate in the program as a condition of receiving his or her AFDC grant. AFDC recipients with pre-school children are not required to participate in WIN. WIN provides both manpower (counseling, training, and placement) and support services, subject to its funding limitations. Both administrative and assistance costs are funded 90 percent by the federal government and 10 percent by the state government. Federal participation is subject to a national ceiling with an individual state share based on a intricate formula related to performance and AFDC caseload size. The total national federal authorization for WIN has not been increased since 1968.

Alaska, because of its minimal AFDC program (the state has opted not to operate an unemployed father program), has a small welfare population in comparison to highly-populated urban states with comprehensive AFDC coverage, such as California. Alaska must compete with these states, which automatically receive large appropriations despite the degree to which they effectively penetrate the AFDC caseload. Also, Alaska's share of WIN funds does not take into account the state's higher cost of living. Today, due primarily to funding constraints, WIN offices are open only in Anchorage and Juneau (which serves Southeast Alaska).

WIN and Workfare

Due to WIN, AFDC, and other federal requirements, workfare programs other than WIN, are generally not permitted, except as approved demonstration grants. Federal funding to the state would be jeopardized if the state were to implement a workfare program not approved by the federal government. Louis Weissman, HEW Acting Assistant Regional Commissioner for the Office of Family Assistance, testified before House HESS Committee on March 16, 1978, stating that requiring individuals to work off, or work for, AFDC assistance is inconsistent with AFDC program requirements. Implementation of a workfare system for AFDC recipients would jeopardize federal funding, except as part of an approved federal demonstration project. In a letter to Gregg Erickson, Director of Legislative Research Services, dated September 28, 1978, Bernard E. Kelly, Regional HEW official, confirmed that the federal position remained unchanged. Mr. Kelly's letter notes the "sanctions range from the withholding of specific amounts of money to the disallowance of all federal financial participation for AFDC." Federal funding in other related programs, such as WIN, Title XX, and Medicaid, may be affected, as well by the implementation of a workfare program not approved by the federal government.

HJR 29 and Benefits to Alaska

HJR 29 urges Congress to amend federal law to allow workfare programs for able-bodied AFDC adult recipients. It also requests the legislatures in the other states to pass similar resolutions, so that Congress will be aware that many states, not just Alaska, are interested in this proposed change in federal law.

The benefits of workfare programs commonly cited are:

1) Mechanism for removing able-bodied adult recipients from AFDC rolls who refuse to work for their assistance;

2) Provision of needed services to society that would cost additional state tax dollars; and

3) Promotion of client dignity, self-esteem and responsible work attitudes by allowing clients to work for their assistance as a paycheck, rather than just receiving a welfare "hand-out".

In conclusion, it is important to note that the resolution, if passed, only expresses Alaska's interest in the federal law change. Although

this paper does not address the problems regarding actua implementation of workfare programs or effect on the clients, further action by the legislature would be necessary at a later date to authorize and fund a workfare program. At that time, the costs and merits of the particular workfare programs permitted by Congress could be discussed and reviewed for their appropriateness for Alaska.

HEW TESTIMONY ON WORKFARE

MINUTES OF HOUSE

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

March 16, 1978

The meeting was called to order at 3:05 P.M. by Chairman Parr. Present was: Mr. Beirne, Mr. Phillips, Mr. Chatterton, Mr. Bennett, Mr. Cotten, Mr. Nakak, Mrs. Buchholdt and Mr. Cse.

Mr. Parr stated House Bill's 410, 415, 891, 493 and SSHB 666, all bills dealing with University of Alaska re-organization, were on the agenda for today. Before discussing the University of Alaska bills, Mr. Dick Wilson introduced Mr. Louis Weissman, Acting Assistant Regional Commissioner, from the Division of Health, Education and Welfare in Seattle, Washington, to speak to the Committee regarding HB 840.

Mr. Weissman spoke from a prepared testimony. Copies were made available to the committee. He stated HB 840 would establish work requirements for recipients of public assistance. Mr. Weissman stated the work requirements under the federal law and regulations. He also told the committee that enactment of HB 840 as it is now written would be inconsistent with the Social Security Act and Federal Regulations. He said enactment of the proposed bill would result in a compliance issue with the State of Alaska's Public Welfare Division and could place the federal financial participation dollars at risk.

Next to be taken up were the University of Alaska re-organization bills. Mr. John Schaeffer, member of the Board of Regents was first to testify. Mr. Schaeffers testified, that given more time he feels that the University of Alaska can correct its own problems. He stated once the financial problems have been corrected, they can begin to address other issues. Mr. Schaeffer also stated that of all proposed legislation, HB 891 would best fit the University of Alaska's needs.

Mrs. Sharilyn Mumaw, student regent University of Alaska, was next to speak. Mrs. Mumaw did not offer testimony but answered questions asked to her by the committee.

Next to testify was Mr. Mason West, President Alaska Community Colleges Federation of Teachers Anchorage. Mr. West stated that ACCFT fully supports HB 410 which advocates total separation of the community colleges from the University of Alaska. He stated they wish to be responsible and responsive to the state legislature, they wish to be accountable for all dollars requested and expended by the community colleges and they wish to provide academic programs that provide students with a quality education by implementing a 5 year plan that is comprehensive, integrated and distributed to all concerned.

No action was taken on these bills today, they will be before the committee again tomorrow.

Meeting adjourned at 4:50 P.M.

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SOCIAL SECURITY ADMINISTRATION
OFFICE OF THE REGIONAL
COMMISSIONER

TESTIMONY REGARDING ALASKA HOUSE BILL NO. 846
MARCH 16, 1973

ALASKA HOUSE BILL NO. 846 WOULD ESTABLISH WORK REQUIREMENTS FOR RECIPIENTS OF PUBLIC ASSISTANCE. INCLUDED AMONG THESE RECIPIENTS WOULD BE CERTAIN PERSONS WHO ARE RECIPIENTS OF BENEFITS UNDER TITLE IV-A OF THE SOCIAL SECURITY ACT, KNOWN COMMONLY AS AID FOR FAMILIES WITH DEPENDENT CHILDREN OR AFDC.

WORK REQUIREMENTS IN RELATION TO THE RECEIPT OF ASSISTANCE UNDER THE FEDERALLY AIDED AFDC PROGRAMS HAVE BECOME A MATTER OF CONSIDERABLE PUBLIC INTEREST.

THE WORK ETHIC IS WELL ESTABLISHED AS A PART OF OUR NATIONAL LIFE. THE NEED AND WISH TO BE ECONOMICALLY PRODUCTIVE MAKES UNEMPLOYMENT A MAJOR PROBLEM IN TODAY'S SOCIETY. IT IS NOT ONLY THOSE WHO ARE POORLY EQUIPPED WHO HAVE DIFFICULTY IN FINDING EMPLOYMENT, MANY WHO ARE WELL EDUCATED AND TRAINED WITH VARIOUS SKILLS ARE ALSO FINDING THEMSELVES IN THE LINES TO CLAIM UNEMPLOYMENT COMPENSATION BENEFITS AND ON THE WELFARE ROLLS FOR VARYING LENGTHS OF TIME. IN ADDITION THERE ARE THE YOUNG PEOPLE WHO ARE SEEKING FOR THE FIRST TIME TO ENTER THE LABOR MARKET WHO ARE UNABLE TO FIND WORK AND THUS SEEK WELFARE AID.

THERE ARE NO DATA TO ESTABLISH THAT PERSONS SEEKING OR RECEIVING WELFARE AID ARE ANY LESS ANXIOUS TO WORK THAN ARE OTHER PERSONS.

WORK REQUIREMENTS UNDER FEDERAL LAW AND REGULATIONS

TITLE IV-A OF THE SOCIAL SECURITY ACT IMPOSES TWO DIFFERENT SETS OF PENALTIES, ONE FOR UNEMPLOYED FATHERS AND ANOTHER FOR ALL OTHER PRESUMED EMPLOYABLES UNDER THE WIN PROGRAM, FOR REFUSING TO REGISTER FOR EMPLOYMENT, REFUSING BONA FIDE OFFERS OF EMPLOYMENT OR TERMINATING WORK WITHOUT GOOD CAUSE.

THE AID FOR FAMILIES OF DEPENDENT CHILDREN UNEMPLOYED FATHERS PROGRAM (AFDC-UF) IS AN OPTIONAL PROGRAM AND ONE IN WHICH THE STATE OF ALASKA HAS DECLINED TO PARTICIPATE.

UNDER SECTION 407(b)(1) OF THE ACT AND 45 CFR 233.100(a)(5) THE ENTIRE FAMILY OF AN UNEMPLOYED FATHER MAY NOT RECEIVE AFDC IF THE FATHER HAS WITHOUT GOOD CAUSE, WITHIN A 30 DAY PERIOD, REFUSED A BONA FIDE OFFER OF EMPLOYMENT OR TRAINING FOR EMPLOYMENT.

I MENTIONED THE SANCTION PROVIDED UNDER THE AFDC-UF PROGRAM TO ILLUSTRATE THAT FEDERAL LAW DOES REQUIRE EMPLOYABLE FATHERS TO ACTIVELY SEEK EMPLOYMENT AS A CONDITION OF RECEIPT OF BENEFITS. ALASKA HOUSE BILL 840 WOULD NOT AFFECT THE TREATMENT OF EMPLOYABLE MALES INSOFAR AS RECEIPT OF FEDERALLY MATCHED WELFARE BENEFITS IS CONCERNED BECAUSE THE STATE HAS NOT ELECTED TO ASSIST THEM UNDER ANY CONDITIONS. HOWEVER, ALASKA HAS BEEN PROVIDING VENDOR PAYMENTS TO THIS GROUP SINCE OCTOBER, 1977 WHEN THE GENERAL RELIEF PROGRAM WAS CHANGED DUE TO COMPLAINTS BY LEGAL AID. I UNDERSTAND THAT THESE PAYMENTS WILL BE TERMINATED SHORTLY.

UNDER SECTION 402(a)(19)(F) THE NEEDS OF ANY INDIVIDUAL WHO FAILS TO PARTICIPATE IN THE WIN PROGRAM OR TO HAVE REFUSED EMPLOYMENT WITHOUT GOOD CAUSE ARE NOT TO BE TAKEN INTO ACCOUNT IN DETERMINING THE NEED OF THE FAMILY AND THE AMOUNT OF THE AFDC ASSISTANCE PAYMENT; ASSISTANCE MUST BE FURNISHED TO THE OTHER ELIGIBLE MEMBERS IN THE FORM OF PROTECTIVE OR VENDOR PAYMENTS TO OTHER THAN THE REFUSING MEMBER. IF AN INDIVIDUAL WHO IS A RELATIVE OTHER THAN THE UNEMPLOYED FATHER RECEIVING AFDC REFUSES WITHOUT GOOD CAUSE TO PARTICIPATE IN THE WORK INCENTIVE PROGRAM OR TO ACCEPT A BONA FIDE OFFER OF EMPLOYMENT IN WHICH HE IS ABLE TO ENGAGE, HIS NEEDS ARE REMOVED FROM THE AMOUNT OF ASSISTANCE OTHERWISE PROVIDED AND AFDC IS PROVIDED TO THE REST OF THE ASSISTANCE UNIT IN THE FORM OF PROTECTIVE OR VENDOR PAYMENTS OR AS FOSTER CARE. (45 CFR 234.60 AND 233.110).

IF SUCH INDIVIDUAL WHO REFUSES IS THE ONLY CHILD IN THE FAMILY, AFDC ASSISTANCE IS DENIED TO THE ENTIRE FAMILY. (45 CFR 224.51(a)(2))

THIS DENIAL OF AID TO THE REFUSING REGISTRANT IS NOT APPLIED DURING THE 60 DAYS IN WHICH THE INDIVIDUAL ELECTS TO RECEIVE COUNSELING OR OTHER SERVICES BUT AFDC ASSISTANCE IS PAID AS A PROTECTIVE OR VENDOR PAYMENT. (45 CFR 224.51(b))

HOWEVER, IF AN UNEMPLOYED FATHER FAILS TO REGISTER FOR WIN AND IS NOT EXEMPT FROM WIN REGISTRATION, THE ENTIRE FAMILY IS INELIGIBLE FOR AFDC (SECTION 407(b)(2)(C) OF THE ACT).

THE LAW SPECIFIES THAT EVERY INDIVIDUAL, AS A CONDITION OF ELIGIBILITY FOR AID UNDER THE AFDC PROGRAM MUST REGISTER FOR MANPOWER SERVICES, TRAINING, AND EMPLOYMENT, AS PROVIDED BY REGULATIONS OF THE SECRETARY OF LABOR UNLESS SUCH INDIVIDUAL IS:

A CHILD WHO IS UNDER AGE 16 OR ATTENDING SCHOOL FULL TIME;

A PERSON WHO IS ILL, INCAPACITATED, OR OF ADVANCED AGE;

A PERSON SO REMOTE FROM A WORK INCENTIVE PROGRAM THAT HIS EFFECTIVE PARTICIPATION IS PRECLUDED;

A PERSON WHOSE PRESENCE IN THE HOME IS REQUIRED BECAUSE OF ILLNESS OR INCAPACITY OF ANOTHER MEMBER OF THE HOUSEHOLD;

A MOTHER OR OTHER RELATIVE OF A CHILD UNDER THE AGE OF 6 WHO IS CARING FOR THE CHILD; OR

A MOTHER OR OTHER FEMALE CARETAKER OF A CHILD IF THE FATHER OR ANOTHER ADULT MALE RELATIVE IS IN THE HOME AND NOT EXCLUDED FROM THE PROGRAM.

INDIVIDUALS WHO HAVE BEEN DETERMINED TO BE EXEMPT FROM REGISTRATION ON THE BASIS OF INCAPACITY ARE REFERRED TO THE APPROPRIATE STATE VOCATIONAL REHABILITATION AGENCY.

A MOTHER OR OTHER RELATIVE OF A CHILD UNDER THE AGE OF 6, WHO IS CARING FOR THE CHILD, IS ADVISED OF HER OPTION TO REGISTER IF SHE SO DESIRES, AND OF THE FACT THAT CHILD CARE WILL BE PROVIDED IF NEEDED. OTHER EXEMPTED INDIVIDUALS MAY REGISTER, SUBJECT TO ACCEPTANCE OF SUCH REGISTRATION BY THE SECRETARY OF LABOR.

WORK RELIEF PRECLUDED UNDER FEDERALLY AIDED ASSISTANCE PROGRAMS

QUESTIONS HAVE ALSO BEEN RAISED BY STATES AS TO WHETHER A CHILD, OTHERWISE ELIGIBLE FOR AFDC, OR THE ENTIRE UNIT COULD, UNDER FEDERAL POLICIES BE DENIED AID IF AN APPLICANT OR RECIPIENT REFUSED TO WORK WITH IN PROJECTS OR WORK RELIEF PROGRAMS, THE ASSISTANCE TO WHICH HE WAS OTHERWISE ENTITLED UNDER TITLE IV-A OF THE ACT.

SUCH A STATE PLAN PROVISION IS CLEARLY PROHIBITED UNDER 45 CFR 233.140 WHICH SPECIFIES THAT:

> "FEDERAL FINANCIAL PARTICIPATION WILL NOT BE AVAILABLE IN EXPENDITURES MADE IN THE FORM OF PAYMENTS FOR WORK PERFORMED IN ANY MONTH AFTER JUNE 1968, EXCEPT UNDER THE WORK INCENTIVE PROGRAM AUTHORIZED BY TITLE IV, PART C OF THE SOCIAL SECURITY ACT, OR UNDER THE WORK EXPERIENCE AND TRAINING PROGRAMS AUTHORIZED BY TITLE V OF THE ECONOMIC OPPORTUNITY ACT."

ABSENT CONGRESSIONAL AUTHORITY TO THE CONTRARY, A NEEDY AND OTHERWISE ELIGIBLE CHILD AND HIS NEEDY CARETAKER RELATIVE MUST RECEIVE ASSISTANCE UNDER TITLE IV-A OF THE ACT TO WHICH HE IS OTHERWISE ENTITLED. THIS VIEW IS CONSISTENT WITH THE UNITED STATES SUPREME COURT DECISION IN THE CASE OF TOMKINS v. SWANK. (404 U.S. 202)

WORK RELIEF REFERS TO ANY SYSTEM IN WHICH AN INDIVIDUAL IS ASSIGNED TO WORK-OFF THE ASSISTANCE GIVEN, OR TO WORK WITHOUT PAY AS A CONDITION OF

RECEIVING SUCH NEEDS-RELATED CASH ASSISTANCE FOR HER OR HIS FAMILY. IT INCLUDES SYSTEMS IN WHICH THE AFDC ASSISTANCE IS SPECIFICALLY CHARACTERIZED AS PAYMENT FOR THE WORK, SYSTEMS IN WHICH HOURS OF WORK REQUIRED ARE DETERMINED BY ASSIGNING AN HOURLY VALUE TO THE WORK PERFORMED AND DETERMINING THE NUMBER OF HOURS THAT NEEDED TO BE WORKED OFF THE PAYMENT, AND SYSTEMS IN WHICH ACCEPTANCE OF THE OTHERWISE UNPAID WORK IS SIMPLY A CONDITION OF ELIGIBILITY FOR ASSISTANCE. IT IS UNCLEAR AS TO WHETHER THE INTENT OF ALASKA HOUSE BILL 840 IS TO LIMIT ELIGIBILITY AT INTAKE OR TO DENY AN ALREADY DETERMINED ELIGIBLE RECIPIENT UPON REFUSAL TO WORK FOR NO COMPENSATION. SUCH A DISTINCTION HOWEVER IS MOOT. SUCH WORK RELIEF CREATES A CLASS OF WORKERS WHO PERFORM WORK WITH NEITHER THE STATUS NOR THE BENEFITS GENERALLY ACCEPTED AS THE RIGHT OF EMPLOYEES. FOR EXAMPLE, AS NON-EMPLOYEES THEY ARE EXCLUDED FROM COLLECTIVE BARGAINING, FROM PENSION SYSTEMS, AND THEY CANNOT QUALIFY FOR PROMOTION. IN ADDITION, GENERALLY THE FAMILY SUFFERS AN OUT-OF-POCKET LOSS SINCE THEY CONTINUE TO RECEIVE ONLY THE AMOUNT OF THEIR REGULAR AFDC ASSISTANCE WITHOUT AN INCREMENT TO ACCOUNT FOR THE EXPENSES INCURRED AS A RESULT OF PARTICIPATION IN THE WORK RELIEF ASSIGNMENT.

FROM THE INITIAL ENACTMENT OF THE PUBLIC ASSISTANCE PROGRAMS IN 1935 HEW HAS TAKEN THE POSITION THAT REQUIRING AN INDIVIDUAL TO ACCEPT ASSIGNMENT TO A WORK RELIEF PROJECT, I.E., TO WORK OFF, OR WORK FOR, ASSISTANCE PROVIDED FOR IN TITLE IV-A OF THE ACT IS INCONSISTENT WITH THE BASIC REQUIREMENT THAT AFDC PAYMENTS BE UNRESTRICTED MONEY PAYMENTS, 42 U.S.C. §606(b). THIS PORTION IS REFLECTED IN THE MINUTES OF THE SOCIAL SECURITY

BOARD, FEBRUARY 25, 1936, BD. DOCUMENT NO. 73, 45 CFR 233.140. THE VIEW WAS BASED ON ITS CONCLUSION THAT A REQUIREMENT THAT AN INDIVIDUAL ACCEPT OTHERWISE UNDENUMERATED WORK AS A CONDITION OF ELIGIBILITY FOR AID IS, IN FACT, A REQUIREMENT THAT THE INDIVIDUAL "EARN" THE FAMILY'S ASSISTANCE BY WORK SO THAT THE WELFARE PAYMENT IS ACTUALLY COMPENSATION FOR SERVICES RENDERED AND NOT AID WITHIN THE MEANING OF U.S.C. § 606(b).

THE CORRECTNESS OF THIS INTERPRETATION OF THE STATUTE WAS CONFIRMED BY THE 1962 ENACTMENT OF 42 U.S.C. §609, THE COMMUNITY WORK AND TRAINING PROGRAM, WHICH PROVIDED SPECIFIC AUTHORIZATION FOR THE ESTABLISHMENT OF WORK RELIEF TYPE PROGRAMS IN AFDC UNTIL ITS REPEAL IN 1968 BECAUSE OF CONGRESSIONAL DISSATISFACTION WITH THE PROGRAM. UPON THIS RPEAL HEW PROMULGATED THE STILL EFFECTIVE 45 CFR 233.140 TO REESTABLISH ITS PRE-1962 RULE. SUBSEQUENT LEGISLATIVE PROPOSALS TO REINSTATE 42 U.S.C. §609 WERE REJECTED.

THIS POSITION WAS REAFFIRMED BY HEW IN 1971, WHEN BOTH CALIFORNIA AND NEW YORK PROPOSED WORK RELIEF PROGRAMS FOR AFDC RECIPIENTS AND WERE ADVISED THAT FEDERAL FUNDING WOULD NOT BE AVAILABLE IF THEIR REGULAR AFDC PLAN REQUIRED RECIPIENTS TO ACCEPT ASSIGNMENT TO WORK RELIEF. THE ONLY EXCEPTION HAS BEEN THE APPROVAL OF PLACEMENTS FOR NOT TO EXCEED 13 WEEKS UNDER THE WIN PROGRAM, ON THE GROUNDS THAT WHERE THE INDIVIDUAL HAD HAD VERY MINIMAL ATTACHMENT TO THE LABOR MARKET, ONE COULD CONSIDER "EXPOSURE TO WORK" TO BE A FORM OF TRAINING. SEE WIN HANDBOOK, CHAPTER SIX, PAGE 5, PARAGRAPH E.

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IN 1974 HEW PUBLISHED A REVOCATION OF §233.140 OF THE REGULATIONS; HOWEVER THIS REVOCATION WAS CHALLENGED IN A SUIT BROUGHT BY RECIPIENTS ORGANIZATIONS (INMRO v. DWIGHT) AND, THE REGULATION WAS REINSTATED.

STATE-ONLY WORK REQUIREMENTS

DURING THE PAST YEAR THERE WERE NUMEROUS INQUIRIES AS TO WHETHER, IN THE ABSENCE OF FEDERAL LAW, STATES COULD IMPOSE THEIR OWN WORK REQUIREMENTS AS A CONDITION OF RECEIVING AID UNDER TITLE IV-A IN ADDITION TO THESE PROVIDED IN THE ACT AS DESCRIBED ABOVE. THE ONLY ADDITIONAL INDIVIDUALS NOT COVERED UNDER CURRENT LAWS AND REGULATIONS WOULD BE RECIPIENTS IN NON-WIN AREAS. (THE POSITION OF HEW TO DATE HAS BEEN THAT IN THE ABSENCE OF LEGISLATIVE AUTHORITY THE DEPARTMENT WOULD NOT ISSUE A POLICY TO SUPPORT STATE-ONLY WORK REQUIREMENTS.)

CONGRESS ENACTED, AS A PART OF P.L. 95-216, THE SOCIAL SECURITY AMENDMENTS OF 1977, SECTION 404 ENTITLED STATE DEMONSTRATION PROJECTS. THIS SECTION AMENDS AND EXPANDS SECTION 1115 OF THE SOCIAL SECURITY ACT WHICH RELATES TO DEMONSTRATION PROJECTS. UNDER THIS AUTHORITY THE SECRETARY OF HEW COULD WAIVE CERTAIN STATUTORY REQUIREMENTS AND PERMIT NOT MORE THAN THREE DEMONSTRATION PROJECTS PER STATE. THESE PROJECTS COULD PROVIDE FOR PUBLIC SERVICE EMPLOYMENT. THERE ARE CERTAIN RESTRICTIONS CONNECTED WITH THIS AUTHORITY:

A. NOT MORE THAN ONE SUCH PROJECT COULD BE CONDUCTED ON A STATEWISE BASIS.

B. WITH RESPECT TO PUBLIC SERVICE EMPLOYMENT -

- APPROPRIATE HEALTH AND SAFETY STANDARDS AND TRAINING CONDITIONS MUST BE MADE
- THE PROJECT MUST NOT RESULT IN DISPLACEMENT OF EMPLOYED WORKERS
- COMPENSATION FOR WORK IS SPECIFIED AT AN HOURLY WAGE EQUAL TO THE LOCAL PREVAILING WORK WAGE
- WORK CONDITIONS MUST BE REASONABLE
- WORKMEN'S COMPENSATION MUST BE PROVIDED

(DEMONSTRATION PROJECTS MUST NOT LAST LONGER THAN TWO YEARS AND ALL MUST BE TERMINATED NOT LATER THAN SEPTEMBER 30, 1978)

THE FACT THAT THE CONGRESS FELT COMPELLED TO BROADEN SECTION 1115 OF THE ACT TO PERMIT WORK PROGRAMS SUCH AS THOSE UNDER DISCUSSION HERE IS CONSISTENT WITH THE CURRENT DEPARTMENTAL POSITION THAT SUCH PROGRAMS ARE INCONSISTENT WITH THE PROVISIONS OF THE SOCIAL SECURITY ACT ABSENT ANY OTHER SPECIFIC LEGISLATIVE AUTHORITY.

THE ONLY PROVISIONS IN FEDERAL LAW OR REGULATIONS WHEREBY A STATE MAY DENY AFDC TO INDIVIDUALS OR TO CHILDREN, ON THE BASIS OF WORK REQUIREMENTS, ARE THOSE CONTAINED IN SECTION 407 (b)(1) OF THE ACT AND 45CFR 233.100 (a)(5) PERTAINING TO THE UNEMPLOYED FATHER AND IN SECTION 402 (a)(19)(F) OF THE ACT AND 45CFR 224.21(b), 224.51(a)(1) AND 233.110 PERTAINING TO THE PROVISION OF FOSTER CARE FOR OTHER INDIVIDUALS UNDER THE WIN PROGRAM.

ENACTMENT OF ALASKA HOUSE BILL NO. 840 AS IT IS NOW WRITTEN WOULD BE INCONSISTENT WITH THE SOCIAL SECURITY ACT AND FEDERAL REGULATIONS. ENACTMENT OF THIS PROPOSED BILL WOULD RESULT IN A COMPLIANCE ISSUE WITH THE STATE OF ALASKA'S PUBLIC WELFARE DIVISION AND COULD PLACE THE FEDERAL FINANCIAL PARTICIPATION DOLLARS AT RISK.

THANK YOU,

LOUIS E. WEISSMAN
ACTING ASSISTANT REGIONAL COMMISSIONER
OFFICE OF FAMILY ASSISTANCE

- HEW LETTER ON
- WORKFARE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
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September 28, 1978

OFFICE OF THE REGIONAL DIRECTOR

Mr. Gregg K. Erickson
Director of Research
Legislative Affairs Agency
State of Alaska
Pouch Y - State Capitol
Juneau, Alaska 99811

Dear Mr. Erickson:

This is in response to your inquiry regarding potential Federal implications if the State of Alaska withdrew from participation in the AFDC Program. The State may, of course, withdraw from the AFDC Program at any time.

Before addressing the specific questions you raised, a general discussion of the compliance process, as it pertains to each of these programs, may be helpful. The compliance process reflects one way in which the Secretary may withhold part or all of the Federal funding for a particular program. The Social Security Act and regulations give the Department broad discretion in compliance proceedings. Pertinent sections of the Social Security Act which describe the compliance process include Sections 404(a) for AFDC, 443 for WIN, 1904 for Medicaid and 2003(c) and (e) for Title XX. The compliance processes for AFDC, Medicaid and Title XX are similar.

There are three ways stated in the regulation in which a question of compliance may arise. 45 CFR 201.6(a) states that:

> A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan, the failure of the State to change its approved plan to conform to a new Federal requirement for approval of state plans, or the failure of the State in practice to comply with a Federal requirement, whether or not its State plan has been amended to conform to such requirement.

All or part of the payments made pursuant to a State plan may be withheld after a finding of noncompliance. 45 CFR 201.6(e) provides that:

> If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (a) of this section, the State agency is notified that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the plan not affected by such failure), until the Administrator is satisfied that there will no longer be any such failure to comply. Until he is so satisfied, no further payments will be made to the State (or will be limited to categories under or parts of the plan not affected by such failure).

A State may appeal an adverse decision to the Court of Appeals for the circuit in which the State is located. (45 CFR 201.7.)

WIN's provision differs, but contains notice and hearing requirements (Section 443). Title XX contains an additional requirement that a State must comply with certain funding requirements (Section 2003(c)), but again there is a notice and hearing requirement.

You have inquired as to which part of a program would lose funds, or whether funding for a certain program would be jeopardized under a given set of circumstances. As stated previously, the Social Security Act gives the Secretary broad discretion in compliance proceedings. For example, noncompliance with one AFDC requirement could result in the withholding of part or all of the Title IV-A funds. There is no loss of Federal funds until a State has its hearing.

The State should be aware that Federal funds may be affected by audit exceptions or fiscal disallowances with respect to individual payments that may occur prior to or at the same time the Department decides to initiate compliance proceedings.

Regional office staff have the primary responsibility for identifying questions of compliance and reporting them to the State involved and to the appropriate officials in Washington, D.C. If a question of compliance cannot be resolved through negotiation, a compliance hearing may be scheduled. If a State is dissatisfied with an action taken on a State plan, it can request a reconsideration.

Title IV-D does not contain the compliance and hearing provisions found elsewhere in the Social Security Act. Instead, Congress enacted a 5 percent penalty to be assessed at such time as the annual audit establishes that a State failed to have an effective child support enforcement program, (Section 403(h)). In order to have an effective program, a State must be in compliance with each of the State plan requirements identified in 45 CFR 305.20. Use of the term "compliance" in discussions of the child support enforcement program refers to the audit and penalty provisions, rather than the process of raising a question of compliance and then holding a hearing.

We now proceed to the questions raised in your letter of June 28, 1978, answering them in the order raised.

I. TITLE IV-D OF THE SOCIAL SECURITY ACT

1. If the Department of Revenue were to implement these instructions, would Alaska be found noncompliant with Title IV-D requirements?

There are two situations in which implementation of the instructions of House Concurrent Resolution 134 would result in noncompliance with Title IV-D regulations.

The first is one in which the practical result of the instruction is that the Child Support Enforcement Agency works no paternity cases. Under those circumstances, the State does not meet the criteria outlined in 45 CFR Part 305. If a limited number of cases are worked, there is a serious question about compliance and therefore a serious question about the effectiveness of the child support program.

The second situation arises from OCSE's approach to the audit and penalty regulations. Although regulations covering the initial start up period are more flexible, HEW intends to amend those regulations and apply more stringent standards as the child support program moves out of the developmental stage and becomes more fully operational nationwide.

2. If found noncompliant, what fiscal penalties would be assessed on the Title IV-D program?

If the State does not comply with the audit criteria, Alaska's Title IV-A reimbursement will be reduced by 5 percent for the period audited.

While not a penalty provision, there is another fiscal consequence of implementation of the resolution that should be mentioned. Activities such as notifying individuals of their right to privacy under the State constitution and obtaining a waiver are outside the scope of Title IV-D and therefore are not eligible for Federal financial participation. The Department of Revenue would need to establish a mechanism for identifying those costs and excluding them from the claim for Federal reimbursement.

There are also some additional ramifications for children and taxpayers in Alaska we feel should be mentioned. The failure to establish the paternity of a child can have grave social and legal consequences. A child's right to those benefits which accrue to a child via the parent-child relationship may be lessened or eliminated if paternity has never been established. This could affect such benefits as Social Security, workmen's compensation and medical and life insurance. The failure to establish paternity will, in many cases, result in shifting the burden for child support from the child's father to the taxpayers in Alaska.

If there is no AFDC program in the State, and therefore no AFDC component of the child support program, there is virtually no chance that HEW could approve a State plan for child support. In that event, no Federal funds would be available for the costs of obtaining financial support for children. It seems likely that Alaskans would want to continue providing child support services to women and children not on assistance and that taxpayers would want the State to recover welfare costs from parents with the obligation and financial ability to support their children. Without a IV-D State plan, Alaska would have to pay all costs pf providing these services. In the twelve-month period ending March 31, 1978, costs of these services were $1,043.445. The Federal Government paid $782,584 of this amount.

3. Would noncompliance with Title IV-D result in noncompliance for Title IV-A (AFDC)?

If a question of compliance is raised with regard to whether an aspect of a Title IV-A requirement would not or could not be met, there could be both a compliance and a Federal matching issue involved. Clearly, a compliance issue would exist if the State plan does not contain language requiring applicants and recipients to cooperate in establishing paternity, as well as if, in practice, the State does not assist recipients in establishing paternity. Furthermore, Federal matching questions may arise if recipients are not cooperating in establishing paternity.

Section 402(a)(27) of the Social Security Act requires that as a part of the State's plan for aid and services to needy families, provision is to be made for a child support program which conforms with Part D of Title IV, as well as the State plan requirements of Section 454, "State Plan for Child Support."

4. If the answer to question number 3 is yes, what would be the penalty assessed on Alaska's Title IV-A program?

If a State is found to be out of compliance after a hearing, it could jeopardize all of their Federal AFDC funds, should the State fail to take steps to immediately come into compliance. (45 CFR 201.6).

II. WORK REQUIREMENTS FOR AFDC RECIPIENTS

1. Has this Federal position remained unchanged regarding the impact on AFDC for institution of a work requirement program as outlined by House Bill No. 840?

Yes, the Federal position remains unchanged with regard to the implications of the enactment of House Bill No. 840. Should Alaska wish to explore alternatives allowable under current policy and law, HEW is willing to explore the possibility of demonstration programs authorized under Sections 1115(a) and 1115(b) of the Social Security Act.

2. Would the Alaska AFDC program be deemed wholly or partially noncompliant if Alaska were to enact House Bill No. 840?

3. What would be the fiscal penalty assessed on the AFDC program if a question of compliance were raised?

These two questions can be best addressed with a single response. Simply enacting the legislation without further action on the part of the State would not affect the program. Should Alaska choose to implement the legislation, however, HEW would be faced with two courses of action. First, the necessary State plan would be disapproved and expenditures for the portion of the grant affected would not be subject to Federal financial participation (FFP). Second, HEW would have to determine whether the nature of the program, should the State choose to operate it without FFP, raises a substantial compliance issue. If HEW decides this is the case, and the State, subsequent to a hearing, is found to be substantially out of compliance with any provision required by Section 402 of the Social Security Act, fiscal sanctions would be imposed. These sanctions range from the withholding of specific amounts of money to disallowance of all FFP for AFDC.

4. Would Federal financial participation be withdrawn from the Alaska WIN program? In whole or in part?

Alaska's WIN allocation would not be affected by a compliance issue generated by the passage of House Bill 840. The term "Federal financial participation" has no direct relevance to the WIN program. That term applies to the Federal share of AFDC grants and administrative costs, not to WIN program funds.

The amount of funding Alaska receives for the WIN program is determined by two factors:

a. Fifty percent of the funds for Alaska's WIN program are based on the number of WIN registrants in Alaska in January of the previous fiscal year, as a proportion of the average number registered in all the States. Hence, any reduction in the number of AFDC recipients registered in WIN will directly affect the level of WIN funds provided to Alaska.

b. In addition to this statutory requirement, the balance of Federal funding to the State's WIN program is allocated on a formula in which the State's performance and potential are measured against other States. A high performance level by the State's WIN program in reducing welfare grants and placing individuals in well-paying jobs having a high job retention rate, will have a positive affect on WIN funding. In contrast, any modification of the AFDC program which results in fewer WIN registrants or a reduced level of WIN performance will adversely affect program funding.

5. Would Federal financial participation in the AFDC foster care component also be jeopardized?

   Yes. This would, however, depend upon the nature of the compliance issue. If the State was found substantially out of compliance, a fiscal sanction would be imposed on the entire program, including the foster care component.

6. If the answer to question 5 is yes, what amount of monies would be lost?

   In the event that a fiscal sanction were imposed on the entire program, then all FFP for AFDC foster care would cease.

7. Could the Alaska WIN program itself be expanded without penalty to include a nonpaid public service component such that nonprofit agencies and public agencies could provide at no cost to the WIN program nonpaid work experience and job training for WIN registrants who are not in other WIN components?

   Our response is a "qualified yes." The WIN regulations provide for a work experience component (45 CFR 224.43(b)) which has similarities to a nonpaid public service component.

   A WIN experience assignment is limited to 13 weeks for any individual (45 CFR 224.35(b)). Participants must be provided a $30 per month incentive payment plus training and related expenses. Assignment to WIN work experience, as with any other WIN training or employment component, must be part of an individual's employability development plan. Work experience sites can only be established in public and private nonprofit agencies.

   As all WIN funding has been allocated to the States, the only way work experience could be expanded would be to restructure the existing program to give work experience a higher priority. Such restructuring would necessitate a modification to the State's WIN plan and approval by the Regional Coordination Committee (RCC).

   Increased utilization of the work experience component could, of course, adversely affect Alaska's WIN allocation. If this restructuring resulted in fewer placements, Alaska's allocation in the subsequent year would be reduced as a result of the performance-based feature of WIN's allocation formula.

8. If the answer to question 7 is yes, to what extent can Alaska receive Federal financial participation in such a component (assuming a compliant AFDC program)? Or have WIN funds essentially reached a ceiling such that any additional expenditures would be State-only funds?

   As explained in the answer to question #4, the term "Federal financial participation" is not applicable to the WIN funding process. Should the

State decide to modify its program to provide for more extensive use of work experience, this should be addressed in the form of a request to the RCC for a WIN plan amendment. Such an amendment would have to be viable given existing funding levels and constraints.

III. MEDICAID (TITLE XIX)

1. (a) If Alaska had no approved Title IV-A (AFDC) plan because it chose to withdraw from AFDC, could its Medicaid State plan still be approved even though we would be lacking coverage of a mandatory group?

   (b) Could Alaska's Medicaid State plan be approved if the State covered these same individuals under Medicaid, but they received their cash assistance under a 100 percent State funded grant program rather than AFDC, if the State chose t withdraw from that program?

These two questions can best be answered together.
Title XIX coverage is mandated for the categorically needy, defined in 42 CFR 448.1(a)(1)(i) as individuals who are eligible for or receiving financial assistance under Titles IV-A (AFDC) or XVI (SSI) of the Social Security Act, or under an SSI State supplement. A State also has the option of extending coverage to the medically needy, as defined in 42 CFR 448.1(a)(2) as well as certain other optional coverage groups described in 42 CFR 448.1(c).

There are no specific provisions in Title XIX or the applicable Federal regulations which require a State to implement a Title IV-A and/or a Title IV-D program as a prerequisite for participating in Medicaid. If Alaska withdrew from participation in AFDC, but elected to retain Medicaid, then Medicaid services could continue to be made available, but only to the SSI required coverage group and the optionally-related Title XVI individuals included in the approved Title XIX State plan. If this were to occur, a question might be raised as to where eligibility determination for SSA eligibles for Medicaid services would be made.

Furthermore, it is not possible to operate a medically needy program without a Title IV-A program, since Section 1903 (f)(1)(B)(i) relates medically needy income to 133 1/3 of the highest money payment under an approved Title IV-A State plan. If no Title IV-A State plan exists, there would be no basis for making this determination.

Title IV-A - type families and individuals receiving cash assistance under a State-only funded program would not be eligible for Title XIX services, because eligibility is based in part upon eligibility under an approved Title IV-A program. If the State opted to withdraw from Title IV-A, there would be no basis under law or regulation to determine eligibility for Medicaid services.

2. Does the phrase "approved State plans under Title IV-A" mean total compliance with provisions of Title IV-A or substantial compliance? If the latter is the case, what constitutes substantial compliance? Specifically:

   (a) If Alaska were found not in compliance with the AFDC program due to noncompliance with Title IV-D requirements, would the Title XIX (Medicaid) State plan also be ruled noncompliant as well, due to that action?

   (b) If Alaska instituted mandatory work requirements as outlined in Alaska House Bill No. 840 and the State was found to be noncompliant with Title IV-A (AFDC), would the Title XIX (Medicaid) State plan also be ruled noncompliant due to that action?

   (c) If Alaska was found not in compliance with Title IV-A (AFDC) for reasons listed in both above questions 2(a) and 2(b), would the State's Medicaid State plan also be found noncompliant?

   All the components of this question are best answered together. As stated earlier, compliance is judged on the accurancy of the State plan, as well as the way in which it is actually being administered. If a question of compliance is raised regarding the Medicaid State plan and cannot be resolved through negotiation, a compliance hearing may be scheduled by the Administrator of the Health Care Financing Administration. A finding of substantial compliance or noncompliance would be made after the hearing, and would depend on the nature of the question. If a compliance hearing were held on a Title IV-A and/or Title IV-D issue, the decision rendered would not directly affect Title XIX in the witholding of Federal Medicaid funds. On the other hand, if the result of a Title IV-A hearing was a determination that a given AFDC population was ineligible for AFDC, this group of individuals would not be eligible for Title XIX either. There must be a clear and undisputed eligibility for Title IV-A or Title XVI before there is an entitlement to Federal financial participation (FFP) under Title XIX. Therefore, in response to your specific questions, the Title XIX State plan would not necessarily be judged out of compliance as a direct result of a finding that Alaska's AFDC State plan is out of compliance because of Title IV-D requirements or a mandatory work program.

3. What would be the fiscal penalty in the Medicaid program for a partially noncompliant AFDC program? Would the result be a total, a partial, or zero withholding of Federal funding under Title XIX (Medicaid)?

4. If the Title IV-A State plan were deemed totally noncompliant, would the fiscal effect on the Medicaid program be the same as if the State withdrew from participation in the AFDC program? Would this result in a total loss of Federal financial participation in Medicaid?

These two questions are best answered with a single response. As noted in our response to question #2, we are unaware of any fiscal penalty which would be applied to Title XIX if Alaska were to withdraw from participation in the Title IV-A and/or Title IV-D programs, but there may be FFP implications.

Donna Rogers of Alaska met with HCFA staff on August 21, 1978. During that meeting, she posed several questions regarding the relationships between Titles XIX, IV-A and IV-D. Our response to the questions she raised follows:

1. Could Alaska have a medically needy program and include unemployed fathers not included in the IV-A program?

   No, this would not be possible. 42 CFR 448.1(d) specifies that if a State opts to include medically needy individuals under Title XIX, the State plan must specify that it covers all medically needy groups that correspond to the categorically needy groups covered in the plan. There is no provision in law or regulation to extend medically needy coverage to other groups of individuals.

2. Can retroactive 90 day coverage go before that date if service were delivered, e.g. 4 or 5 months previously?

   No, this would not be possible. 45 CFR 206.10(a)(6)(ii) provides for retroactive medical coverage up to three months prior to the month of application. Again, there is no provision in law or regulation to allow coverage prior to the 3 month retroactive period.

3. Spend-down: Utah requires recipients to make their payments the first of each month before medical coupons are issued. Is this acceptable?

   No, this would not be possible. 42 CFR 448.3(c)(2)(ii) provides that in determining when spend-down requirements are met "income will be applied to costs incurred . . ." (emphasis added). Since the Utah method requires that individuals not only incur costs, but pay them as well, before eligibility is established, it is not acceptable.

IV. SOCIAL SERVICES (TITLE XX)

1. We are concerned that the fifty percent rule (45 CFR 228.56) may cause a partial or total reduction in the amount of Title XX Federal financial participation if the State withdrew from participation in AFDC. Thus, we need to know the fiscal impact of 45 CFR 228.56. Would the effect be to eliminate all Social Services Federal funding if the State no longer had an approved State plan under Title IV-A? Or would the effect be to reduce the amount of Title XX funding due to the fact there would be no AFDC Federal funding included in the calculation contained in the fifty percent regulation?

The fifty-percent rule (45 CFR 228.56) applies to Title XVI (SSI), Title XIX (Medicaid), and Title IV-A (AFDC) recipients or those eligible to participate in these three programs. If there were no AFDC program, the fifty-percent rule would then need to be applied to the remaining two income maintenance groups -- Medicaid and SSI. If Medicaid eligibles would no longer be eligible for Title XIX services because of no approved Title IV-A AFDC plan, the fify-percent rule would then need to be applied to the category of SSI recipients and SSI eligibles only. If this were to happen, some Title XX funding would be lost, but not the total amount.

If the fifty-percent rule is not met, the Federal share is adjusted downward until the rule is, in effect, met. You may wish to refer to 45 CFR 228.56(a) which states, in part, that ". . .Federal funds will be adjusted so the total Federal reimbursement does not exceed twice the amount of the total expenditures in behalf of those individuals. . ." who come under the rule.

The loss of Federal dollars for failure to meet the fifty-percent rule would amount to the difference between what the total Federal share would have been had the rule been met, and twice what was spent on social services and personnel training. Downward adjustment of the eligible population will reduce the Federal share of Title XX funds, but will not eliminate Federal participation altogether.

2. If the State were found noncompliant with AFDC Federal requirements, would the fiscal effect on Title XX Federal funding be the same as if the State withdrew from Title IV-A? If there is a different fiscal impact, please detail those differences.

   If the State were found noncompliant with AFDC Federal requirements, it would be assumed that the State would be operating an AFDC program under a plan which would be approved to a certain degree. There would be no change in Title XX FFP in such a case. If the State withdrew from Title IV-A, however, there would be no approved plan under Title IV-A, and the fifty-percent rule would then need to be applied, minus this former category of income maintenance status eligibles.

3. If the State no longer had an approved State plan under Title IV-A, but instituted a State-only cash assistance program for those individuals who previously were or would have been covered by AFDC, would Federal financial participation for Title XX services to these people be the same as if they were receiving AFDC? If so, to what degree? We are assuming here that such a State-only program would be essentially the same as a Title IV-A program.

Application of the Title XX fifty-percent rule is based on individuals ". . .who are receiving aid under the plan of the State approved (our emphasis) under Part A of Title IV or who are eligible to receive such aid. . ." (45 CFR 228.56(a)(1)). The fifty-percent rule would not allow FFP consideration of State-only cash assistance recipients as though they were eligible for AFDC.

4. If the State were only partially noncompliant with Title IV-A requirements and partial rather than total Federal penalties were assessed on the AFDC program, would there be a partial withholding of Title XX Federal funding? If so, to what degree and for what reasons?

As indicated in our response to question #2, if the State had an approved AFDC plan and was found partially noncompliant, there would be no Title XX funding constraints, assuming there would be no change in the number of eligibles (45 CFR 228.56(a)(1)).

5. Title XX requires AFDC recipients to be informed of the availability of family planning services. If the State had no AFDC program, how would this action affect this Title XX mandatory requirement? Would fiscal penalties result? What if the State were able to inform these types of low income individuals of family planning services and these individuals received their grants through a 100 percent funded State-only program, would Title XX funding still be jeopardized? What fiscal penalties might still result?

6. If the State were found noncompliant with all or part of the AFDC Federal requirements, but still was informing AFDC recipents of family planning service availability, would there be any fiscal penalty imposed on Title XX? That is, is the family planning issue totally separate from other AFDC requirement considerations when compliance with Title XX requirements are addressed?

These two questions can be best addressed with a single response. Failure to provide family planning services under provisions of Section 402(a)(15) of the Social Security Act would result in a disallowance of a reduction by one percentum of the quarterly amount payable to the State for all expenditures under Title IV-A (45 CFR 201.14 (a)(2)). The fiscal penalty involved is not a Title XX funding penalty, but rather a loss of FFP to the State under its AFDC program. If there is no AFDC program with no AFDC FFP, there can be no reduction. If, however, there continues to be a program with noncompliance Title IV-A reductions, there would be no further penalties, providing there was compliance with the provisions of Section 402(a)(15).

V. OTHER PROGRAMS

There would undoubtedly be many other programs affected by a decision to withdraw from the AFDC program. For example, loss of Medicaid funds for AFDC eligibiles would almost certainly have a negative impact on Community

Mental Health Centers (CMHCs). Although there are no references in the CMHC legislation (Title III of P.L. 94-63) requiring that AFDC clients be served, there are a number of areas which could be interpreted as applicable:

--Within the limits of its capacity, a CMHC should provide services to any individuals residing or employed within the catchment area regardless of ability to pay (Section 201 (a)(1)(B)).

--The provision of services shall be coordinated with the provision of services by other health and social services agencies (Section 201 (b)(2)).

--If the area is a designated poverty area, additional grant funds received because of this designation will be used to provide services for people unable to pay (Section 206 (c)(1)(G)).

--CMHCs will develop a financial plan to insure adequate support from other Federal and nonfederal sources, will have a contractual arrangement with the State agency that administers Title XIX and will make every effort to collect reimbursement. (Section 206 (c)(1)(H)(I)(J)).

Because most CMHCs are currently operating on such tight budgets, we expect that potential clients with no means of reimbursement are likely to receive minimal, if any, services. CMHCs claim a significant number of fee reimbursements through Medicaid. Loss of Medicaid funds for AFDC eligibles would limit access to mental health care and could seriously undermine the comunity mental health program in Alaska. Other public health services would probably be similarly affected.

Because of the magnitude of the issues you have raised, we recognize there may well be other Federal implications not addressed in this letter, and that our response may precipitate additional questions. This response constitutes a preliminary reaction to the questions you have raised. Some portions have been sent to Washington, D.C. for review and it is possible there may be some modifications. We shall look forward to a continuing dialogue with the Legislative Affairs Agency on these subjects. Please feel free to contact me again if I can be of additional assistance.

Sincerely,

Bernard E. Kelly

Bernard E. Kelly
Principal Regional Official

- STATES INTER-ESTED
- IN WORKFARE
-

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
WASHINGTON, D.C. 20213

SEP 29 1978

MEMORANDUM FOR: MERWIN S. HANS ✓
SHELLY BLOOM

FROM: JAY ROWEN JWR

SUBJECT: State Initiatives Toward AFDC Workfair Programs

The attached "TABA" represents the most recent Office of Family Assistance attempt to get information on State initiatives.

From the list and my discussions with Gene Walker I identify the following as of most immediate concern to us:

Kentucky

The State plan amendment request should be in the regional office in the near future.

Michigan

S'arted out with a focus on Kent County (Grand Rapids). This is not pure work relief, but a mixture of employment training and work relief. The word is that Michigan is looking at what happens in Colorado, and may move in that direction. Sue Foster (Under Secretary's Office) is supposed to be calling a meeting. Hans name is on the list.

Wisconsin

Regional office has this request, but for some odd reason has not sent a copy into National OFA. So Walker does not know its contents. Supposedly, the regional office is waiting to see what response is made to Michigan.

Alaska

We have been in on this. There is pending legislation to establish a work program. State is looking a consequences.

Other efforts either appear to be dormant, have not reached an action point, or are not really workfair proposal, ie-- Pennyslvania is taking about a strong work search and acceptance of jobs in non-WIN counties.

For the directors meeting, I suggest we give them the attached document and ask that they give us more complete information where available, also that they obtain any documents such as legislative actions and plan requests on State initiatives. Caution them to use fineese in dealing with Regional OFA staff since they have just been approached by Walker to get this information.

TAB A

The following States have expressed interest in implementing mandatory work programs for AFDC recipients:

REGION I

CONNECTICUT – State law passed which established Employability Benefit and Equity Program which requires all employable persons to participate in a community project program. Law has not been implemented.

MAINE – Discussed with Regional Office staff the possibility of a work program.

MASSACHUSETTS – Submitted Amendment to State plan establishing Work Experience Program, but withdrew plan in favor of Special Initiative under the WIN program.

NEW HAMPSHIRE – Discussed with Regional Office staff the possibility of having a work program.

REGION II

NEW JERSEY – Senate Minority Leader plans to introduce a Bill which would establish public work programs.

NEW YORK – State is not interested in a work program, however several upstate counties have discussed with State staff the desirability of such a program.

REGION III

PENNSYLVANIA – Has submitted an amendment to State plan establishing a work registration requirement.

REGION IV

FLORIDA	-	Currently has an 1115 project in operation.
KENTUCKY	-	State law passed January 1978 establishing a work requirement. Plan material not yet submitted.
MISSISSIPPI	-	Expressed interest to R.O.
NORTH CAROLINA	-	Expressed interest to R.O.
TENNESSEE	-	Expressed interest to R.O.

REGION V

MICHIGAN	-	State plan amendment submitted establishing an employment and training requirement. Pending in Central Office.
WISCONSIN	-	State plan amendment submitted establishing an employment and training requirement. Pending in Regional Office.

REGION VI

NEW MEXICO	-	A Bill establishing a work requirement has been introduced in the State Senate.

REGION VII

No interest in a work requirement, however, Iowa, Kansas, Missouri, and Nebraska has discussed with Regional Office staff a Job Search requirement.

REGION VIII

COLORADO	-	State Law passed which establishes a work requirement. State plan material pending in Central Office.
UTAH	-	Operating an approved Work Experience and Training Program.

REGION IX

No interest.

REGION X

ALASKA – A Bill establishing a Work Requirement has been introduced in the State Legislature.

IDAHO – The State has passed legislation which establishes a WIN-like work in non-WIN counties, however the legislature did not fund the program.

OREGON – Discussion with Regional staff to establish a program under 1115(b).

WASHINGTON – ~~The Governor is in favor of a Work Requirement.~~ Apparently not in favor

- PAST & PRESENT
- WARFARE BILLS

Introduced: 3/8/79
Referred: Health, Education &
Social Services

IN THE HOUSE BY PHILLIPS AND MARTIN

HOUSE JOINT RESOLUTION NO. 29

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

Requesting Congress to permit workfare programs and urging all states to make similar requests of Congress.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS welfare costs have skyrocketed in Alaska, more than tripling in the most recent eight-year time period; and

WHEREAS excess welfare costs drain scarce dollars that are much needed throughout Alaska for many other basic state programs and services such as education, health, and public safety; and

WHEREAS Aid to Families with Dependent Children (AFDC) is the largest federal and state funded cash assistance program providing over $18 million in aid to over 13,000 needy Alaskan children and their families; and

WHEREAS Alaska pays one-half of the total costs of the AFDC program administered in the state, yet is given little flexibility by the federal government to design a program that channels our limited dollars to needy children and only to those needy AFDC adults who are disabled or who are willing to work in exchange for their welfare checks; and

WHEREAS many Alaskans, as well as other taxpayers across the United States, are alarmed by the rising costs of welfare and are demanding a mechanism to require able-bodied AFDC adults to provide society with some tangible work product; and

WHEREAS mandatory workfare programs are seen by many as not only providing the state with a mechanism to remove from the welfare rolls idlers who refuse to work for their welfare grant, but also as (1) promoting client dignity, self-esteem, and responsible work attitudes, (2) assisting clients

in establishing a work history often necessary for obtaining permanent gainful employment, and (3) providing needed services to society that might otherwise require additional state revenues; and

WHEREAS those states which have attempted to implement workfare systems have been threatened with the loss of substantial federal funds because workfare programs are not permitted under federal law;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the United States Congress to amend provisions of federal law to permit workfare programs for AFDC able-bodied adults without jeopardizing federal funding for the state's welfare programs; and be it

FURTHER RESOLVED that the Alaska State Legislature calls on the state legislatures in all of the states to forward similar resolutions to the United States Congress acknowledging their interest in such a change of federal law and urging Congress to pass legislation allowing for workfare programs.

COPIES of this resolution shall be sent to the Honorable Warren G. Magnuson, President Pro Tempore of the United States Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the United States House of Representatives; to the Honorable Ted Stevens and the Honorable Mike Gravel, U. S. Senators, and the Honorable Don Young, U. S. Representative, members of the Alaska delegation in Congress; and to the presiding officers of each house of the legislatures of all the states and the governing bodies of Puerto Rico, the Virgin Islands, Guam and the District of Columbia.

Introduced: 2/8/79
Referred: Health, Education & Social Services and Finance

IN THE SENATE BY TILLION

SENATE BILL NO. 124

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to general relief assistance; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The legislature

(1) finds that excessive welfare costs are a burden on the taxpayers of the state and a drain on limited state revenues which are much needed in other state programs and services; that, in view of these constraints, state general relief assistance must be provided only to those needy citizens who are unable to work and those with dependent children; and that to discourage idlers and to promote responsible work attitudes and self-esteem, a work requirement must accompany state general relief assistance for able-bodied recipients; and

(2) declares that the purpose of this Act is to limit general relief assistance payments to persons who are at least 55 years old, are disabled, or have dependent children in their homes, and who are unable to provide sufficient support for themselves or their dependents.

* Sec. 2. AS 47.25.120 is repealed and re-enacted to read:

Sec. 47.25.120. ELIGIBILITY FOR ASSISTANCE. (a) Financial assistance may be given under AS 47.25.120 - 47.25.300, so far as practicable under the conditions in this state, to an eligible individual who is

(1) at least 55 years old, or disabled, or who has dependent children in the home;

(2) not receiving other assistance under this chapter;

(3) unable to provide sufficient support for himself or those dependent upon him; and

(4) a resident of the state.

(b) For the purpose of determining whether an individual seeking assistance under this section is a resident of the state, the department shall consider, but is not limited to considering, the following factors:

(1) enrollment in the welfare program of another state and receipt of welfare benefits from another state;

(2) physical presence in the state;

(3) maintenance of a place of residence in the state;

(4) furnishings and household and personal effects sufficient to lead a reasonable person to conclude that the place of residence is more than a public accommodation;

(5) registration to vote;

(6) motor vehicle operator's license and motor vehicle registration;

(7) enrollment of children in local schools;

(8) bank accounts in this state or another state.

(c) An individual who is at least 55 years old is eligible for general relief assistance if the individual

(1) is unemployed for reasons other than misconduct or voluntary separation without cause;

(2) is actively and diligently seeking gainful employment;

(3) has not refused to accept employment when offered;

(4) has registered and is available for work as required by AS 23.20.375; and

(5) has exhausted all of his benefits, if so entitled, under AS 23.20, except that if his benefits under AS 23.20 are less than those

for which he would otherwise be eligible under this section, he is eligible for supplementary general relief assistance.

(d) A disabled individual between the ages of 18 and 65 years is eligible for general relief assistance if the individual is (1) determined to be needy in accordance with standards established by regulations of the department; (2) unable to meet the requirements established by the federal Supplemental Security Income Program or its successor agency; and (3) unable to engage in substantial gainful employment because of a physical or mental impairment determined and certified by a licensed physician. "Substantial gainful employment" as used in this paragraph means at least 30 hours of work per week. An individual determined to be eligible under this subsection may be referred to the appropriate state agency for vocational rehabilitation services and is required to accept such services as an additional condition of eligibility under this section. An individual determined to be eligible under this subsection may be required to seek employment or to participate in public service employment projects under AS 47.25.145 as an additional condition of eligibility under this section.

(e) An individual with children is eligible for general relief assistance if he satisfies the requirements of (c)(1) - (5) of this section.

(f) In addition to the requirements and conditions of (c) and (e) of this section, the department shall require that an individual who is physically fit, able to work, and employable shall, as a condition to receiving general relief assistance, accept an assignment to work under AS 47.25.145.

(g) An applicant for and recipient of general relief assistance must satisfy all applicable provisions of this section. Recipients disqualified for failure to comply with a requirement of this section

shall be excluded from general relief assistance for a period not longer than 12 months.

(h) The department shall adopt regulations under the Administrative Procedure Act (AS 44.62) necessary to enforce this section and to establish criteria and standards for the conditions and requirements of general relief assistance.

* Sec. 3. AS 47.25 is amended by adding a new section to read:

Sec. 47.25.145. PUBLIC SERVICE EMPLOYMENT. (a) The department is responsible for providing public service employment on public works projects to an individual who is receiving (1) general relief assistance under this chapter; or (2) unemployment compensation benefits under AS 23.20 that are within the last two weeks of eligibility and who, upon termination of those benefits, will be eligible for full or partial general relief assistance from the state. A general relief assistance recipient participating in public service employment is considered to be an employee of the employing agency. Except for workmen's compensation coverage under AS 23.30, the laws relating to public employees do not apply to individuals employed under this section. Payment for public service employment may not be made from the funds of the agency employing the general relief assistance recipient, but shall be made from the funds of the department.

(b) The department shall adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the purpose of this section. The regulations shall include, but are not limited to, provisions requiring that

(1) the employment of a general relief assistance recipient may not displace a state or municipal employee or an individual performing work for the state or a municipality on a contractual basis;

(2) the period of employment may not exceed that number of

hours which, when multiplied by the prevailing rate of compensation for the work, equals the amount of general relief assistance provided;

(3) there shall be no discrimination based upon race, color, creed, sex, age, religion, or national origin; and

(4) an individual refusing without justification to accept suitable work under this section shall be ineligible for general relief assistance.

* Sec. 4. AS 47.25.300 is amended by adding new paragraphs to read:

(5) "children" does not include unborn children and means individuals who are

(A) ineligible for and unable to obtain aid under a federal assistance program;

(B) in need, and without sufficient income or other resources to provide health care and essential support;

(C) under 18 years old, except that a child between 18 and 21 years may be eligible for assistance under AS 47.25.120 - 47.25.300, if the child is

(i) regularly attending high school to complete requirements leading to a high school diploma or its equivalent;

(ii) employed part time and is enrolled at least half time in an organized program of vocational or technical training designed to fit the child for gainful employment; or

(iii) employed part time and is enrolled at least half time in a local college or university; and

(D) living in a home with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, uncle, aunt, first cousin, nephew, niece, or foster parents in a place of residence maintained by the relative as his own home; or

is living in a family home or institution conforming to the standards fixed by the department;

(6) "public work projects" includes any kind of labor under the Department of Transportation and Public Facilities, department of public works of any municipality, or under any other agency of the state or a municipality.

* Sec. 5. An individual receiving general relief assistance on the effective date of this Act who would otherwise be excluded by the provisions of this Act shall continue to receive assistance if he satisfies the requirements of AS 47.25.120(c), 47.25.120(e), and 47.25.120(f).

* Sec. 6. This Act takes effect July 1, 1979.

Introduced: 2/14/78
Referred: Health,Education &
Social Services and Finance

BY PHILLIPS,DANKWORTH,HAYES,
KELLY,LETHIN AND URION

IN THE HOUSE

HOUSE BILL NO. 840

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to work requirements for recipients of public assistance."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 47.05.010 is amended by adding a new paragraph to read:

(15) solicit the cooperation of all governmental units and nonprofit agencies in developing unpaid job positions with those units or agencies, with a view toward placing persons receiving assistance under AS 47.25.120 - 47.25.300 and 47.25.310 - 47.25.420 in the positions.

* Sec. 2. AS 47.25 is amended by adding new sections to read:

Sec. 47.25.285. WORK REQUIREMENT. Needy persons receiving assistance under secs. 120 - 300 of this chapter are required to work for no compensation up to 24 hours a week in positions developed under AS 47.05.010(15), if available. Refusal to accept, or to perform with due diligence, work required under this section shall result in discontinuance of the assistance provided under secs. 120 - 300 of this chapter.

Sec. 47.25.407. WORK REQUIREMENT. Parents or relatives receiving assistance under secs. 310 - 420 of this chapter, not participating in the work incentive program for welfare recipients authorized under AS 23.15.650 and not exempt under 42 U.S.C. 602(19)(A)(i), (ii), (iv) - (vi) are required to work for no compensation up to 24 hours a week in positions developed under AS 47.05.010(15), if available. Refusal to accept, or to perform with due diligence, work required under this section shall result in discontinuance of that portion of the monthly assistance

provided under secs. 310 - 420 of this chapter attributable to the needs of the parent or relative.

* Sec. 3. AS 23.10.055(6) is amended to read:

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis, or an individual placed in a position developed under AS 47.05.010(15);