

K. Way



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 07 1994

MEMORANDUM

TO: Alice Rivlin
FROM: Belle Sawhill
RE: Welfare Reform - Latest Update

Congressional Activity

There have been several hearings in August on the House side; the Senate side has been quiet.

-- House

Ways and Means may mark up a welfare reform bill in September. It is our understanding that committee staff have been instructed to be ready to go forward then. However, we believe no decision to move a bill has been made and the markup may not happen. Democrats on the subcommittee with jurisdiction (Human Resources) are unhappy with the Administration proposal, Rep. Matsui most prominently. They have advised the Committee leadership not to move a welfare bill this year, fearing electoral politics will inevitably result in a punitive conservative bill. (HHS legislative affairs staff do not consider this inevitable, arguing that moderate Democrats may be less likely to stray during the partisan run-up to an election.) Chairman Gibbons has shown greater enthusiasm for action but has been described of late as losing some of that interest.

Pat Schroeder has been trying to move a child support enforcement bill separately as an alternative to comprehensive legislation. We think this would be a huge mistake, and HHS, including Secretary Shalala, appear to have made progress in discouraging it.

-- Senate

It is our understanding that Moynihan's staff is saying, in private and off-the-record, that we should not expect welfare reform to move this year in the Senate.

Given the little legislative time remaining this year, even if the House were to begin action it remains unlikely that a welfare reform bill would be sent to the President this session.

Estimates

We are continuing to work on ten-year estimates of our bill with HHS but, as yet, have no plans to go public. CBO is continuing to work to produce five-year estimates of our bill as well. Ways and Means subcommittee staff have requested that CBO be ready with estimates and may be looking for them around the second week in September. We continue to have informal conversations with CBO and have some sense of where they are likely to come down on many provisions.

When clearing the welfare reform legislation, our staff estimated that the pricing for welfare reform might be \$1-3 billion higher than the official numbers. We advised Leon and others of this risk, and he decided to clear the bill with the \$9.3 billion estimate.

As the staff predicted, indications are that CBO may be \$2-3 billion higher than the HHS \$9.3 billion estimate of costs over 5 years. (CBO has not made these numbers public and they should be considered confidential.) Up to \$1.5 billion of this may be due to different unit cost assumptions in the child care provisions. Combined with CBO's lower estimates of our financing package (and the loss of some offsets to GATT) we may well be faced with as much as a \$4-5 billion spread between the costs of our bill and our financing, by CBO five-year scoring. A decision will have to be made about whether to seek added offsets or reduce welfare reform's cost in the budget, or both. I have asked David Ellwood to provide us with an initial set of options on how to handle all of this in the budget by Mid-September.

Specific Provisions

-- Alien Eligibility

The main welfare reform bills (ours, the Mainstream Forum, and the House Republican) all affect alien eligibility for benefits. The Administration bill tightens eligibility and asks sponsors of aliens to bear financial responsibility for those they bring to the U.S. for a longer period of time. The Republicans and Mainstream Forum bills completely terminate legal alien eligibility for programs like SSI, AFDC, and Food Stamps. The Republicans, as you may know, have been encouraging the use of their provision as an offset for GATT. In a recent House hearing Barbara Jordan, in her role as chair of the commission on immigration, opposed the Republican provision, although she did not endorse ours. (She did endorse the principle that sponsors should bear responsibility.) In addition, the offset has come up during health care discussions as a possible financing measure (e.g. the Rowland-Cooper-Bilirakis bill). With the heated debates about immigration policy these days, these offsets will continue to be the subject of discussion. Any changes could also affect the costs of increased legal immigration from Cuba.

-- Technicals

HHS is pulling together a technical amendments package on the Administration's bill, to correct problems discovered after the legislation had been transmitted.

-- Health Care Reform and "Welfare Lock"

At the low-income review my staff expressed some skepticism about the evidence suggesting that some people remain on welfare in order to qualify for Medicaid and would leave the rolls if health insurance was universally available. You were curious about the basis for this skepticism. The most recent research has been done by David Ellwood and Robert Moffitt. Several different studies by these authors or others find a significant effect of medical costs on the length of stay on AFDC. This research is suggestive but not conclusive. As a result, while we believe the research could be used as justification for saying there may be an effect of health care reform on welfare caseloads, we recommend against basing budget estimates or policy on it for three reasons.

(1) The findings of an association between health care utilization and AFDC receipt can be explained by hypotheses that do not involve a causal effect of health insurance on welfare stays. For example, having a baby leads to both more utilization of the health care and welfare systems.

(2) Both analyses are based on Medicaid as it existed between 1980 and 1986, not as it exists today. Medicaid expansions since 1988 should have significantly diluted any effect on AFDC that existed in 1984.

(3) None of the analyses account for the potential effects of having State welfare agencies administer low-income health subsidies. People who apply for health subsidies are likely to be advised of their eligibility for other programs, such as AFDC and Food Stamps, increasing the AFDC participation above the current 80-85%.

When we reviewed testimony on welfare reform, HHS agreed to say there is some research that suggests health care reform would have a significant effect on AFDC caseloads, rather than asserting a large effect.

Next Year

-- Changing Congress

There are indications that the midterm elections may result in a more conservative and/or more polarized Congress. A more conservative Congress would probably make it easier to enact a welfare reform bill; however, it could become more difficult to enact a measure like our welfare reform bill.

The Administration bill represents a "New Democrat" balance of measures. As such, it is likely to draw somewhat ambivalent support from many to the left and to the right. Liberals, for example, support the increase in child care funding (and probably want to go further) but find time-limited cash benefits very troubling. Conservatives prefer stricter limits on benefits than are in our bill but are less interested in funding child care. Passing our bill will probably require drawing some support from each camp.

In a more conservative Congress the pressure to move to the right will, of course, increase. If we do, there is a significant chance that liberals, rather than viewing the Administration bill as being somewhat helpful and the best they are likely to get, may simply abandon the process and withdraw support. Without the left, the choice could become a quite conservative welfare reform bill or none at all.

For these reasons, some feel it would be better to enact a bill this year. However, the weight of current opinion, (especially at HHS) is that this can't happen (logistically) and that it wouldn't necessarily be desirable if it did. It's simply too late in the session. Moreover, election fever and the partisan spirit it has engendered might produce a very bad bill.

-- Reconciliation

If there is a reconciliation bill next year welfare reform is a candidate for possible inclusion. By then there may have been sufficient hearings that Congress will feel ready to move it as part of reconciliation. One advantage of including it in reconciliation would be to reduce the political heat we get for our offsets, since they would be buried in a comprehensive bill and would not attract the attention they do when we try to move them separately. On the other hand, given the complexity of the issue, Congress may want to move a free-standing bill. Including welfare reform in a reconciliation bill would, among other things, likely run into Byrd rule problems.

Conclusion:

In conclusion, our main targets for the remainder of this year are:

- To head off a separate child support bill, if necessary.
- To monitor CBO scoring of our bill, the use of existing welfare offsets for other purposes, and the implications of any health bill for welfare reform's costs.
- In light of the above, to decide how to treat welfare reform in the 1996 budget: that is, what combination of new offsets and/or program revisions to include.

This last set of decisions is likely to be almost as difficult as putting together the original financing package, especially if our existing offsets are largely used for other purposes and CBO prices our bill \$2 to \$3 billion above its original price tag of \$9.3 billion.

TO: Kathi Way

FROM: Stan Herr

SUBJECT: Comments to the "Comprehensive Welfare Reform And Family Support Amendments of 1994", revised 6/14/94

Date: June 16, 1994

Thank you for the chance to review the draft legislation with respect to its disability policy issues.

For the sake of brevity, I attach the pages of the bill with suggested fixes. Below are brief explanations of why the changes seem necessary or desirable.

p. 10, line 20. insert "disability" in place of "health".

Mental disability professional is the broader and correct term for a professional who may be assessing capacity on the basis either of mental illness, mental retardation, severe learning disability, or other developmental disability.

If for some reason you want to hang on to "mental health professional" than an option would be to draft the phrase as "mental health or mental retardation professional."

p. 18, line 9. insert "rehabilitation" after the word "training".

The concept of rehabilitation is distinct from the other terms used; i.e., education, training. It points to a vital form of support that employability plans will need to consider to assist some persons with disabilities to leave welfare rolls. Later in the bill there are references to treatment for substance abuse, which a sub-set of rehabilitation services. So in the framing of employability plans it would be important to identify various types of rehabilitation needs, whether or not those services are provided directly or by referral under this Bill.

p. 20, line 12, insert "or other entities" or comparable phrase after the word "State".

Employability plans for deferred individuals in many cases might usefully require the individual to seek services provided not only by the State, but by other entities such as non-profits, purely voluntary services, etc. This change is meant to suggest that desirable latitude and the need to seek private partners in this enterprise.

p. 21, line 12, insert "in" in place of "with".
This is simply a technical change for clarity.

p. 41, line 2-3, insert "complete the individualized education plan" in place of "attain a high school education (or the equivalent)."

Under the Individuals with Disabilities Education Act, some students with disabilities have statutory coverage until age 22 to receive "a free and appropriate public education" based on "an individualized education plan." They are receiving this coverage without regard to whether it is necessary to attain a high school diploma, or complete a high school education, or its equivalent.

The current draft adds a limitation that is not based in IDEA, and may create unnecessary ambiguity or an appearance of unfairness. There are relatively few students who go on to post-18-year old IDEA education to begin with so this change of phraseology will not greatly impact the numbers of people who will enjoy the extended time limit. The number of states that provide for this special education beyond the age of 22 is also quite a low number. [I'm informed the number is two states; but am seeking confirming information].

Please pass these comments on and advise me if I can clarify any of this, or further assist. Thank you.

Attachments

"(i) is the custodial parent of a child --

"(I) born less than one year earlier, or,

"(II) (in the case of either a child conceived during a month in which such parent received aid under this part or a child whose custodial parent is under age of 20 and has not attained a high school diploma or equivalent) born more recently than within the preceding 12 weeks (or, if greater) the number of weeks specified in section 102(a)(1) of the Family and Medical Leave Act of 1993 establishing the period of leave to which certain employees are entitled following the birth of a child, but this clause may only be applied to one parent of a child for any month;

"(ii) is a woman in the third trimester of pregnancy;

"(iii) is 60 years of age or older;

"(iv) is needed in the home because of the illness or incapacity (as confirmed by a licensed physician, psychologist, or mental ^{disability} health professional (from a list of such professionals approved for this purpose by the State)) of another member of the household and no other appropriate household member is available to provide the needed care;

Alternative:
mental health
or mental
retardation
professional

effective way to help the participant find employment and become self-sufficient. The plan shall indicate the overall period of time that is expected to be necessary to achieve the individual's employment goal, taking into consideration, in the case of individuals to whom the provisions of section 417 apply, the maximum remaining period of time for which aid may be paid to such individual under the plan approved under part A. The plan will detail the specific types of education, training, ^{rehabilitation,} job search, employment preparation, or employment activities in which the individual will be expected to engage, and for what periods of time. The plan must be reasonable in light of the individual's literacy, skills, and needs, and the resources and opportunities for employment (including self-employment) within the community where the individual resides, and shall, to the maximum extent possible and consistent with this section, reflect the preferences of such individual. The employability plan shall also describe the child care and other social services and assistance which the State agency will provide in order to allow the individual to take full advantage of the activities under the program operated under this part, and the steps the individual should take to bring promptly to the attention of the State agency any difficulties the individual is encountering in participating in the program

(B) have been completed and under which the employability plan has been found appropriate, shall result in denial of aid with respect to such individual, except that no sanction or other penalty shall continue under this subparagraph after the individual has signed an appropriate plan.

"(3) Employability Plan for Deferred Individuals.-- The State agency and each individual for whom participation in activities has been found appropriate under section 402(a)(19)(D) shall jointly develop an employability plan. The plan shall place primary emphasis on the activities in which the individual is able to engage that, together with any services provided by the State/^{or other entities} will best prepare the individual for full participation in the program under this part. Plans under this paragraph are not subject to the procedures of paragraph (2).

"(4) Case Manager.-- The State agency may assign a case manager to each participant and the participant's family who will be responsible for assisting the family to obtain any services which may be needed to assure effective participation in the program.

"(5) Periodic Assessment.-- At such intervals as the State agency finds appropriate, but not less frequently than once every 6 months, a representative of the State agency and the individual shall conduct a review of the

individual's employability plan (including the plan of an individual to whom paragraph (3) applies) and the progress that is being made to achieve the goals set in the plan.

The State agency shall consider, in conducting the assessment, whether an individual participating in activities under section 402(a)(19)(D) has become ready to participate in the program under this part, or whether an individual required to participate under this part should no longer be so required and instead should participate in such activities. If it is concluded that there should be any

✓ such change in status, the individual's employability plan shall be revised accordingly effective ⁱⁿ ~~with~~ the month following the month in which the revision is made. In the case of an individual participating in the program under this part, the assessment shall specifically address both the individual's participation and the State agency's delivery of services as agreed to in the employability plan. If it is found in the course of an assessment that there has been a substantial failure to provide services to the recipient in accordance with the employability plan, the plan (or some other State agency record) must document that finding, and the period during which the failure occurred.

"(6) Revision of Employability Plan.--The employability plan may be revised as necessary following an

Education Act, for so long as necessary to permit such individual to ^{complete the individualized} ~~attain a high school education~~ ^{education plan} ~~for the equivalent~~ or, if sooner, until such individual reaches age 22; and

"(ii) in the case of an individual in a structured learning program (as defined in paragraph (4)), including a program under the School-to-Work Opportunities Act of 1993, for so long as necessary to permit such individual to complete the program or, if sooner, until such individual reaches age 22.

"(B) Subject to subsection (e), the State agency may extend the twenty-four month limit referred to in subsection (a)--

"(i) for no more than 12 additional months in order to allow an individual to complete high school (or an equivalent program of education), so long as the individual is making satisfactory progress toward obtaining a high school diploma (or equivalent);

"(ii) for no more than 24 additional months in order to allow an individual to complete a course of post-secondary education so long as the individual is enrolled in a work-study program, or

"(2) assign the individual to another WORK position if the individual was unable to find unsubsidized employment either because there were no jobs available that such individual had the necessary skills to fill or because such individual ^{requires} ~~is incapable of working outside of~~ a sheltered or supported work environment.

Notwithstanding the preceding sentence, in such cases where the State finds that the individual is employable and living in an area where there are jobs available to match the individual's skills, the State may require the individual to engage in intensive job search, supervised by a job developer who may require the individual to apply for appropriate job openings to determine if the individual is making a good faith effort to find unsubsidized employment. An individual who fails without good cause to apply for appropriate job openings, cooperate with the job developer or employer, or accept a private sector job opening, shall be ineligible for aid under part A or an assignment under the State's WORK program for 6 months. Following such a period of ineligibility, the State shall reassess such individual's status, and may take such steps under this subsection as it finds appropriate.

"SEC. 496. FAILURE TO MEET WORK PROGRAM REQUIREMENTS.

"(a) Actions That Constitute Failure To Meet WORK Program Requirements.--The following actions, without good cause,

THE WHITE HOUSE
WASHINGTON

Kathi -

Here is the final
draft re: benefits and
immigration status. Let me
know if there is anything
else that you need help with.

Steve

QUALIFIED ALIEN STATUSES ADMINISTRATION'S WELFARE REFORM LEGISLATION

Background

The Administration's Welfare Reform Legislation, in keeping with the provisions of the proposed Health Security Act, establishes a uniform definition clarifying those groups of noncitizens who qualify for benefits. Currently, there is no uniform listing which has resulted in variation in eligibility among public assistance programs. This situation has resulted in different treatment of similar individuals, confusion, and litigation challenges to policy determinations.

SSI benefits are now available to aliens in 17 different immigration categories. Similarly complicated lists of qualified alien categories are used to determine eligibility for Medicaid and AFDC. The current categories also include many groups of persons who enter the United States illegally or become illegal after entry.

The proposed changes reduce and clarify the number of categories of aliens eligible for public assistance. They also focus on aliens in lawful and long-term statuses. While it is this Administration's goal to welcome persons coming through legal channels and accord them with the benefits associated with this status, we must also prevent illegal entry and reduce the incentives for those who abuse our immigration system. This proposal achieves both of these goals.

Aliens Qualified for Public Assistance

The following groups would be considered qualified to apply for SSI, Medicaid, and AFDC benefits under the Administration's Welfare Reform legislation:

- Aliens Admitted as Permanent Residents These persons are admitted to live permanently in the United States with what are commonly called "green cards." Generally, they are eligible to become citizens after 5 years residence. For qualification purposes, this group includes immediate relatives of U.S. citizens who have pending applications for adjustment of status to lawful permanent residents.
- Refugees and Persons Granted Asylum These persons have been admitted because they are fleeing persecution based on race, religion, nationality, membership in a particular social group, or political opinion. Refugee status is determined overseas, while asylum status is granted to persons already in the United States. After 1 year in the United States, refugees and asylees may adjust to permanent resident status. Persons granted conditional entrant status prior to passage of the Refugee Act of 1980 who have not adjusted to permanent resident status would also qualify for benefits.

- Legalized Aliens This group includes aliens who were given temporary resident status under the Immigration Reform and Control Act of 1986 based on long-term residence or qualifying agricultural work who have not yet adjusted to permanent resident status.

- Withholding of Deportation Aliens in deportation hearings may be granted permission to remain in the United States and adjust to permanent resident status upon showing that their return would threaten their life or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion.

- Suspension of Deportation Aliens in deportation hearings may be allowed to adjust to permanent resident status based on long-term continuous presence in the United States, good moral character, and a finding of extreme hardship to the alien or an immediate relative who is a citizen or permanent resident alien if the alien were deported.

- Certain Other Aliens Lawfully in the United States The complexities of immigration law and regulation make it impossible to define unequivocally in statute all groups of lawful aliens who should be considered qualified aliens for the purposes of receiving benefits. A provision is included for the Attorney General and the Secretary of Health and Human Services to determine situations where immigration and public assistance interests are jointly served by making other lawful aliens eligible for benefits. In a few immigration statuses only a subset of aliens would meet the criteria for benefit eligibility. As an example, the parole category is comprised partly of persons who should qualify for benefits because they have characteristics similar to those of refugees. However, many other aliens in this category may have entered for short-term purposes such as prosecution or attendance at a funeral. These persons clearly should not qualify. Similarly, a handful of aliens in other immigration statuses not otherwise covered might qualify under this category if their presence is lawful and long-term.

Aliens Ineligible for Benefits

Certain categories of aliens now allowed access to public assistance under regulatory PRUCOL (permanently residing under color of law) definitions would not meet the criteria established in this legislation. As noted above, one of the purposes of changes in the definition of qualifying aliens is to reserve access to public assistance to those aliens who have demonstrated that they follow the law and will reside here as long-term lawful residents and part of our society.

Groups of aliens who will no longer be qualified for public assistance include:

- Applicants for Asylum Last February the Administration announced reform of the asylum system to ensure prompt approval of valid asylum claims and strong actions to deter fraudulent applications by reducing incentives for asylum abuse. Ineligibility for public assistance for asylum applicants before their cases have been approved is integral to this reform.

- Extended Voluntary Departure Aliens who could not return to their country of origin because of war, natural disaster, or similar danger were given temporary relief to remain in the United States at the discretion of the Attorney General during the early 1980's. To qualify for this status, nationals of Afghanistan and Ethiopia, the only groups in this status when the category was eliminated in 1990, must have entered the United States in or before 1980. Since these aliens were able to adjust to lawful permanent resident status under the Immigration Reform and Control Act of 1986, this category is no longer necessary.

- Aliens Present Illegally Currently, undocumented migrants may be eligible for public assistance if INS is aware of their presence but does not contemplate enforcing their departure. This situation usually exists because priority is given to removing criminal aliens before aliens whose only offense is unlawful presence. This change ensures that unlawful residence will no longer be supported through public assistance programs.

- Aliens Who Can Regularize Their Status A few groups of aliens in temporary or unlawful statuses, including those who have continuously resided in the United States since 1972, those who have filed applications for adjustment of status, and those who are immediate relatives of legalized aliens, are currently qualified for some types of public assistance. Under the proposed changes, these groups would no longer be qualified. However, aliens in these categories are eligible to apply for lawful permanent resident status which would make them qualified under the uniform definition. In some cases these aliens have not applied for permanent residence and in others, grant of the status is pending. The proposed legislation, therefore, will enable these persons to qualify once they have been granted permanent resident status.

- Indefinite Stay of Deportation/Indefinite Voluntary Departure These categories are no longer used by INS but were included in the regulatory categories of aliens qualifying for some types of public assistance.