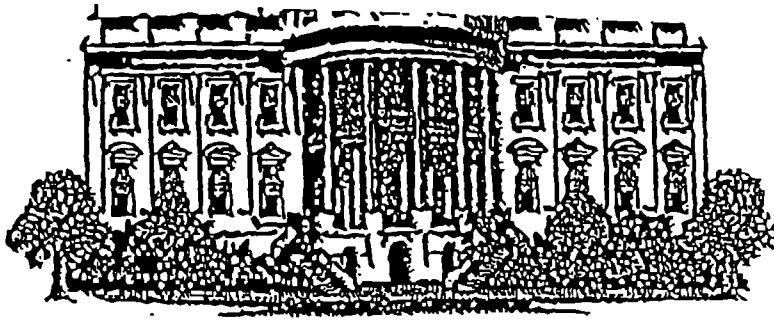


PHOTOCOPY  
PRESERVATION



## THE WHITE HOUSE

WELFARE -  
Drug Treatment /

Domestic Policy Council

DATE:

Anna / Enc

FACSIMILE FOR:

FAX:

PHONE:

62878

FACSIMILE FROM: Cynthia Rice, Special Assistant to the President for  
Domestic Policy

FAX: 202-456-7431

PHONE: 202-456-2846

NUMBER OF PAGES (INCLUDING COVER):

5

COMMENTS:

You should take this  
home in case you need  
it this weekend - I just got  
it



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

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9/24/99

Total number of pages sent:

4

Comments:

9/24/1999

NOTE TO BRUCE REED —

Just wanted to let you know about this inquiry from the New York Times. As I've indicated here, it's not exactly clear what the city of New York is planning to do, and the story seems focused on the privacy angle. Please feel free to page me if you have questions.

I'm asking your press office to refer any follow-up calls to me once the story runs, since it seems to involve TANF, Medicaid, privacy and substance abuse policies. But this is my best guess at press guidance for the weekend.

Thanks.

Melissa Skolfield

Cc: Chris Jennings  
Cynthia Rice  
Barry Toiv  
Mike Hammer

**Suggested Press Guidance**  
9/23/99

**BACKGROUND:** The New York Times may have a story this weekend about New York mayor Giuliani's plans to require certain welfare recipients to enter drug treatment. Advocates in New York are concerned about the plan, particularly about possible invasions of privacy if Medicaid records are examined. HCFA provided background information, and noted that the privacy provisions in the state Medicaid plan must be followed. The city's proposal must be approved by the state.

**CONTACT:** Melissa Skolfield, HHS. 690-7850, 800-800-7759.

**Q:** What does the Administration think of New York City's plan to require certain welfare recipients to enter drug treatment? Do you believe the plan raises privacy concerns? Will the Administration take action to block the plan? And if you do object, what will you do, since this seems to be allowed under the 1996 welfare reform bill?

**A:** It's not clear yet what the city intends to do, nor whether the state will permit it. But there are confidentiality provisions in New York state's Medicaid plan, and we expect them to be followed.

**ADDITIONAL BACKGROUND:**

**MEDICAID RECORD CONFIDENTIALITY BACKGROUND:**

In general, a state may access Medicaid beneficiaries' records only to determine eligibility, determine the proper level of medical assistance, provide services, and investigate and prosecute Medicaid fraud and abuse. A Medicaid beneficiary's files may not be accessed for the operation of any other state program without the informed consent of the beneficiary.

[Based on 42 CFR Part 431.300-306] It appears that because the local Departments of Social Services are considered part of the central administration of the Medicaid program in New York state, they do have access to the adjudicated claims file. And under the 1996 welfare law and ACF's subsequent guidance and regulations, states can require substance abuse treatment as part of personal responsibility agreements for TANF (welfare) recipients. However, it is not clear that the local Department of Social Services can use Medicaid files to refer Medicaid recipients to non-Medicaid programs.

At this point, it's not clear what the city intends to do, nor whether the state will permit it. The bottom line is that there are confidentiality provisions in New York state's Medicaid plan, and we expect them to be followed.

## ACTUAL LANGUAGE FROM NY STATE MEDICAID PLAN

"Under State statute which imposes legal sanctions, safeguards are provided that restrict the use or disclosure of information concerning any applicants or recipients to purposes directly connected with the administration of the plan"  
[Effective date: October 1, 1987 . Citation: 42 CFR 431. 301]

## TANF BACKGROUND

The 1996 welfare law and ACF's subsequent guidance and regulations regarding it address substance abuse in several ways:

- states can require, as part of personal responsibility agreements under the law, substance abuse treatment;
- the federal law does not bar states from requiring substance abuse testing;
- states can use federal TANF funds for substance abuse treatment as long as it is non-medical (e.g., discussion support groups). In other words, the types of substance abuse treatment that would not be covered under Medicaid, could be covered by TANF. Similarly, Medicaid would cover the health-related, medical substance abuse treatment programs that could not be covered under TANF.
- also, the law does permit states to deny benefits to those convicted of felony substance abuse violations.

It is important to stress that states can, and should, use TANF and Medicaid funds for treatment programs because substance abuse can be a barrier for parents trying to get jobs.