privatization mtg.

Kevin does not want to appy TX bies letter to a demo.

we should think about whether we want to do this at all — environment; can we broaden our policy?

Chris - will we be vulnerable to criticism if we don't do this?

Kevin: depends on interest of state... it's not an issue now — no immediate fires to put out.

Cynthia: but no one is asking for a demo, & they don't have evaluation strategies.

HHS doesn't want what USDA does to preclude actions in Mcaid.

CHRIS wants WI

principles — pri ~~PALS~~.

Sally will get them.

citing TX b/c

AZ to be a

we consider

full state proposal

options around legit waiver

~~phase service~~

prospectively

Kevin doesn't

temp

think sta de

is right reason

to say no.

Administration

conversation w/

PHOTOCOPY PRESERVATION

United States Department of Agriculture

Food and ~~Consumer~~ Nutrition Service

3101 Park Center Drive
Alexandria, VA
22302-1500

FOOD STAMP PROGRAM

DATAFAX COVER SHEET

DATE: 11/27/98

TO: Cynthia Rice

OFFICE: DPC

PHONE: fax 202-456-7431

FROM: Bonny O'Neil

OFFICE: USDA-FNS-Food Stamp Program

PHONE: 703-305-2022 fax 703-305-2454

SUBJECT: Arizona Waiver Letter - Draft for comments

REMARKS: Please send comments simultaneously to Cynthia Rice at DPC + to me - Thanks!

NO. OF PAGES INCLUDING COVER SHEET: 3

Copies to: Kevin Thurm - HHS
Sally Richardson - HCFA
Cynthia Rice - DPC.
David Cade - HCFA
Edwin Lau - OMB
Jeff Farkas - OMB
Barbara Chow - OMB
Karen Tramontano - White House

Linda Blessing
Director
Arizona Department of Economic Security
1717 W. Jefferson
P. O. Box 6123
Phoeniz, AZ 85005

Dear Ms. Blessing:

This is in response to your requests to waive the merit system personnel requirements of the Food Stamp Act to transfer the Food Stamp Program certification process and eligibility determinations to a private entity *or* to implement alternative administrative structures in which the private entity would have direct control over the Food Stamp Program certification process. The State of Arizona is requesting these waivers as part of the Arizona Works demonstration/pilot project. For reasons explained in this letter, the waiver and alternative proposals are denied.

This Administration is committed to ensuring that all eligible low-income households have access to vital Federal food assistance programs such as the Food Stamp Program. The Food Stamp Program, which provides food assistance benefits to more than 19 million eligible individuals nationwide, is the cornerstone of our efforts to guarantee a healthy and nutritious diet to all low-income families.

The Federal government must be cautious in allowing changes to the Food Stamp Program's eligibility process which is designed to ensure fair and equitable program access. Provisions of the Food Stamp Act itself support this goal of program access. Section 11(e)(6) of the Food Stamp Act, which requires public employees to undertake the certification of applicant households, is one of these provisions. The requirement for merit employees reflects a general belief that fair and complete access to Federal Food Stamp Program benefits is best served by the use of public employees in the certification process that results in the final decision of eligibility.

DRAFT

The Food Stamp Program's eligibility process includes accepting the application, conducting the food stamp interview, collecting and entering data into a State database, requesting and reviewing verification, making a final eligibility determination, and providing a fair hearing if the household wishes to contest the final eligibility determination or benefit level. Furthermore, it is through the certification process that program accountability (in which household eligibility is ensured through verification procedures); program integrity (in which State and Federal agencies work together in efforts to detect and deter program fraud and abuse); and accountability to taxpayers (in which all administrative decisions and procedures are open to public opinion and oversight) are ensured. An example of one way in which the Arizona proposals are inconsistent with these objectives of the merit system requirement is the State's option to provide incentive payments to the vendor for caseload reduction.

We do not find that the Arizona proposals sufficiently support the objectives of the Food Stamp Act and do not adequately ensure program access for food stamp applicants and recipients.

I appreciate the State of Arizona's cooperation and patience during our review of these requests and I regret that we were not able to respond to you earlier on this matter. Should you have further concerns, please contact me. I can be reached at 703) 305-2026.

Sincerely,

Susan Carr Gossman
Deputy Administrator
Food Stamp Program

cc: Allen Ng, Regional Administrator, WRO

REDRAFT - November 24, 1998

Linda Blessing
Director
Arizona Department of Economic Security
1717 W. Jefferson
P. O. Box 6123
Phoeniz, AZ 85005

Dear Linda:

This is in response to your request to waive the merit system personnel requirements under section 11(e)(6) of the Food Stamp Act of 1977, as amended, to allow a private entity to determine Food Stamp Program (FSP) eligibility under the Arizona Works demonstration project.

This letter will also respond to your July 2, 1998 letter to Bonny O'Neil, FSP Associate Deputy Administrator, and to Michael Koppleman's November 3, 1998 letter to Allen Ng, Regional Administrator of the Food and Nutrition Service's (FNS) Western Regional Office in San Francisco. These two letters request assistance with the development of an eligibility determination process and client flow model that can be implemented in the absence of the Federal waiver.

Because these proposals do not ensure adherence to principles integral to successful administration of the FSP, we must deny the requests.

Under one proposed structure, all applicants for food stamp benefits would initially be directed to a private vendor. The private vendor would collect all information needed for making the eligibility determination and enter all information into the statewide computer system (AZTECS). Food Stamp eligibility determinations would then be made by public employees of the Department of Economic Security (DES). For the purposes of making food stamp eligibility determinations, the private vendor would be under the supervision of the DES. Under an alternative administrative structure, public employees would be contracted to the vendor, and thus, under the supervision of the private entity.

REDRAFT - November 24, 1998

As specified under section 11(e)(6) of the Act, public employees must undertake the certification of applicant households. For FSP purposes, the certification process includes accepting the application, conducting the food stamp interview, collecting and entering data into a State database, requesting and reviewing verification, and making a final eligibility determination. The certification process ensures public access to the Food Stamp Program, a principle upon which this vital nutrition assistance program is based The FSA also specifically establishes principles of program integrity, client confidentiality and accountability to taxpayers.

Neither the State of Arizona's privatization waiver request nor the alternative administrative structures identified in your July 2, 1998 letter ensure adherence to these principles, which the FSA holds as inherently governmental. For instance, the proposed contract limitations on administrative funding and incentive payments to the winning vendor for caseload reduction are inconsistent with the principles established by the FSA and could weaken program access or discourage program participation by eligible households. Therefore, we must deny both your initial waiver request and proposed alternative administrative structures.

I appreciate the State of Arizona's cooperation and patience during our review of these requests and I regret that we were not able to respond to you earlier on this matter. Should you have further concerns, please contact me. I can be reached at (703) 305-2026.

Sincerely,

Susan Carr Gossman
Deputy Administrator
Food Stamp Program

cc: Allen Ng, Regional Administrator, WRO
David Cade, DHHS, HCFA

AFLCIO principles.

GUIDING PRINCIPLES FOR STATE WAIVERS

Currently most federal programs of assistance to needy individuals require that public civil servants play key roles. Statutory and regulatory provisions prohibit federal agencies from allowing states to use private contractors to serve in these roles. The policy concerns that motivated these Congressional and administrative mandates also require that, when a federal agency is asked to exercise the limited authority that it might have to waive certain of these mandates on an experimental, sub-state basis, it must carefully scrutinize proposals to ensure that these concerns are adequately addressed, avoiding harm to intended beneficiaries of the program and inefficiencies resulting in reduced services to those beneficiaries. Programs that are fully federally funded and/or are designed to serve the most vulnerable populations, in particular, require the utmost oversight by the federal government and accountability for program goals. Therefore, federal agencies will review any requests to waive the design elements of such programs with the highest standards. To that end:

* States must prove that proposals to waive important statutory requirements will not result in harm to claimants or customers.

* States must justify the need for an experiment.

Experiments should be justified by insufficient public performance, fraud, cost savings, or vendor expertise that cannot be efficiently replicated. States should explain why they have been unable to rectify problems through public sector interventions within current legal boundaries. Experiments should not be based solely on an interest in exploring private provision.

* States must show evidence of labor-management cooperation in design.

In both the public and private sector, the definition of "high performance" includes extensive coordination between front line workers and managers. The insights of all parties, particularly those who will implement change, must be brought to bear in decision-making from the beginning of the re-design process.

* The experiment should be designed through extensive public input.

States should be held to a high standard for public input. Evidence of stakeholder support should be required. Vendors should have proven capacity and experience, with documentation available for public evaluation.

* Evaluation should be on-going, with state monitoring, benchmarks, and reporting.

Experiments should not be evaluated only at completion. This will requires "sunshine" provisions and non-proprietary information sources. Employees of vendor organizations must be guaranteed "whistle blower" protections in the interest of full disclosure. As a means to ensure accountability and due process, clients should be guaranteed face-to-face options where new technology is being implemented.

* Plans must provide structures which avoid conflict of interest.

Experiments should never be designed to create new incentives that discourage vendors from providing services or encourage vendors to determine that clients are ineligible.

* Plans must ensure privacy and confidentiality.

* Public employees should retain discretionary decision-making around eligibility and policy determination.

* Public "failsafe" provisions.

Related to the on-going monitoring, states should be required to show that they can return programs to state provision without interruption of benefits or services to clients. Vendors should be made aware, from the beginning, that they will be required to facilitate the return to public provision should the experiment fail.

prin2doc.wpd

Comparison of Whether Demonstration Requests Meet Guiding Principles for Privatization of Food Stamp and Medicaid Certification Process

DRAFT -- DRAFT -- DRAFT -- DRAFT (10/4/98)

withdrew MC portion of waiver request

	Arizona	**Florida**	**Wisconsin**
Affected Programs	Food Stamps, Medicaid, Child Care, State General Assistance	Food Stamps, Medicaid	Food Stamps
Deadline	State law requires program to be fully operational on 1/1/99; state plans to go forward with RFP on 11/1/99		Must provide response by 10/5 (seeking information or giving yes/no answer)
Public employees should retain discretionary decision-making around eligibility.*, **** (Activities involving the use of discretion that could result in potential applicants being screened out must be performed by State merit system employees. Discretionary functions include initial contact, application, data entry, interview process, request for and evaluation of appropriate documentation as well as the resulting eligibility decision and benefit calculation. Most if not all activities involving personal contact with an applicant or recipient, including data entry during an interactive discussion with the applicant, have the potential to involve the use of discretion or judgment, and to directly influence or affect eligibility determination process.*) (There are narrow instances in which non-public employees may be involved. In the outstationing provisions of the Medicaid program, non-public employees are permitted to perform a number of initial processing activities, but are not permitted to evaluate the information presented by the applicant, or make the actual eligibility determination. Under the Food Stamp program, volunteers may simply assist potential clients in filing applications with the State.*)	Probably no. State would like to have private employee interview and gather information and enter it into the computer, and then have the public employee use the data to make the determination. State would like to either "detail" public employees to the private entity or allow private entity to have management control over private employees.	No. Certification of Medicaid and Food Stamp applicants who are subject to work requirements would be transferred to a private or non-profit organization; those exempt from work requirement would continue to be certified by public employees. Note: On-site inspections of TANF demonstration projects show that intake and referral activities for food stamp certification have been transferred to the private vendor, which may not meet principles outlined in HHS letter.	No. Food Stamp households that are subject to work requirements could be certified by private employees if private bidder wins county contract. Individuals that are exempt from work requirements would continue to be certified by public employees (25% of caseload). Note: On-site inspections of TANF demonstration projects show that intake and referral activities for food stamp certification have been transferred to the private vendor, which may not meet principles outlined in HHS letter.

are programs currently operating out of compliance?

* Principle articulated in the 5/13/97 letter from HHS to Texas.

** Principle articulated by labor community.

*** FNS recommendation.

**** IRS has told other federal agencies that they will not share their data with private entities.

	Arizona	Florida	Wisconsin
Public employees should retain discretionary decision-making in setting program policy.*, **	Yes. State retains responsibility for policy, quality control, and fair hearings.	Yes. State retains responsibility for policy, quality control, and fair hearings.	Yes. State retains responsibility for policy, quality control, and fair hearings.
Demonstration projects, if allowed, should be time-limited and sub-state.*	No -- state could expand initial pilot statewide. Initial pilot would operate in one urban and one rural site for 4 years, but state would be able to expand statewide at end of pilot without federal approval.	Yes (operates in one urban, one suburban and one rural site across 5 counties for 3 years).	No. Every county in which a private bidder won the contract would become private. Currently private entities in 8 counties, including Milwaukee, have won contracts (now applies only to TANF).
Demonstrations projects should include a strong research component to test the effects of program privatization on client accessibility, confidentiality, program integrity, administration and costs, and effective monitoring and oversight.*** **Evaluation should be on-going**, with state monitoring, benchmarks and reporting, including protections for whistle-blowers.**	Evaluation would be done by an independent evaluator, but state has not provided other details.	State law requires an evaluation, but the state has not provided other details.	State proposal doesn't include an evaluation, but performance would be reviewed during the bidding process every 3 years.
States must prove that proposals to waive important statutory requirements will not result in harm to claimants or customers.**	Unknown	Unknown	Unknown
States must justify the need for an experiment, and explain why they have been unable to rectify the problems through public sector interventions. Experiments should not be justified by insufficient public performance, fraud, cost savings or vendor expertise that cannot be efficiently replicated; experiments should not be based solely on an interest in exploring private provisions.**	Unknown	Unknown	Unknown

* Principle articulated in the 5/13/97 letter from HHS to Texas.
** Principle articulated by labor community.
*** FNS recommendation.
**** IRS has told other federal agencies that they will not share their data with private entities.

	Arizona	Florida	Wisconsin
States must show evidence of labor-management cooperation in design, seeking input from all workers in the program redesign process.**	Unknown	Unknown	Unknown
The program should be designed through extensive public input; vendors should have documentation of experience available for public evaluation.**	Unknown	Unknown	Unknown
Plans must provide structures which avoid conflict of interest -- i.e., creating incentives that discourage vendors from providing services to individuals or encourage them from deeming clients ineligible for services.**	Unknown	Unknown	Unknown
Plans must ensure privacy and confidentiality.**	Unknown****	Unknown****	Unknown****
Plans must contain public "failsafe" provisions, making vendors aware that they will be required to facilitate the return to public provision should the experiment fail, and requiring them to demonstrate that they can return programs to state provision without interruption of benefits or services.**	Unknown	Unknown	Unknown

* Principle articulated in the 5/13/97 letter from HHS to Texas.
** Principle articulated by labor community.
*** FNS recommendation.
**** IRS has told other federal agencies that they will not share their data with private entities.

Department of Health and Human Services
Office of the Secretary,
Office of the Assistant Secretary for Management and Budget
Health Benefits and Income Support Fax
202-690-6896

TO: Deborah Adler 456-5557

FROM: Genie Chough, HHS
690-7194

DATE:

Number of pages (not including cover sheet): 4

Comments:

If you have trouble receiving this fax, please call 202-690-6553. Thanks.

THE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

Texas ties letter. (privatization) conflicts w/ outreach policy

MAY 13 1997

Michael D. McKinney, M.D.
Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

Dear Commissioner McKinney:

I am writing to follow up on our most recent meeting and to respond to your letter dated March 5, 1997 to me concerning the Texas Integrated Enrollment Services (TIES) project. You asked that I provide, on behalf of the Administration, guidance under which Texas could release the TIES request for offers (RFO), if it so chooses.

In this letter, I describe the current status of our discussions, the flexibility available to the State under current law, the limitations regarding functions which must be performed by State merit system employees, and next steps in the process of moving forward with the TIES project. Because Texas is considering an integrated eligibility system, I address both Medicaid and Food Stamp policy in this letter, the content and language of which have been approved by the Department of Agriculture. Official notification by the Food and Consumer Service (FCS) of the Department of Agriculture will be provided to you by the FCS regional office.

<u>Current Status of Our Discussions</u>

Our staffs have been working together to resolve many issues related to the development of the TIES project, a highly complex undertaking by the State that involves the integration of three large Federal programs (Temporary Assistance for Needy Families, Medicaid and Food Stamps), as well as a number of other Federal and State programs. The State has submitted for review a draft RFO which seeks innovative approaches to the delivery of public services. The draft RFO calls for proposals which would replace the State's computer system and which would re-engineer the methods by which eligibility is determined. Among the important technical and policy issues potentially raised by the draft RFO is the fundamental question of the extent to which functions historically performed by State merit system employees could be performed by private contractors.

The State has not submitted an actual proposal to privatize State functions, nor requested a waiver of any Federal statutes or regulations. Rather, we have engaged in discussions so that the State would be in a position to communicate to the vendor community any restrictions regarding those activities which could be performed by non-merit system, non-State employees (hereinafter "non-public employees"). Recognizing that you did not express interest in discussing a time-limited, sub-State demonstration during last week's meeting, this letter addresses the limitations set forth in Food Stamp and Medicaid law and regulations.

Flexibility Available in Current Statutes and Regulations

Current Food Stamp and Medicaid statutes, regulations and precedent provide the State with the opportunity to automate and re-engineer business processes, as well as to use contract staff to perform a number of functions. Such functions include design, development and operation of the large and complex information system which the State expects to implement in TIES. The State could also employ contract staff to develop and recommend an integrated and re-engineered eligibility process for the programs included in TIES. Contract staff could provide training and assist management in the transition to TIES. In addition, as you know, Texas has very broad authority to administer the Temporary Assistance for Needy Families (TANF) program and, with respect to the administration of TANF, can use non-public employees without limitation.

Therefore, significant opportunities exist for the State to take advantage of the efficiencies and expertise available through the vendor community in developing and administering TIES. There are, however, limitations imposed by law on contractor involvement related to client certification and eligibility determination, as described below.

Extent of Work by Non-Public Employees

Section 1902 of the Social Security Act and section 11(e)(6) of the Food Stamp Act and implementing regulations reflect the principle that most activities included in the eligibility determination process (referred to as the certification process in the Food Stamp Act) must be performed by public agencies. A non-public employee may not take actions involving discretion or value judgments, including all elements of the eligibility determination process that relate to the evaluation of information provided by an applicant or bearing on the eligibility decision.

AK - just quoting

-Redesigning the eligibility determination process could have the effect of merging discretionary and non-discretionary activities. Whereas previously a series of separable administrative steps occurred as part of the eligibility determination process, current technology may enable the State to combine multiple steps into a single, seamless process. The initial contact, application, data entry, interview process, request for and evaluation of appropriate documentation, as well as the resulting eligibility decision and benefit calculation, may no longer necessarily be separable and sequential steps. To attempt to separate certain portions of the eligibility determination process for the purpose of isolating individual activities involving discretion would seem to defeat the State's purpose in integrating and streamlining program enrollment.

It is more appropriate to restate the intent of these provisions -- i.e., in an integrated and streamlined process, most if not all activities involving personal contact with an applicant or recipient, including data entry during an interactive discussion with the applicant, have the potential to involve the use of discretion or judgment, and to directly influence or affect the eligibility determination process. Therefore, these activities, and any other activities in which specific eligibility criteria are discussed with an applicant or eligibility-related information is collected and evaluated, must be performed by a State merit system employee.

As we discussed in our meeting, there are narrow instances in which Medicaid and Food Stamp law and regulations permit involvement of non-public employees for the purpose of expanding and enhancing State outreach efforts. In the outstationing provisions of the Medicaid program, non-public employees are permitted to perform a number of initial processing activities, but are not permitted to evaluate the information presented by the applicant, or make the actual eligibility determination. Under the Food Stamp Program, volunteers may simply assist potential clients in filing applications with the State. In both cases, these non-public employees are precluded from engaging in activities that could have the effect of screening out potential applicants. Activities involving the use of discretion that could result in potential applicants being screened out must be performed by State merit system employees. A significant non-State presence in the integrated enrollment process could result in some screening out of potential applicants by non-public employees.

Possible Next Steps

The State may release the draft RFO, under the condition that the State include the applicable language from this letter in the draft RFO. HHS will approve Federal matching funds for project planning activities for the costs incurred through the planning phase.

In order for HHS to consider approving and funding a contract which may result from release of the RFO, the State must submit an implementation advanced planning document (IAPD) for HHS' prior approval following the solicitation process, in accordance with the rules at 45 CFR Part 95, Subpart F. The IAPD must meet the requirements specified in the cited rules and provide a rigorous and positive cost benefit analysis for the project. The State may want to advise potential offerors to make use of HHS' cost benefit analysis guidance for State systems. We will consider HHS funding for the actual project itself at such time as the State submits an IAPD for approval by the Federal agencies.

HHS and USDA staff are available to continue their ongoing discussions with your office. Mark Ragan, Director of the Office of State Systems, Administration for Children and Families or his staff will be in contact with your office shortly. Ruthie Jackson, FCS Regional Administrator will also be in contact with your office to advise you of FCS funding.

I want to express my appreciation for your understanding of the complex issues raised during our consideration of the TIES project. I also appreciate the time and effort you and your staff have contributed towards moving these issues to resolution. If you have any questions concerning the content of this letter, please do not hesitate to call me or Mr. Ragan at (202) 401-6960.

Sincerely,

Kevin Thurm

JOHN McCAIN
ARIZONA
CHAIRMAN, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
COMMITTEE ON ARMED SERVICES
COMMITTEE ON INDIAN AFFAIRS

United States Senate

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TELEPHONE FOR HEARING IMPAIRED
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(602) 952-0170

September 14, 1998

Ms. Donna Shalala
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201-004

Dear Secretary Shalala :

I am writing to you regarding the Arizona Works pilot welfare program. It has been more than a year since the state of Arizona submitted an official waiver request to the appropriate federal agencies, including the Health Care Financing Administration (HCFA). Arizona still has not received an answer regarding this waiver.

I am confident you would agree that a crucial component of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) is the flexibility it allows the individual states in running their welfare programs. With this flexibility, the states are able to construct programs tailored to the specific needs of their communities. It is my belief that this is exactly what my state is attempting to do through the Arizona Works pilot program.

The Arizona Works program allows the state to contract with a private entity that will be responsible for determining eligibility for certain welfare services including: Temporary Assistance for Needy Families (TANF), Child Care, Food Stamps, Medicaid and the state-funded General Assistance program. Under the 1996 welfare law, states are permitted to contract with the private sector to operate TANF and Child Care programs. However, states are required to use state employees when determining eligibility for the Food Stamp and Medicaid programs. Thus, Arizona is seeking a federal waiver for their Arizona Works program which allows non-state employees to determine eligibility for the Medicaid and Food Stamp programs.

It is important to note that Arizona Works meets the federal requirements for a welfare privatization demonstration as outlined by the Administration on May 13, 1997. This includes limiting the length of the demonstration, implementation in only one county, rather than statewide, and a strong methodology for measuring and assessing outcomes.

Developing an effective and efficient welfare reform program which creates opportunities for Arizonans to become self sufficient is a laudable goal and one that should be encouraged. I am hopeful that this Administration will conclude that the Arizona

Works pilot program is an important step in this process and will determine that it meets the federal requirements for a demonstration project.

It is imperative that Arizona receive a prompt response regarding this waiver since they are obligated by state law to have this program fully operational by January 1, 1999. If, for some reason, the waiver is not approved, Arizona will need sufficient time to establish a dual system whereby private entities determine eligibility for TANF while state employees make determinations for Medicaid and Food Stamps.

Since submitting the waiver, the state of Arizona and Governor Hull have been working closely with officials from your agency to address and eliminate any concerns the Department may have about the innovative Arizona Works program. In addition, the state amended the original proposal in a concerted effort to address federal concerns about the length of the pilot program and time frames for state implementation. Now the state is simply awaiting a decision by you.

Providing a waiver for the Arizona Works program would give our nation an opportunity to learn if privatization can lead to a more efficient and effective service delivery. Therefore, I am requesting that the Department, in accordance with all applicable rules, regulations and ethical guidelines, review Arizona's formal waiver request in an efficient and expeditious manner.

I look forward to your prompt response regarding this important matter.

Sincerely,

John McCain

John McCain
United States Senator

JM/sds

[redacted]
Governor Hull

Talking Points

Meeting with New York State Department of Health & New York City Human Resources Administration

November 13, 1998

Background: The HCFA Regional Office met with the New York State Department of Health (NYSDOH) and New York City Human Resources Administration (NYCHRA) to discuss the procedures for Medicaid application and referral for eligibility determinations. The November 13th meeting discussion is the result of five months of media coverage alleging that strict interpretation of welfare reform appeared to create barriers to individuals seeking Medicaid coverage.

Attendees: New York State Department of Health

Ann Kohler - NYS Medicaid Director
Sarah Van Leer - NYSDOH Counsel's Office
Betty Rice - NYSDOH Director, Bureau of Medicaid Eligibility
Thomas Fanning-NYSDOH Medicaid Program
Alvin Conyers-NYSDOH Medicaid Eligibility Program
Gail Gordon -NYSDOH Medicaid-NYC Office

New York City Human Resources Administration

Mark Hoover-First Deputy Commissioner
Iris Hernandez-Executive Deputy Commissioner
Judy Nathan- NYCHRA legal counsel

DHHS Office of General Counsel

Annette Blum - Regional Director-OGC

HCFA New York Regional Office

Sue Kelly - Associate Regional Administrator
Dan Walsky- NY Branch Chief
Lynne Testa-Special Assistant-ORA
Jane Salchli-Health Insurance Specialist
Nicole McKnight-Health Insurance Specialist

What was NYSDOH and NYCHRA's response to HCFA's inquiry about the Medicaid application and referral procedures in New York City?

NYSDOH and NYCHRA representatives stated that New York State and City government agencies are committed to assuring that all individuals wishing to apply for Medicaid have the opportunity to do so, consistent with law and regulation. In support of this they provided NYC policies and procedures on the Medicaid eligibility process which are under review by the HCFA Regional Office.

As part of welfare reform, the State and City reported on the following actions they are taking to "de-couple" Medicaid from the former Public Assistance system:

- Instituted **Medicaid Liaisons at Job Centers** so that if an individual asks for Medicaid, the Liaison will arrange for a Medicaid application interview [at another office location]. Furthermore, if an individual asks for assistance (eg. TANF and/or Medicaid) the Job Center staff completes a screening profile to initiate the application process;

- Currently, applications for Medical Assistance only are not available directly from the Job Centers. The Job Centers distribute a combined application for TANF, Medicaid and Food Stamps reportedly on the applicant's scheduled second visit to the Job Center. Recognizing the need to improve the distribution of information for individuals on how to apply for Medicaid, HRA is preparing to **"station" Medicaid Eligibility Workers at the Job Centers** who will begin the application process for Medicaid eligibility;

- HRA is **developing a brochure** to inform individuals and families about their rights and the procedures to apply for Medicaid;

- HRA has committed to **expand its outreach and education efforts** to promote coverage for children through the Medicaid or Child Health Insurance Program (CHIP) programs.

When asked for target implementation dates for these actions, neither New York State nor New York City representatives could be specific at the meeting. In response to the NYRO's request for implementation dates, Ann Kohler and Sarah VanLeer of NYSDOH stated on November 16, 1998 that they will request this information, and will provide an update on November 17.

Is the State currently providing applications for Medical Assistance at Job Center upon request?

New York State and New York City representatives did not provide evidence or confirm that Medicaid applications were being given to prospective beneficiaries upon request at the Job Centers. In fact, it appears from their responses that the combined application for TANF and Medicaid is being made available typically after an individual returns for a second scheduled visit. NYRO called NYSDOH to confirm this information, and specifically asked again on November 16, 1998 whether individuals requesting Medical Assistance were given Medicaid applications upon request at the Job Centers. NYSDOH representatives said that they have to revisit this question again with New York City; and would respond on November 17.

Is the information provided by New York City and New York State consistent with the guidance provided in HCFA's June 5, 1998 State Medicaid Director's letter on Outreach and Enrollment of low income families in Medicaid or other health insurance programs?

Representatives from the City and State government agencies reported that they are implementing procedures and training staff to place Medicaid program staff in the Job Centers who could respond to low income people and families inquiring about or applying for Temporary Assistance to Needy Families (TANF) and also requesting information about Medicaid and CHIP. These reports are subject to verification by New York State and the HCFA Regional Office. At this time, it does not appear that NYCHRA is in full compliance with the June 5, 1998 State Medicaid Director letter on Outreach and Enrollment in Medicaid; this letter was redistributed at the November 13, 1998 meeting since it appeared that the State and New York City attendees were unfamiliar with its contents. Specifically, it does not appear that NYC is in full compliance with the following components of the State Medicaid Director letter:

" Families who inquire about or apply for TANF should also receive information about Medicaid and CHIP, how to apply for these programs, and how to receive assistance with the applications." (P.2)

"It is critical that States with diversion programs conduct aggressive outreach to provide Medicaid information to families and to take all possible steps to assure that eligible children are enrolled in Medicaid and CHIP. Families receiving diversionary assistance may never encounter or fill out an application for TANF. States should assure, however, that sites where diversionary assistance is provided have Medicaid and CHIP applications available, and we encourage you to locate State workers (in the case of Medicaid) and/or CHIP elgibility workers in these sites to take the applications and assist in their preparation." (P. 3)

Unless otherwise notified by NYSDOH, it does not appear that NYCHRA is providing Medicaid applications upon request at Job Center sites in New York City. Families who inquire or apply for TANF do not appear to be receiving specfic information about Medicaid and CHIP; again, Medicaid and CHIP applications do not appear to be available at this sites. However, NYS and NYC representatives do report that they are planning to locate Medicaid (NYCHRA) workers at these sites to work with individuals seeking to apply for Medicaid.

How will the city and state address concerns raised about the Eligibility Verification Review (EVR) -home visit program?

Representatives from the New York City and New York State government agencies are sensitive to concerns raised that the EVR (home visit program) may inappropriately discourage pregnant women and children from applying for Medicaid and/or the Children's Health Insurance Program. The New York State Medicaid Director had indicated prior to the meeting that a NYC EVR pilot program is being reviewed by the State and will not be expanded city-wide without the State's approval. On November 16, 1998, the NYRO requested DOH legal counsel to advise HCFA under what legal authority and program conditions would a NYC-wide home visiting program be approved for Medicaid.

What are the next steps?

NYRO expects to receive additional information from NYSDOH on November 17, 1998 as reported above. Representatives from NYSDOH and NYCHRA agreed at the November 13th meeting to continue to meet and report to the HCFA Regional Office on HRA's plans to "station" Medicaid Eligibility Workers in the Job Centers; develop an informational brochure on Medicaid applicants' rights; and expand outreach and education efforts on Medicaid and CHIP enrollment.

Furthermore, it was indicated that there are information system changes that have to be made in the New York Welfare Management System to effectively "de-couple" Medicaid from TANF. The HCFA Regional Office will follow up with the Administration for Children and Families to assess any pending system requests.

Still to be addressed is the need for on-site visits and verification by NYSDOH with possible participation by the NYRO to determine whether NYCHRA is in compliance with Section 1902(a)(8) of the Social Security Act as well as with 42 CFR Subpart J, which sets forth requirements for the processing of applications, determining elgibility, and furnishing Medicaid. 42 CFR 435.903 states, "The agency, must (a) Have methods to keep itself currently informed of the adherence of local agencies to the State Plan provisions and the agency's procedures for determining elgibility and (b) Take corrective action to ensure their adherence." NYSDOH reports that it relies upon its ongoing meetings and telephone communications with the local districts to determine compliance; and appears to be reluctant to conduct on-site verification and review of local district operations. We will need to determine whether existing methods used by the State to determine compliance are acceptable given the concerns reported by legal advocates for needy families and press articles regarding NYCHRA's compliance with Medicaid requirements.

GREAT SEAL OF THE STATE OF FLORIDA
IN GOD WE TRUST

THE STATE OF FLORIDA

WASHINGTON OFFICE

DEVORAH ADLER

444 NORTH CAPITOL STREET
SUITE 349
WASHINGTON, D.C. 20001

TELEPHONE # (202) 624-5885
FAX # (202) 624-5886

FOLLOWING 3 PAGES

TO: Cynthia Rice

FAX # 456 - 7431

FROM : CHARLIE SALEM

DATE : November 24, 1998 TIME: 12:40

NOTE : Per our conversations.

I've sent this to DOJ

CR

WHEREAS, in February 1995, the State of Florida filed suit against the tobacco industry to recover expenses incurred by the State in treating smoking-related illnesses of its citizens.

WHEREAS, in August 1997, the State of Florida settled all pending civil claims with the tobacco industry, including, but not limited to, those claimed under the Florida Medicaid Third Party Liability Act, punitive damages, Racketeering under the Florida RICO Act, and various other State statutory theories. The monetary value of the State of Florida's recovery from the tobacco industry over the next 25 years under the August 1997 Settlement Agreement is estimated to be approximately $11.3 billion.

WHEREAS, in October 1998, the State of Florida amended its settlement with the tobacco industry under the "Most Favored Nation" Clause or its August 1997 Settlement Agreement. The monetary value of the State of Florida's additional recovery from the tobacco industry over the next 5 years is estimated to be approximately $1.75 billion.

WHEREAS, due to certain pre-trial orders entered by the trial court in Florida's litigation against the tobacco industry the State of Florida was limited in the amount of Medicaid damages it could recover to only those damages incurred from July 1, 1994 (the effective date of amendments enacted to Section 409.910, Florida Statutes) through August 25, 1997 (the date of Settlement). Florida was prohibited by Court order from seeking Medicaid damages for the period prior to the enactment of the amendments to Section 409.910; prohibited from seeking future Medicaid damages; and prohibited from claiming federal Medicaid damages under the Florida RICO Act. Thus of the approximately $13 billion in damages recovered by Florida less than $1 billion was attributable to Medicaid damages.

WHEREAS, a dispute has arisen between the State of Florida and the Health Care Finance Administration (HCFA) of the United States Department of Health and Human Services regarding reimbursement of monies recovered by the State of Florida under its Settlement Agreements with the tobacco industry.

WHEREAS, the State of Florida asserts that none of the monies recovered from the tobacco industry to reimburse State-borne expenses attributable to treating smoking-related illnesses are properly recoverable by HCFA as a recoupment of Medicaid expenses and HCFA asserts a right to a substantial share of the entire $13 billion recovered by the State of Florida.

WHEREAS, as a means of settling the current dispute, the State of Florida and HCFA have agreed to enter the following settlement agreement.

THEREFORE, the undersigned parties, on behalf of the State of Florida and the United States agree as follows:

In any year in which the State of Florida, through its Legislature and Governor, appropriate 50% of the funds recovered from the tobacco industry for any or all of the enumerated programs listed on Exhibit A to this agreement, HCFA shall determine that the amount of Medicaid recoupment owed is "zero" and shall make no claim to any funds recovered by the State of Florida from the tobacco industry in that year nor shall they attempt to offset any other federal funds available to the State of Florida including through the Medicaid program.

EXHIBIT A

1. The State program under the maternal and child health services block grant under title V of the Social Security Act (42 U.S.C. 701 et seq.);

2. Funding for child care under section 418 of the Social Security Act, notwithstanding subsection (b) (2) of that section;

3. Federally funded child welfare and abuse programs under title IV-B of the Social Security Act;

4. Programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title XIX, part B of the Public Health Service Act;

5. Safe and Drug-Free Schools Program under title IV, part A, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.);

6. The Department of Education's Dwight D. Eisenhower Professional Development program under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.); and

7. The State Children's Health Insurance Program authorized under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

*Funding for these programs shall be used to supplement and not supplant other Federal, State or local funds provided to any of the programs described above.

MEMORANDUM

DATE: 11/24/98
TO: Chris Jennings
Jeanne Lambrew
Devorah Alder 2/6
KarenTramantano
Barbara Chow
Dan Mendelson
Edwin Lau
Jeff Farkas
Sally Richardson
Julie Paradis
Bonny O'Neil
FROM: Cynthia Rice
RE: Conference call re: Arizona privatization waiver proprosal

Enclosed is a revised draft letter concerning the Arizona privatization waiver proposal. Please fax any changes to me at 456-7431 by noon on Wednesday, November 25, 1998, and please join me on a conference call starting at 1:15 pm and ending at 2:15 pm.

If you plan to participate, please utilize the following numbers to gain access. Please use the number you have been assigned. The code is the same for each caller (0004).

DPC and WH-COS participants dial 456-6777 + 0004.

OM, HHS and USDA participants dial 456-6799 + 0004.

If you have any questions you may reach me at 456-2846.

REDRAFT - November 24, 1998

Linda Blessing
Director
Arizona Department of Economic Security
1717 W. Jefferson
P. O. Box 6123
Phoeniz, AZ 85005

Dear Linda:

This is in response to your request to waive the merit system personnel requirements under section 11(e)(6) of the Food Stamp Act of 1977, as amended, to allow a private entity to determine Food Stamp Program (FSP) eligibility under the Arizona Works demonstration project.

This letter will also respond to your July 2, 1998 letter to Bonny O'Neil, FSP Associate Deputy Administrator, and to Michael Koppleman's November 3, 1998 letter to Allen Ng, Regional Administrator of the Food and Nutrition Service's (FNS) Western Regional Office in San Francisco. These two letters request assistance with the development of an eligibility determination process and client flow model that can be implemented in the absence of the Federal waiver.

Because these proposals do not ensure adherence to principles integral to successful administration of the FSP, we must deny the requests.

Under one proposed structure, all applicants for food stamp benefits would initially be directed to a private vendor. The private vendor would collect all information needed for making the eligibility determination and enter all information into the statewide computer system (AZTECS). Food Stamp eligibility determinations would then be made by public employees of the Department of Economic Security (DES). For the purposes of making food stamp eligibility determinations, the private vendor would be under the supervision of the DES. Under an alternative administrative structure, public employees would be contracted to the vendor, and thus, under the supervision of the private entity.