E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

27-Dec-1995 01:44pm

TO: Carol H. Rasco

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: EA Memo to Harold

FYI, we have heard that the California probation officers just filed suit over the cutoff of emergency assistance funds for juvenile justice costs. HHS thinks they don't have standing.

Harold is here and interested in this. I had written the attached "pro and con" memo for Leon. It was supposed to be from us and OMB, but I just heard OMB wrote their own memo. Therefore, the attached memo will go from me to Harold. OMB's memo, which favors the cutoff, will go separately.

So it's in Harold's hands. Emily and Jen O'Connor are around. I am in and out because of the new house. (It's very exciting, but I am a bit deflated -- I had planned to decorate this week, but David is at the office till midnite and my nanny's sick, so I can't even finish unpacking boxes!)

N T E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E

N T E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E

26-Dec-1995 05:34pm

TO: Kenneth S. Apfel

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Jennifer Palmieri

SUBJECT: EA memo draft

Ken, here is my draft of the EA memo for you to edit/change. I'm not sure who it should be from. Carol is out of town, but I can get to her if you would rather it come from her and Alice. But we should get this in soon if it's to be of any use.

Also, please note the fact that the California probation officers are filing suit against us tomorrow over this. HHS says they may not have standing to do so, but you never know.

(Jen: John Monahan tells me that Secretary Shalala is under the impression that she has called Leon to talk about this, but hasn't heard back from him yet -- which hasn't surprised HHS, needless to say, given everything else he has to do.)

DRAFT

December 26, 1995

MEMORANDUM FOR LEON PANETTA

FROM: Ken Apfel, Office of Management and Budget??
Diana Fortuna, Domestic Policy Council??

SUBJECT: Emergency Assistance Funds Cut-off January 1

Beginning next week, states will no longer be permitted to use emergency assistance (EA) welfare funds to pay for the costs of juvenile justice placements. HHS announced this policy change back in September, when an HHS Inspector General report investigating the growth of the program was being drafted. HHS's new policy states that the cost of room, board, counseling, etc., for a child in a juvenile justice facility or on probation should not be reimbursed by EA funds, because it is caused by a child's behavior and not related to a family emergency.

Among the areas disproportionately affected by this change is California, particularly Los Angeles County, which plans to close some juvenile justice facilities and lay off 800 workers next month. HHS has received letters objecting to this change from California state legislators, county officials (including the L.A. County Board of Supervisors), probation officer associations, and Gerald McEntee, President of AFSCME. In fact, the Chief Probation Officers of California plans to file suit this week in Federal court to enjoin the Department from implementing this change. (HHS is not sure that they have standing to do so.)

In response to these complaints, HHS considered delaying the policy's effective date in order to allow states more time to adjust to the change. However, the agency is now reportedly planning to proceed with the January 1 timetable.

The arguments for and against this action are as follows:

<u>For Policy:</u>

1. The costs of the EA program are spiralling. The IG's final report noted that EA program costs have grown from $153 million in 1991 to over $1 billion expected in 1996. The IG identified juvenile justice costs as one of five causes of this growth.

2. States and counties have gradually begun to take advantage of the EA program's open-ended definition of a family emergency to shift costs from state- and county-financed programs to the Federal government.

3. Congress did not intend to define "family emergency" to include crises brought on by children who commit crimes or misdemeanors.

4. The fiscal constraints we face will force us to cut many programs that are more meritorious than this one. Further, if these funds are block granted and HHS does not make this change, states will be more likely to cut basic benefits for families.

<u>Against Policy:</u>

1. At a minimum, states must be given adequate time to adjust their budgets. Three or four months is not enough time. Using EA funds in this way has been an accepted practice, and HHS approved state plans that did so.

2. Although this policy change is certainly defensible from a legal perspective, HHS should use its discretion to consider the practical effects of its policies on states and local governments, rather than viewing them in a vacuum, particularly at this time of substantial budget cuts in so many programs. If these programs are rapidly shut down, as L.A. County plans to do, juveniles will be released to foster care (with Federal reimbursement) or to the community, or else incarcerated as adults.

3. This move runs counter to our goal of providing more flexibility to state and local governments.

4. The IG report (which was not covered by the press when it was released) identified juvenile justice costs as one of five factors causing the tremendous growth in this program and stated that juvenile justice costs go beyond the statutory intent of the EA program, but it was not an especially harsh report.

cc: Carol Rasco
Alice Rivlin
Harold Ickes
Marcia Hale
John Emerson

ACF-AT-95-9 September 12, 1995

TO: STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS AND OTHER INTERESTED ORGANIZATIONS AND AGENCIES

SUBJECT: Emergency Assistance Program

REFERENCES: Section 406(e) of the Social Security Act (the Act); 45 CFR 233.120 and 234.120; SSA-AT-82-28, and SSA-AT-78-44 (OFA)

PURPOSE: To establish that Federal financial participation (FFP) is not available under the Emergency Assistance program for the costs of benefits or services provided to children in the juvenile justice system.

BACKGROUND: Section 406(e) of the Social Security Act and the implementing regulation at 45 CFR 233.120 provide States flexibility to define the scope of their Emergency Assistance (EA) programs. As a result, States have dramatically expanded the EA benefits and services to families with children, which require assistance either in their home or in alternative living arrangements.

A number of States have defined emergency situations to include children who: (1) have been removed from home as a result of alleged, charged, or adjudicated delinquent behavior--i.e., behavior that if committed by an adult would be criminal, or (2) have been otherwise determined to be in need of State supervision by reason of the child's behavior. These States are using State or county-operated correctional facilities or group homes and claiming Federal matching for benefits and services such as room and board, counseling, and psychiatric evaluations provided to such children in these facilities.

DISCUSSION: The EA program was established by the 1967 amendments to the Social Security Act as an optional complement to the AFDC program under title IV-A of the Social Security Act. The context of the EA program is the family and its purpose is to help family members by providing financial assistance and services to enable them to meet family emergencies that they are experiencing.

The legislative history is particularly clear in this regard. Both the report of the House Ways and Means Committee and the report of the Senate Finance Committee on the 1967 Social Security Amendments state that the EA program is designed to deal with crisis situations threatening a family such as "eviction, or when utilities are turned off, or when an alcoholic parent leaves children without food." H. Rep. No. 544, 90th Cong., 1st Sess., 109 (1967); S. Rep. No. 744, 90th Cong., 1st Sess., 165 (1967).

During the Senate floor debate, Senator Ribicoff noted that the EA program "takes into account the problems that poor families meet in day-to-day life" and recognized that "[f]ires, desertions, and other emergencies constantly arise and welfare agencies need to have flexibility in dealing with these situations." 113 Cong. Rec. 32853 (1967).

Later, following Senate approval of the House-Senate Conference report, Senator Mansfield stated that:

> Families with emergency trouble will be able to receive emergency assistance in whatever form it is best for them at their time of need. Families which have been burned out, suffered personal tragedies and such will be able to get money, medical care, shelter provided, food sent in, or whatever else is needed to deal with the crisis.

50's NM wells

113 Cong. Rec. 36925 (1967).

Federal policy has provided each State with the authority "to define the types of emergencies it will cover ... so long as the program's scope ... bears a valid relationship to the intent and purpose of the program...." (SSA-AT-82-28, p.2)

We believe that costs for services provided to children in the juvenile justice system as a result of alleged, charged, or adjudicated delinquent behavior bear no such "valid relationship" to the context or purpose of the EA program and, therefore, do not qualify for Federal matching under it.

The central purposes and goals of the juvenile justice system are different from those of the EA program. The placement of a child in the juvenile justice system due to delinquency results from behavior that would be a criminal offense committed against society as defined under State law if done by an adult. A principal purpose of

the placement of such children is to protect society. While it is true that rehabilitative services are provided to the child, the purpose is to enable the juvenile to return to society in a responsible capacity.

When a child is placed in the juvenile justice system due to a need for supervision, it is because of the child's behavior rather than a family emergency. In many instances, the minor may have committed delinquent acts. Since the placement is made to address the child's behavioral problem rather than to alleviate a family emergency, the associated program and administrative costs would not be subject to Federal matching under the EA program.

Finally, the statutory requirement in section 406(e) of the Social Security Act that a child sought to be served by the EA program be "without available resources" need not be met before a child is placed in the juvenile justice system for either of the above two reasons. Children are not placed in the juvenile justice system because they are destitute or in need of living arrangements. Indeed, such considerations are not even relevant.

Accordingly, we do not think that it is appropriate for a State to claim under the EA program either the program or administrative costs incurred in connection with such children.

POLICY AND EFFECTIVE DATE:

Federal financial participation is not available under the Emergency Assistance program for costs associated with providing benefits or services to children in the juvenile justice system who have been removed as a result of the child's alleged, charged, or adjudicated delinquent behavior, or who have otherwise been determined to be in need of State supervision by reason of the child's behavior.

In announcing this policy, we recognize that we have approved State plan amendments in the past that cover such children and have been matching such claims. Therefore, to give these States the opportunity to modify their procedures and implement this policy, we are making the policy regarding Federal matching effective January 1, 1996. Otherwise, the action transmittal is effective immediately.

What this means is that States with approved State plan amendments that currently cover such children in the juvenile justice system may continue to claim Federal matching for costs through December 31, 1995. Effective January 1, 1996, Federal financial participation will not be available and any claims for such costs will be disallowed.

In addition, effective immediately, any proposed State plan which defines emergencies in such a way as to include such children in the juvenile justice system will be disapproved.

STATE PLAN AMENDMENTS: States, which currently provide EA benefits or services to such children must submit plan amendments to the Regional Office by December 31, 1995 deleting references to such assistance with an effective date of no later than January 1, 1996.

INQUIRIES TO: ACF Regional Administrators

Lavinia Limon
Director
Office of Family Assistance

To : John T. Monahan@IOS.IGA@OS.DC
Cc : Michael King@IOS.IGA@OS.DC, Patricia Woods@IOS.IGA@OS.DC
Bcc :
From : Emory Lee@ORD@SF
Subject : ACF AT - ALERT
Date : Thursday, September 14, 1995 at 11:49:54 am PDT
Attach :
Certify : Y
Encrypt : N

This is to alert you to an issuance of an Action Transmittal (AT-95-9) by ACF's Central Office on September 12 that has significant budgetary impact upon the State of California. We learned about it today because of phone calls we are receiving. This AT provides that effective January 1, 1996, FFP will no longer be permitted for Emergency Assistance (EA) benefits and services such as California's EA services to children under the jurisdiction ~~of County~~ Juvenile Probation Departments. The EA-Probation expenditures ~~for~~ California ~~for~~ the January-March 1995 quarter was almost $80 million; or almost $320 million annualized if claimed at the same rate.

Strong concern about this AT has come from California Senate ~~President~~ Pro Tem Bill Lockyer's office because of the impact this decision will have on the state budget. It will also have direct implications for the current discussions going on in Los Angeles County. I will fax you a copy of the AT (4 pages) and follow-up with a telephone call.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

Intergovernmental Affairs

Facsimile Cover Sheet

To: Diana Fortuna

Organization: White House

From: John Monahan/ ~~Jim Mason~~

Date: 11/3/95

Intergovernmental Affairs
200 Independence Avenue, S.W.
Room 630F
Washington, DC 20201

Phone: (202) 401-5639
Fax: (202)690-5672

Recipient's Fax Number: 456-7028

Number of pages including this sheet: 3

Remarks: Diana,

Attached is ACF's latest draft response on the Emergency Assistance issue, John asked me to fax this to you and Emily Bromberg ~~for~~ one more review before we clear it. Please call John with any comments at 690-8090. Thanks!

Jim

DRAFT
11/3/95

Name
Address

Dear Senator (Mr./Ms.)----:

Secretary Shalala has asked me to respond to your concerns about the Emergency Assistance (EA) program. You asked that we reconsider the recent policy transmittal of September 12, 1995 which ends Federal funding for juvenile justice costs under the EA program.

As background, the Department's Inspector General recently completed a study of EA and released a report, "Review of Rising Costs in the Emergency Assistance Program." Based on a review of States, including California, the study questioned juvenile justice and other costs and recommended that the Administration for Children and Families revise certain of its policies.

We carefully re-examined these policies in light of Congress' statutory intent for the EA program. We concluded that costs for services provided to children in the juvenile justice system due to alleged, charged, or adjudicated delinquent behavior bear no valid relationship to the purpose of EA. The EA program serves to provide financial assistance or services to families in emergency situations. As a result, we notified States that Federal funding would no longer be available for the costs of these services. To minimize the impact on affected States, we established an effective date of January 1, 1996 allowing over three months of lead time for States that have approved plans which include juvenile justice costs.

Also, as you may know, welfare reform legislation passed by both houses of Congress would repeal the Emergency Assistance program and fold it into States' cash assistance block grant programs. Under the block grants proposed by both houses of Congress, States would receive fixed allotments for the fiscal year beginning October 1, 1995 and subsequently in amounts generally equal to the Federal funds they were awarded in FY 1994 for EA, AFDC, and related programs. States will have considerable flexibility to design their own programs, including the benefits and services they will provide to families.

We understand the concerns that have been raised regarding our recent transmittal. But, the EA program may also be affected substantially by welfare reform legislation. Consequently, we will review this policy in light of your concerns once legislation is completed.

Thank you for sharing your views regarding this matter.

Sincerely,

Mary Jo Bane
Assistant Secretary for
Children and Families

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

Intergovernmental Affairs

Facsimile Cover Sheet

To: Diana Fortuna

Organization: White House

From: Jim Mason

Date: 11/1/95

Intergovernmental Affairs
200 Independence Avenue, S.W.
Room 630F
Washington, DC 20201

Phone: (202) 401-5639
Fax: (202)690-5672

Recipient's Fax Number: 456-7028

Number of pages including this sheet: 2

Remarks: Diana,

Attached is a draft letter prepared by our Administration for Children and Families responding to letters we have received on the use of Emergency Assistance funds for juvenile justice activities. John Monahan asked me to fax this to you and Emily for your review and comment. Please note John's handwritten edits regarding our commitment to revisit this issue once welfare reform legislation is enacted. Please call John with your edi

Thanks! Jim

Name
Address

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Also, as you may know, welfare reform legislation passed by both houses of Congress would repeal the Emergency Assistance program and fold it into States' cash assistance block grant programs. Under these block grants, States will have considerable flexibility to design their own programs, including the benefits and services they will provide to families. Since the EA program may be affected substantially by welfare reform legislation, we will carefully assess its impact on the program should legislation be enacted.

regarding our recent transmittal.

and we understand the concerns that have been raised we will revise this policy once legislation is completed.

Thank you for sharing your views regarding this matter.

Sincerely,

Mary Jo Bane
Assistant Secretary for
Children and Families