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NATIONAL ASSOCIATION OF PUBLIC HOSPITALS & HEALTH SYSTEMS

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November 14, 1996

Mr. Bruce Vladeck
Health Care Financing Administration
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Vladeck:

On behalf of the National Association of Public Hospitals and Health Systems (NAPH), I would like to thank you for your leadership and responsiveness in implementing the Medicaid-related provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in a manner that is sensitive to the needs of America's safety net health system. As you are aware, the loss of Medicaid coverage for a significant number of legal immigrants, as envisioned in this bill, will have spillover effects on the ability of safety net providers to ensure access to necessary health services for all residents of our communities -- citizens as well as immigrants, insured as well as uninsured. Because of the stress that this rollback in coverage places on these providers' resources, it is important that the Medicaid-related provisions of the legislation be interpreted carefully so that no more individuals lose coverage than is required under the law.

In that spirit, I urge you to review HCFA's proposed policy with respect to current legal immigrants who lose their SSI and, derivatively, their Medicaid coverage under the bill. In an October 4 letter to State Medicaid Directors, HCFA indicated that states that currently do not have a non-cash SSI-related eligibility group for Medicaid would be required to amend their state plans to establish such a group if they wish to continue to cover immigrants who have lost SSI. These states would be faced with the dilemma of either disenrolling all current SSI immigrant recipients or effecting a significant expansion in their Medicaid programs well beyond what their resources may permit. Twenty-one states, including Texas, would confront such a predicament.

We believe the law permits a less drastic alternative. It is our reading of the Act that when it delegates to states the authority to "determine the eligibility of" legal aliens for Medicaid, it has authorized states effectively to ignore the alien status of those who otherwise meet SSI eligibility criteria and deem them to be SSI

recipients for purposes of determining Medicaid eligibility. In this way, states will not be required to create a new non-cash SSI-related eligibility category, but rather may opt simply to continue the Medicaid eligibility of those who otherwise would have lost it due solely to the loss of SSI. This reading of the statute is also consistent with Congress' otherwise stated intent to continue Medicaid coverage for all current immigrants, while providing states with an option to terminate coverage if they so choose.

In addition, we strongly recommend that HCFA clarify that in determining the Medicaid eligibility of legal immigrants, states only have the option to decide between continuing eligibility or not continuing eligibility for this population. They have not been granted flexibility to provide partial coverage or to distinguish between types of legal immigrants. In providing states with the option to "determine the eligibility" of legal immigrants, and in specifying that for these purposes, "eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage," Congress has made clear that the decision is an "up or down" one, and that states may not foray into other aspects of the Medicaid program, such as benefits packages, in determining "eligibility."

I am enclosing a copy of a memorandum prepared by the Georgetown Federal Legislation Clinic for Catholic Charities USA which discusses the legal theory supporting our interpretation of the statute in more detail. While this interpretation may not be the *only* possible reading of the law, it is clearly well within the scope of discretion that Congress has granted HCFA as the implementing agency. We urge you to adopt such an approach as you prepare final instructions for states in implementing this complex legislation.

We would be pleased to meet with you, your staff, and/or your lawyers to discuss this interpretation in more detail, if it would be helpful. Please feel free to give me a call at (202) 624-7237. Barbara Eyman (202-624-7359) and Lynne Fagnani (202-414-0101) are also available to answer any questions. In the meantime, I thank you once again for your demonstrated commitment to preserving and protecting our nation's system of safety net providers.

Sincerely,

Larry S. Gage
President

Enclosure
22171634.W51

GEORGETOWN UNIVERSITY LAW CENTER

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STATE DISCRETION TO DETERMINE MEDICAID ELIGIBILITY FOR QUALIFIED ALIENS

I. INTRODUCTION

Prior to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Welfare Act"), one of the primary ways in which immigrants qualified for Medicaid was through the receipt of Supplemental Security Income ("SSI") cash payments. Section 402(a) of the Welfare Act now prohibits certain immigrants who are lawfully residing in the United States ("legal immigrants") from receiving SSI payments. Section 402(b) of that Act gives States the discretion to determine whether legal immigrants otherwise eligible for Medicaid under a State plan will remain eligible for Medicaid.

Section 402(b) allows States to ask and answer a single question: "Will we, as a State, continue Medicaid eligibility for legal immigrants who are otherwise eligible for Medicaid under our State plan?" If a State answers this question in the negative, legal immigrants will be denied Medicaid in that State. Conversely, if a State answers affirmatively, legal immigrants will be treated *as if they were citizens* for purposes of Medicaid eligibility in that State. Immigrants who used to be receiving SSI payments will be "deemed" as if they were receiving SSI and will be eligible for Medicaid as part of that "categorically needy" group.

If a State fails to notify the Federal government of its decision regarding Medicaid eligibility for legal immigrants, such immigrants will continue to be eligible for Medicaid under current categories for which they qualify *as immigrants*. In other words, legal immigrants who were receiving Medicaid through the receipt of AFDC, as pregnant women or children, or through any category other than SSI, will automatically continue to be covered under Medicaid in any State that has not notified the Federal government of its desire to eliminate Medicaid coverage for such individuals.

Legal immigrants who previously received SSI cash payments and who live in a State that has elected to cover individuals who meet the income, resource, and disability requirements of SSI, but are not actually receiving SSI cash payments, will automatically fall into this "SSI/optional categorically needy" group and will receive Medicaid. Conversely, legal immigrants who previously received SSI payments in a State that has not elected to create a "SSI/optional categorically needy" group will lose Medicaid coverage if the State fails to notify the Federal government of its intention to cover such individuals.

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II. STATE DISCRETION TO PROVIDE MEDICAID TO IMMIGRANTS

The discretion provided to States by §402(b) of the Welfare Act is both broad and limited. It is *broad* in the sense that States are allowed to decide, notwithstanding any previous restriction in the Medicaid statute, whether or not to provide Medicaid coverage to immigrants lawfully residing in the United States. It is *limited* because States were given the authority to decide only *one* question: whether or not they will treat legal immigrants *as citizens* for purposes of Medicaid eligibility.

The broad discretion granted to States was the end result of a long political process. The House-passed version of the Welfare Act had barred current legal immigrants from Medicaid. In contrast, the Senate-passed version of the legislation gave States discretion to bar legal immigrants from Medicaid. The final conference agreement for the Welfare Act followed the Senate approach, recognizing that a number of States that wished to maintain Medicaid coverage for current legal immigrants would lose considerable Federal funds if the House approach was adopted. Thus, Congress' ultimate political resolution was to provide States the broad discretion and flexibility to grant or deny Medicaid eligibility to legal immigrants.

The limitation on State discretion arises from the convergence of §402(b)(1) and §433 of the Welfare Act. Section 402(b)(1) provides the following:

> Notwithstanding any other provision of law . . . a State is authorized to determine the *eligibility* of an alien who is a qualified alien for [Medicaid].

Section 433(a)(1) provides the following definition of "eligibility:"

> For purposes of this title, eligibility relates only to the *general issue* of eligibility or ineligibility *on the basis of alienage* (emphasis added).

The combination of §402(b)(1) and §433 makes clear that States are allowed to make one decision: whether they will consider individuals eligible or ineligible *because of* their alienage. If a State decides aliens will be eligible, the State has decided to *disregard alienage* and to treat immigrants legally residing in the United States *as if they were citizens* for the purposes of Medicaid eligibility.

If a State exercises its authority to consider legal immigrants as if they were citizens, these immigrants will be *"deemed"* as if they were receiving SSI payments for purposes of Medicaid eligibility. The concept of "deeming" is not a foreign one. Congress has amended Medicaid to create several categories of individuals who are "deemed" to be receiving SSI or AFDC for purposes of Medicaid eligibility,[1] and the Health Care Financing Administration

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[1] *See, e.g.*, 42 U.S.C. §1396v(a)(3) (Medicaid eligibility maintained for foster children who would have been eligible for AFDC except for removal from the family home by court order

("HCFA") has often issued regulations implementing these statutory changes.[2] Indeed, Congress took an analogous action in the Welfare Act with regard to families losing AFDC as a result of the repeal of that program. In §114 of the Welfare Act (the "Chafee-Breaux provision"), Congress required States to continue providing Medicaid to individuals who *would have* received AFDC prior to the enactment of the Welfare Act. Section 114 states: "For purposes of this title . . . in determining eligibility for medical assistance, an individual *shall be treated as receiving [AFDC] aid or assistance.*"

In the context of SSI and immigrants, however, rather than amend the Medicaid statute to create a category of individuals deemed as receiving SSI payments, and rather than mandate States to create such a category, Congress chose to delegate the *decision* to create such a category, and the *authority* to do so, to the States. Once a State decides to provide Medicaid coverage to legal immigrants, it has chosen to exercise the option provided it by Congress to deem such individuals as if they were receiving SSI payments. Thus, Congress acted to deny SSI *cash* payments to immigrants legally residing in the United States, but chose to delegate the consequential question of *Medicaid* coverage to the States.

By contrast, the reading of §402 offered by HCFA[3] fails to give appropriate weight to Congress' ultimate political resolution with regard to Medicaid and the States, and fails to implement the discretion granted by Congress to the States as part of that resolution. Under HCFA's reading, many States would be required to *expand* their Medicaid program in order to continue covering the *same* people they cover now. At the present time, twenty-nine States have chosen to provide Medicaid to individuals who meet the income and resource requirements, and the disability standard, of SSI but do not actually receive SSI payments.[4] If these States wish to cover legal immigrants as before, they need do nothing more than recertify such individuals as "SSI/optionally categorically needy." But if any of the remaining twenty-one States wishes to cover the same immigrants they had been covering before, these States must create a *new* "SSI/optional categorically needy" group for *both* citizens and immigrants.

There is no evidence in the legislative history that Congress intended to require States to expand Medicaid coverage in order to serve the same people they were serving before. Indeed, such a result would have been contrary to the spirit of the political resolution reached by Congress to accommodate the States.

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or voluntary placement by deeming them as receiving AFDC); *see also* 42 U.S.C. § 1396v(a)(5)(E) (Medicaid eligibility restored for individuals who lost Medicaid because a Social Security cost of living increase made them ineligible for SSI by deeming them as receiving SSI); see also CFR cites.

[2] *See, e.g.*, 42 C.F.R. §435.113, 42 C.F.R. §435.122 .

[3] *See* HCFA's October 4, 1996 letter to State Medicaid Directors (Fact Sheet #3).

[4] In its fact sheet, HCFA calls this group "non-cash SSI-related." We call this group "SSI/optionally categorically needy," based on "Yellow Book" terminology.

Moreover, forcing a State to continue its identical Medicaid coverage for legal immigrants *only* by significantly expanding its existing Medicaid program would be a sufficiently dramatic change that one would expect to see such an intent reflected somewhere in the committee reports or the Congressional Record. As the time-honored principle of statutory interpretation teaches, the "dog didn't bark" in this case.[5]

III. "NOTWITHSTANDING ANY OTHER PROVISION OF LAW"

Section 402(b)(1) provides the following:

> *Notwithstanding any other provision of law* . . . a State is authorized to determine the eligibility of an alien who is a qualified alien for [Medicaid].

For States that wish to continue Medicaid coverage for legal aliens, the phrase "notwithstanding any other provision of law" provides these States with the necessary authority to do so. That is, *notwithstanding* §402(a), which bars SSI cash payments to immigrants lawfully residing in the United States, and *notwithstanding* 42 U.S.C. §1396a(a)(10)(i)(II), which mandates Medicaid coverage solely for individuals "with respect to whom supplemental security income benefits are being paid under title XVI," States are authorized to deem such immigrants *as if* they were receiving SSI cash payments for purposes of Medicaid eligibility.

For States that wish to deny Medicaid coverage for legal immigrants, the phrase "notwithstanding any provision of law" provides States with the authority to take that course of action. That is, *notwithstanding* the legal requirements of the statute authorizing Medicaid,[6] States may discriminate against immigrants as a group in their Medicaid programs.

Any broader reading of the phrase "notwithstanding any other provision of law" would be inappropriate. There is no evidence in the legislative history that the phrase was intended to encompass a wholesale repeal of all Medicaid rules, such as statewideness, comparability, and amount, duration, and scope, or a wholesale repeal of all statutory civil rights rules.[7] Such an interpretation would have been a monumental change in healthcare and civil rights principles and would not have been accompanied by silence. (See, e.g., Shine v. Shine, 802 F.2d 583 (1986).)

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[5] *See, e.g.*, Shine v. Shine, 802 F.2d 583 (1986)(explaining principle that a statute "should not be read to effect a reversal of . . . long-standing principles" without legislative history affirmatively evincing such Congressional intent, including "not[ation] in the congressional discussions").

[6] *See, e.g.*, Medicaid Source Book: Background Data and Analysis ("Yellow Book"), CRS 103-A, Jan. 1993, p. 244.

[7] For example, Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of or be subject to discrimination under, any program or activity receiving Federal financial assistance. (42 U.S.C. § 2000(d) (1996).)

Instead of such a bizarre and far-reaching interpretation, the phrase "notwithstanding any other provision of law" must be understood in light of the explicit *limited* definition of "eligibility" provided by Congress in §433. Congress intended for States to be given the authority to decide whether alienage would *matter* in the initial decision of whether to provide Medicaid coverage. The phrase "notwithstanding any provision of law" was inserted to provide States with the statutory leeway to exercise this one particular decision. Thus, once States choose to disregard alienage and provide Medicaid, they remain bound by existing Medicaid requirements of statewideness, comparability, and amount, duration and scope.

IV. CONCLUSION

HCFA's guidance to States should read as follows:

> The authority granted to States in §402(b)(1) to determine Medicaid eligibility for qualified immigrants requires States to answer a single question: *"Will we, as a State, consider qualified immigrants eligible for Medicaid?"* If a State answers in the negative, all qualified immigrants, subject to certain statutory exceptions, will be barred from receiving Medicaid in that State. If a State answers affirmatively, qualified immigrants will be treated as citizens for the purposes of Medicaid eligibility.
>
> In States that elect to consider qualified immigrants eligible for Medicaid, immigrants who previously qualified because they received SSI cash payments will be deemed as if they were receiving those payments, notwithstanding §402(a), and will be eligible for Medicaid as members of that "categorically needy" group.
>
> A State must inform the Health Care Financing Administration of its choice by stating explicitly in a letter signed by the State Medicaid Director that the State has elected or declined to consider qualified immigrants eligible for Medicaid. A State may also notify HCFA of its decision by amending its State plan.
>
> Once a State makes a decision to provide Medicaid to qualified immigrants, the State must abide by existing Medicaid requirements of statewideness, comparability, and amount, duration, and scope with respect to the class of qualified immigrants.
>
> If a State fails to notify the Federal government of its decision regarding Medicaid eligibility for immigrants, qualified immigrants will continue to be eligible for Medicaid under current categories for which they qualify *as immigrants*. In other words, qualified immigrants who were receiving Medicaid

through the receipt of AFDC, as pregnant women or children, or through any category other than SSI, will automatically continue to be covered under Medicaid in that State.

Qualified immigrants who previously received SSI cash payments in States that have elected to cover individuals who meet the income, resource, and disability requirements of SSI, but are not actually receiving SSI cash payments, will continue to be covered under Medicaid as members of that group. However, if a State has not previously elected to create such a group, and chooses not to do so at the present time, qualified immigrants who had previously received SSI will lose their Medicaid coverage through the State's failure to notify HCFA of its intentions regarding this group of individuals.

The Center for Public Policy Priorities

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Austin, Texas 78702

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November 6, 1996

Donna E. Shalala
Office of the Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Shalala,

The Center for Public Policy Priorities of Austin, Texas, extends an urgent appeal on behalf of Texas' legal immigrants who currently receive Supplemental Security Income. Most of these poor, elderly or disabled individuals now face the loss not only of their cash assistance and food stamps, but also potentially their medical assistance.

Upon adoption of the PRWORA in August we assumed, as we believe most members of Congress did, that Section 402 (b)(1) meant what it said; that is, that states would be authorized to determine the eligibility of "qualified" aliens for Medicaid. Instead, we now find that USDHHS is proposing a narrow interpretation that would actually only allow Texas to continue serving this vulnerable population if the state Legislature approves an **expansion** of the Texas Medicaid program. We want to communicate to you that such a decision would be very likely to result in the loss of Medicaid eligibility for the vast majority of immigrants now receiving SSI in Texas.

As you know, Texas is currently home to about 60,765 immigrant recipients of SSI (per our July 1996 eligibility file). We understand that the Social Security Administration has issued estimates suggesting that roughly 37% of these persons are likely to retain their SSI eligibility by having naturalized since initial application, or because they fall into one of the PRWORA exception categories. If those estimates prove accurate in Texas, then "only" 38,450 persons might lose their SSI cash assistance. Our Medicaid program estimates that fewer than 1,200 of these persons are in institutional care (nursing facility or ICF/MR). These institutional clients represent the only subset of Texas' immigrant SSI clients who would have a "programmatic home" to go to under the punitive interpretation of qualified immigrant Medicaid eligibility proposed by USDHHS. The remaining individuals, over 37,000 in number, live in the community. They would face the loss of Medical assistance in addition to cash assistance (in many cases their only source of cash support), as well as their food stamps.

You probably know that Texas has never had any form of "state-only" general cash assistance, and there are no local (city or county) cash assistance programs in the state. No state-sponsored safety net exists for this vulnerable population, and immigrants who lose their SSI and food stamps will have only local charities to turn to for cash and nutrition assistance.

Moreover, there is no consistent, formalized county responsibility for the provision of indigent health care in Texas. If these elderly and disabled immigrants also lose their Medicaid eligibility, their fates will be varied. In our large urban centers, loss of Medicaid will result in a direct cost-shift to county public hospital districts,

while in rural areas former clients will in many cases lack access to any public source of health care. About 50% of Texas' 60,765 immigrant SSI clients reside in the 15 counties along the 1,000-mile U.S.-Mexico border. There is only one Level I trauma center along the entire border (in El Paso), half the counties have no hospital and there are only 3 public hospitals, and all of the counties are designated either as MUAs or HPSAs. As you know, these counties are among the poorest in the United States, with poverty rates ranging from 30-58%, and uninsured rates that mirror the poverty rates. If these Texans lose their Medicaid coverage, the ranks of the uninsured in those 15 counties alone will swell by another 19,000-30,000. The bulk of the balance of newly-uninsured elders and persons with disabilities would be distributed among the major metropolitan areas, with San Antonio, Houston, Dallas, Ft. Worth, Austin, and Corpus Christi topping the list.

The clear intent of PRWORA was to allow states to continue providing Medicaid to qualified aliens entering the U.S. prior to enactment. As such, we can only guess that USDHHS in taking its current position is under the misapprehension that the Texas Legislature is likely to approve an expansion of Medicaid eligibility to unknown numbers of new, non-immigrant eligibles -- the state's only avenue to continued coverage under your proposed interpretation. We wish to disabuse the agency of this notion. We cannot state strongly enough how difficult it would be to achieve this goal in the Legislative area. Indeed, state agencies have not been allowed to request any funding for Medicaid in the upcoming 1998-99 budget period above the 1996-1997 budgeted level. You may also recall that when our legislature was faced in 1995 with the possibility that Congress might not reauthorize Texas' Medicaid Frail Elderly program, they chose not to replace those funds and indicated that they would eliminate the program instead, which would have left over 15,000 community care clients without services. If USDHHS remains inflexible on this point, please realize that Texas' public interest advocates will face an uphill Legislative battle which we are quite likely to lose. This will be true despite the support we anticipate we will have from health care providers.

In closing, we re-state our initial request for an interpretation of PRWORA that would allow Texas to "deem" qualified immigrants entering the U.S. prior to enactment and now losing SSI to be eligible for continued Medicaid coverage. Thank you for your consideration of this issue. If we may answer any questions regarding this letter, please do not hesitate to contact us.

Sincerely,

Dianne Stewart

Dianne Stewart, Director

cc: Bruce Vladeck
Sally Richardson
John Monahan
Harold Ickes
Ken Apfel
Nancy Ann Min
Christopher Jennings

FAX TRANSMISSION

COUNCIL OF JEWISH FEDERATIONS
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To: Chris Jennings
cc: Diana Fortuna

Date: 12/9/96

Pages: 9 pages, including this cover sheet.

From: Lee Goldberg
Legislative Associate

Subject: Medicaid and Welfare Reform Implementation

Comments:

Enclosed is a brief explanation of the issues and our most recent communications with HCFA, which I am sending as per our conversation on Thursday after the meeting with Families USA. I appreciate your attention to this matter. Let me know if there is any additional information you may need.

CJF Council of Jewish Federations

WASHINGTON ACTION OFFICE • 1640 Rhode Island Ave., NW, Suite 500 • Washington, DC 20036 • (202) 785-5900 • FAX (202) 785-4937

DIANA AVIV
Director,
Washington Action Office

December 6, 1996

Dr. Bruce C. Vladeck
Administrator
Health Care Financing & Administration
Department of Health and Human Services
200 Independence Ave., SW, Room 314G
Washington, DC 20201

Dear Dr. Vladeck:

On behalf of the Council of Jewish Federations, I am writing to express our concerns about implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). As you know, President Clinton has said that the recent changes in the federal welfare law are too harsh in its treatment of legal legal immigrants and refugees. On November 26, 1996, the Health Care Financing Administration (HCFA) issued its draft Medicaid manual providing the states with guidance in implementing PRWORA. Although HCFA has done a commendable job in clarifying many important policy issues, we are concerned that the manual fails to cover a number of key issues that are likely to decrease the harsh impact of the recent changes in the welfare law.

As you know, the Council of Jewish Federations (CJF) is a national organization representing 189 local Jewish Federations. CJF serves as the central planning organization and assists Federations in the fundraising efforts for domestic and overseas needs. Local Federations help to coordinate Jewish health and social services for approximately 800 municipalities throughout the U.S. and Canada. This Jewish social service network embraces more than 6.1 million Jews and provides needed assistance to those in the Jewish community and many in the general community as well. There are at least four issues that we feel strongly about and that require your immediate attention.

Assuring the State Option to Continue Coverage

In enacting PRWORA, Congress gave states the option of continuing to provide Medicaid benefits under the categories of coverage that is left as a state option. Our concern is that many states do not have appropriate

optional categories and many others that do will be reluctant continue coverage if exercising this option entails additional administrative costs.

One way to ensure that states maximize Medicaid eligibility is to permit them to "deem" as Medicaid eligible those legal immigrants and refugees who meet the SSI income and resource standards but who have lost their SSI eligibility as result of PRWORA. In the past, the HCFA has employed this type of "deeming" for individuals who lose their Medicaid coverage due to changes in SSI law that make them ineligible for that program. Under PRWORA, the authority to determine has been granted to the states and HCFA should issue guidance to the states reiterating the authority of states to continue coverage for legal immigrants and refugees without having to amend their state Medicaid plan.

So far, HCFA has been silent on this issue. Its November 26th draft Medicaid manual does not address the power of the states to deem legal immigrants and refugees eligible for Medicaid and we urge the Administration to clarify this issue in any revision to that document.

Assuring Due Process:
We appreciate the efforts that HCFA and other agencies in the Administration are making to communicate with states regarding the need to adhere to due process protections that have long been recognized in the Medicaid program. Unfortunately, there is evidence that some states are planning on terminating Medicaid beneficiaries who lose their SSI benefits without conducting a full redetermination of their eligibility. We urge the Administration to continue to take all steps necessary to insure hat beneficiaries who face the loss of benefits are accorded due process protections required by law. Specifically, HCFA must add to its November 26th Medicaid manual language that requires states to conduct a full redetermination process and to offer legal immigrants and refugees an opportunity for a hearing, pursuant to federal regulations. Legal immigrants and refugees who are found ineligible should be permitted to continue to receive benefits while they appeal an adverse action.

Limiting Federal Matching Funds
We are concerned by language in HCFA's November 26th Medicaid manual that may limit federal financial participation (FFP) in Medicaid for individuals whose eligibility must be redetermined. According to the HCFA document, federal matching payments will be limited to a period that may be as short as 20-days and as long as 52-days after the start of the redetermination process. In areas where there is a significant immigrant population, the state Medicaid agency may be overwhelmed by the need to process within the time limits the tens of thousands of individuals who require a determination of eligibility - - especially if states are not permitted the option of "deeming" legal immigrants and refugees eligible for Medicaid under an optional state program. We are concerned that such time limits provide a strong incentive for states to act fast and terminate benefits. Limiting the time period for federal matching thus becomes an obstacle to continued coverage for legal immigrants and refugees. We urge HCFA

to delete references to FFP in the draft Medicaid manual and make clear that FFP will be available beyond those time frames.

Retaining the Availability of Retroactive Medicaid

Under current federal law, states participating in the Medicaid program must provide benefits to all eligible Medicaid beneficiaries to cover the cost of care and services provided to the beneficiary during the three month period preceding the date of application. To be eligible for retroactive Medicaid, the beneficiary must have been eligible for medical assistance at the time and services were furnished. This provision is intended to fulfill an important public policy objective -- assuring access to care for individuals who have a sudden illness and have not had an opportunity to formally apply for benefits.

We are concerned that HCFA's draft Medicaid manual substantially reduces the availability of retroactive Medicaid by limiting it to states that have elected to cover an optional group that meets SSI income and resource requirements, or the individuals that meet the requirements of another optional group covered under a state plan. We urge HCFA to redraft that portion of the Medicaid manual to make clear that once an individual establishes his or her Medicaid eligibility, that individual is entitled to three months of retroactive medical assistance, provided the individual met the SSI income and resource criteria during period when services were furnished.

We appreciate President Clinton's commitment to ameliorating the severity of provisions in this law that single out legal immigrants and refugees for unduly harsh treatment. We believe that these corrective actions would help to fulfill the President's pledge.

Sincerely,

Diana Aviv
Director, Washington Action Office

Minimizing the Reductions in Medicaid Coverage

The Need for Advocacy at the Federal Level

The welfare law grants states the authority to make decisions on Medicaid eligibility based on alienage. Many of the key issues in the implementation of welfare reform will be decided by state agencies. However, states actions will be shaped by guidance from the Health Care Financing Administration (HCFA), the agency within the Department of Health & Human Services that administers the Medicaid program. How HCFA interprets the federal welfare statute can significantly minimize the loss in Medicaid coverage. This paper will explain the four major issues on which HCFA can influence the scope of Medicaid coverage

HCFA and federal officials in other agencies are soliciting input from state officials and from service providers on its draft Medicaid Manual and for upcoming policy decisions on Medicaid. We strongly recommend that Federations encourage your local agencies to contact state and federal officials on the issues discussed below. Attached is a model letter and two lists of officials to contact. One is a list of federal officials and the other is a list of the State Medicaid officials that have a formal role in advising HCFA on welfare reform implementation.

Statutory Changes

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) bars legal immigrants and refugees in the country for more than five years from receiving SSI. Individuals receiving SSI are automatically eligible for Medicaid consequently for many individuals, the bar on SSI will also affect Medicaid. There new law will make two very important changes to Medicaid eligibility. First, "qualified aliens"[1] who entered the United States on or after August 22, 1996, will be ineligible for Medicaid for a period of five years. Second, the statute grants states the option of making qualified aliens permanently ineligible for Medicaid. There are exemptions for refugees and legal immigrants based on their work history and other factors.[2]

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[1] Qualified aliens include: legal permanent residents, refugees, asylees, parolees, individuals permanently residing under color of law, aliens granted withholding of deportation by the Immigration & Naturalization Service (INS), aliens granted conditional entry into the United States and certain battered alien spouses and their children. All other noncitizens are considered "non-qualified aliens" and are permitted even fewer benefits.

[2] The following qualified aliens are exempt from restrictions on SSI and Medicaid: refugees and asylees who have been in the country five years or less, qualified aliens who have worked 40-quarters without receiving benefits, honorably discharged veterans and their immediate family and individuals whose deportation has been withheld by the INS for five years.

Key Concerns

(1) HCFA Should Permit States To "Deem" Legal Immigrants and Refugees Who Lose Their SSI As Categorically Eligible For Medicaid.

In enacting PRWORA, Congress gave states the option to continue Medicaid benefits. Approximately 28 states provide coverage for individuals who meet the SSI requirements even if they do not receive cash payments.[3] Individuals in these states will continue to receive the core set of services they received prior to the change in law, including skilled nursing care and home health services.

Individuals in the remaining 22 states may not be so fortunate. In some states, legal immigrants and refugees may qualify for Medicaid under one of the state's other optional categories, or under a program for the medically needy[4], although those that qualify as medically needy may not be able to access the full range of Medicaid services that are currently available to them. Unless certain steps are taken by the Administration in implementing the welfare law, states that do not have medically needy or other optional programs will not be able to continue to provide coverage for legal immigrants and refugees without having to amend their state plan -- something that is politically difficult to achieve.

Even for states that have a medically needy program or that have Medicaid coverage for optional groups, the process of redetermining the eligibility of legal immigrants and refugees is administratively burdensome and expensive. In California, for example, the state Medicaid office will be forced to undertake well over 200,000 eligibility redeterminations. New York's already

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[3] These states are: Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

[4] The medically needy are persons who become entitled to Medicaid when their income meets state criteria, after deducting income spent on medical services. The medically needy category covers those persons who may not be poor, but nevertheless cannot cover the costs of their health care. Several states with large immigrant populations, including Florida and Illinois, have medically needy programs but also have state income criteria that are well below the SSI benefit levels. This means that legal immigrants and refugees in those states who are cut off of SSI may have a difficult time regaining Medicaid coverage through this optional program. In general, a state that provides the medically needy with fewer services. For example, some states do not offer hospice services, emergency hospital services or personal care services for the medically needy.

beleaguered Medicaid program will have to review approximately 105,000 cases. Unlike the provision of law creating the Temporary Aid to Needy Families block grant, there is no additional administrative money for the states for undertaking these Medicaid redeterminations.

The administrative expense and the lack of coverage can be avoided by permitting states the option of declaring eligible or "deeming" as Medicaid eligible those legal immigrants and refugees who lose their SSI eligibility. This action would not automatically extend Medicaid coverage to all legal immigrants and refugees -- only to those who meet the SSI income and resource requirements, have now been declared ineligible because of their alienage status. The result is that states wishing to continue coverage of legal immigrants and refugees would be able to do so without changing their Medicaid program or taking on significant new administrative expenses.

This type of "deeming" procedure is not new. HCFA has done something similar in the past to restore the Medicaid eligibility of beneficiaries who lose their SSI.[5]

Recommended Action: *HCFA should include in its Medicaid Manual guidance that states may deem as eligible for Medicaid those aliens that will lose their SSI benefits. Guidance from HCFA explaining its interpretation of federal law will be influential because of HCFA's expertise on Medicaid and its legal responsibility for the Medicaid program. HCFA's approval of categorical deeming is especially important in the six states where there is no medically needy program and apparently no categorically needy program for legal legal immigrants and refugees.[6] HCFA's November 26th Medicaid Manual Issuance implementing the PRWORA fails to mention the power of the states to "deem" legal immigrants and refugees as eligible.*

(2) States Must Honor The Constitutionally Protected Due Process Rights Of Beneficiaries. The loss of cash assistance under the AFDC or SSI programs should not result in automatic termination from the Medicaid program. States are required to perform redeterminations for those individuals that lose SSI. State agencies that do not find a basis for continued Medicaid eligibility

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[5] For example, the federal government restored the Medicaid eligibility of individuals whose Social Security payments increased and provided them with an income that was above the SSI income criteria, cutting off their SSI payments and their Medicaid eligibility. In another case, families with stepchildren who lost Medicaid because welfare deeming rules made them ineligible for Aid to Families with Dependent Children. In both cases, Medicaid was restored by having HCFA deem the litigants eligible for Medicaid.

[6] Those states are: Alabama, Delaware, New Mexico, South Dakota, Texas and Wyoming.

must provide individual beneficiaries with a notice and an opportunity for a hearing prior to the termination of benefits. Medicaid benefits must continue during the redetermination process and during any appeals of the state agency's final determination. These procedural protections are constitutionally mandated and have not been altered by any of the provisions of the welfare reform law.[7]

Recommended Action: *Although HCFA communicated to state Medicaid directors the need for redeterminations and a full appeals process, the agency's November 26th draft Medicaid Manual implementing the PRWORA fails to mention these important due process rights. HCFA should monitor state implementation and sanction states that seek to terminate Medicaid beneficiaries in violation of their due process rights. Specifically, HCFA should amend its manual to require that states carry out a full redetermination and that they provide beneficiaries with continued benefits during the review process.*

(3) Continuation of Federal Payments During the Redetermination Period.

We are concerned by language in HCFA's November 26th draft Medicaid Manual that refers to federal regulations that limit federal matching funds for individuals whose eligibility must be redetermined. According to the document released by HCFA, federal financial participation in Medicaid (called the FFP) will be limited to a period that may be as short as 20-days and as long as 52-days after the start of the redetermination process. In areas where there is a significant immigrant population, the state Medicaid agency may be unable to process within the time limits the tens of thousands of individuals who require a determination of eligibility.

According to the Social Security Administration, there are over 500,000 legal immigrants and refugees who are currently receiving SSI. Although some of the immigrants and refugees may be able to establish their SSI eligibility, many will have their benefits cut off and will require a redetermination of their Medicaid eligibility. The likelihood that states will be able to process large numbers of redeterminations within a short time frame is slim - - especially if states are not permitted the option of "deeming" legal immigrants and refugees eligible for Medicaid under an optional state program. The time limit on federal payments provides a strong incentive for states to act fast and terminate benefits. Limiting the time period for federal matching funds during redetermination is not required by statute and is an obstacle to continued coverage for legal immigrants and refugees.

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[7] The right to notice and a fair hearing and the right to receive benefits until a final determination of ineligibility were first established by the Supreme Court in Goldberg v. Kelley, 397 U.S. 254 (1970) and has codified for Medicaid at 42 CFR §431.

Recommended Action: *Delete references in the draft Medicaid Manual to the time limits on FFP and make it clear that HCFA intends to continue to make FFP available beyond those time frames, by amending or waiving current regulatory requirements.*

(4) Retaining the Availability of Retroactive Medicaid

Under federal law, states participating in the Medicaid program must provide benefits to all eligible Medicaid beneficiaries to cover the cost of care and services provided to the beneficiary during the three month period preceding the date of application. To be eligible for retroactive Medicaid, the beneficiary must have been eligible for medical assistance at the time and services were furnished. This provision is intended to fulfill an important public policy objective -- assuring access to care for individuals who have a sudden illness and have not had an opportunity to formally apply for benefits. As drafted, HCFA's draft Medicaid manual substantially reduces the availability of retroactive Medicaid by limiting it to states that have elected to cover an optional group that meets SSI income and resource requirements, or if the individuals meet the requirements of another optional group covered under a state plan.

Recommended Action: *We urge HCFA to redraft that portion of the Medicaid manual to make clear that once an individual establishes his or her Medicaid eligibility, that individual is entitled to three months of retroactive medical assistance, provided the individual met the SSI income and resource criteria during that three month time period when services were furnished.*

FAX TRANSMISSION

Farmworks on 8/22 who migrate
- MOE issues
- don't want to allow
- also in monthly from Curley
Caseload red. credit

CENTER ON BUDGET AND POLICY PRIORITIES
820 FIRST STREET, NE SUITE 510
WASHINGTON, DC 20002
202-408-1080
FAX: 202-408-1056

To: Elena Kagen; Diana Fortuna **Date:** October 8, 1996

Fax #: 456-1647 **Pages:** 10, including this cover sheet.

From: Cindy Mann

Subject: Medicaid /SSI

SSI - affects poverty
- Hoagland
*Super-call

Attached is a memo on a number of Medicaid-related issues that was prepared by the National Senior Citizen's Law Center and the National Health Law Program. The matter of Medicaid categorical eligibility for qualified immigrants who are losing eligibility for SSI is discussed beginning at page 5. The memo gives some background and examples of other situations where eligibility under the related cash assistance program has been curtailed while categorical eligibility for Medicaid has been maintained. It references the regulation we have discussed, 435.122, but does not describe its history.

In general, the argument is that the intent of the new law was to allow states to continue to cover all currently Medicaid eligible categories of qualified legal immigrants who entered the country before August 22, 1996. This would include persons who qualify under SSI rules. The alienage changes in the law were not meant to change or restrict other basic Medicaid eligibility criteria. (See, section 433(a)(1) which states, "for purposes of this title, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage".)

The regulation we discussed, section 433.122, may be a convenient, already-existing handle for making it clear that states may continue to cover on Medicaid those people who would qualify for SSI but for their citizenship status, assuming the state has decided to prohibit the SSI alienage rules from applying under Title XIX.

The result would be to allow states to cover groups they now cover without forcing states to create a new optional category and perhaps opening up eligibility to a wider group of people (thus risking that the new category would have costs and may not be adopted at the state level). This approach increases state flexibility and allows for the widest possible scope of coverage, without creating any mandate regarding coverage.

HCFA has released the attached "fact sheet" which is not definitive, but which suggests that they may not be heading in this direction.

I hope this is helpful.

WELFARE REFORM IMPLEMENTATION: ISSUE PAPER 1

Continuing Medicaid Coverage for Qualified Aliens, SSI Children and former AFDC Recipients

by

Claudia Schlosberg, National Health Law Program
Trish Nemore, National Senior Citizens Law Center

Introduction

This memorandum identifies several key "first order" issues concerning the implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (P.L. 104-192) and its effect on Medicaid. The analysis is premised on the principle that while the welfare law makes radical changes in the structure of welfare programs and creates major new restrictions on receipt of public benefits by legal immigrants, the structure of the Medicaid program was left intact. In order to implement the new welfare policies and restrictions, states need not and cannot alter or amend their Medicaid programs beyond the narrow changes authorized by this law.

ISSUE ONE - DUE PROCESS REQUIREMENTS

Policy: The loss of cash assistance under the AFDC or SSI programs does not result in automatic termination from the Medicaid program. States must undertake an automatic, ex parte redetermination of eligibility and, if a beneficiary's eligibility is not otherwise established, issue timely and adequate notice and provide an opportunity for hearing. Pending final determination, Medicaid benefits must be continued.

Rationale: Under the welfare law, families with dependent children, certain children on SSI and lawful aliens will no longer be eligible for cash assistance under the AFDC and SSI programs. The loss of cash assistance, alone, however, does not result in automatic termination from the Medicaid program. To the contrary, federal regulations establish that Medicaid beneficiaries must continue to receive benefits until they are found ineligible. 42 C.F.R. Section 435.930. The general rule is that states must redetermine eligibility before finding that a recipient can be terminated. Specifically, 42 C.F.R. 435.916 requires that the state agency responsible for administering the Medicaid program must promptly redetermine eligibility when it receives information about changes in a recipient's circumstances that may affect his or her eligibility. 42 C.F.R. 435.916(c)(1). Under 42 C.F.R. Section 435.916(c)(2), "[i]f the agency has information about anticipated changes in a recipient's circumstances, it must redetermine eligibility at the appropriate time based on those changes." (Emphasis supplied). In other words, states cannot terminate Medicaid based on an anticipated change in a recipient's status. States must wait for the change to actually occur and then proceed with the required redetermination. Redetermination reviews, moreover, are conducted *ex parte*. Massachusetts Ass'n of Older Americans v. Sharp, 700 F.2d 749, 753 (1983).

If the Medicaid agency reviews the recipient's case and makes a determination that the recipient is no longer eligible, the Medicaid agency must still provide the beneficiary with notice

and an opportunity for hearing, prior to the actual termination of benefits. 42 C.F.R. Sec. 435.919. Specifically, "[t]he agency must give recipients timely and adequate notice of proposed action to terminate, discontinue, or suspend their eligibility or to reduce or discontinue services they may receive under Medicaid." 42 C.F.R. Section 435.919(a). The notice also must meet the requirements of 42 C.F.R. Section 431, Subpart E. Id. at Section 435.919(b). The requirements of Subpart of E of Section 431 set forth in detail the notice and fair hearing requirements of the Medicaid program. These procedural requirements are based on the Constitutional requirements of due process of law, Goldberg v. Kelly, 397 U.S. 254 (1970), and are fundamental requisites of the Medicaid program. Federal regulations therefore provide that at the time of any action affecting a recipient's claim, the State must provide the recipient with written notice stating 1) what action the agency intends to take, (2) the reasons for the intended action, the specific regulations that support the action and the recipients right to a hearing. 42 C.F.R. Section 421.210. With limited exception, recipients must be notified at least 10 days before the date of action, 42 C.F.R. Section 431.211, and the state must provide a hearing to "[a]ny recipient who requests it because he believes the agency has taken action erroneously." 42 C.F.R. Section 431.220(a)(2).

Significantly, Medicaid benefits must continue during the redetermination process, 42 C.F.R. Section 435.930(b), and at least ten days after notice of ineligibility is mailed to the recipient. 42 C.F.R. Section 431.211. If the recipient requests a hearing before the date of action, however , Medicaid benefits must continue pending a decision following the hearing. 42 C.F.R. Section 431.230. The agency also has discretion to reinstate benefits pending a hearing decision if the request for hearing is made not more than 10 days after the date of action. 42 C.F.R. Section 431.231. These procedural protections in the Medicaid program have not been abrogated by any provisions of the welfare law. Furthermore, they apply to all individuals who qualify for Medicaid under any eligibility category. Massachusetts Ass'n of Older Americans, supra at 753.

Accordingly, HCFA must notify States that the loss of cash assistance does not trigger an automatic termination from the Medicaid program. Instead, states must conduct an ex parte redetermination of eligibility. If it is determined that Medicaid eligibility is not otherwise established, the state must comport with due process and issue notice and provide the beneficiary with the opportunity for a fair hearing.

ISSUE TWO - THE STATUS OF QUALIFIED LEGAL ALIENS WHO LOSE SSI CASH ASSISTANCE

Policy: Qualified legal aliens who lose SSI cash assistance remain categorically needy and therefore eligible for Medicaid unless a state opts to discontinue coverage. This is because the state's authority under Section 402(b)(1) to determine the eligibility of non-exempt qualified aliens to Medicaid relates only to the general issue of eligibility or ineligibility on the basis of alienage. States do not need to expand their existing Medicaid programs to continue coverage

for these otherwise qualified aliens.

a. States need only act affirmatively if they opt to discontinue coverage.

Section 402 (a) makes clear that only qualified aliens who are refugees and asylees, veterans or on active duty or who have worked for 40 quarters remain eligible for SSI cash benefits. Under Section 402(b)(2), these same qualified aliens remain categorically needy and therefore "shall be" eligible for Medicaid (as well as other "designated federal programs"). The question of whether other qualified aliens who lose SSI cash assistance under Sec. 402 (a) remain eligible for Medicaid is controlled by Sec. 402 (b)(1). In pertinent part, Section 402(b)(1) provides: "Notwithstanding any other provision of law and except as provided in section 403 and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in section 431) for any designated Federal program (as defined in paragraph (3))." Section 403 bars new legal immigrants (with some exceptions) who enter the country on or after the date of enactment from receiving most federal means-tested benefits for five years. Section 402(3) defines the term "designated Federal program." In pertinent part, "Medicaid" is defined as "[a] State plan approved under title XIX of the Social Security Act, other than [emergency] medical assistance described in section 401(b)(1)(A).

"As in all cases involving statutory construction, the 'starting point must be the language employed by Congress. '" Lynch v. Rank, 747 F.2d 528, 531 (1984), quoting Reiter v. Sonotone Corp., 442 U.S. 330, 337. 99 S. Ct. 2326, 2330, 60 L.Ed. 2d 931 (1979)). Faced with a statute containing "plain and unambiguous language," a court should ordinarily simply "enforce it according to its terms." Ciampa v. Secretary Of Health and Human Services, 687 F.2d 518, 524 (1st Cir. 1982), citing Mass. Financial Services, Inc. v. SIPC, 545 F.2d 754, 756 (1st Cir. 1976), quoting Caminetti v. U.S., 242 U.S. 470 (1917), cert. denied, 431 U.S. 904 (1977).

Here, the language of the statute clearly authorizes states to determine the Medicaid eligibility of qualified aliens (other than those excepted under Section 402(b)(2)). In other words, states can decide to continue Medicaid eligibility of qualified aliens under the state's Medicaid plan. Some have argued however that section 402(b)(1) automatically terminates benefits for qualified aliens and that states desiring to continue coverage will have to take affirmative action including enacting legislation to do so. The language of Section 402(b)(1) however does not plainly address this issue. Where, as here, the meaning of the statutory language is ambiguous, congressional intent is ascertained by examining materials extrinsic to the statute such as the statute's legislative history. Moore Bayou Water Ass'n Inc. v. Town of Jonestown, 628 F. Supp. 1367 (N.D. Miss. 1986).

As that legislative history reveals, the original House-passed version of HR-3437 barred qualified aliens (with some exceptions) from receipt of SSI, food stamps and Medicaid. Included within the House bill were provisions that allowed beneficiaries who were receiving benefits on the date of enactment to continue to receive them for at most one year. If, after a review, the qualified alien failed to meet an exceptional category, benefits would cease immediately. States

were also given "the option of ending cash welfare payments and social service benefits for current recipients after January 1, 1997." H. R. Conf. Rep. No. 725, 104th Cong, 2nd. Sess 380 (1996). The blanket bar to Medicaid however was rejected by the full Congress in the final vote on the bill. Instead, Medicaid was included with cash welfare and social services as benefits that states could opt to terminate. Furthermore, the final version of the law retains the House provision prohibiting states from taking action to terminate benefits for current enrollees prior to January 1, 1997. Sec. 402(D)

The language of Section 411 is further evidence that Congress did not intend States to terminate qualified aliens' Medicaid benefits automatically or to require states to enact legislation in order to provide Medicaid benefits to these enrollees. Under Section 411(a), Congress clearly pronounces that illegal aliens are not eligible for most State or local public benefits. In Section 411(d), however, Congress authorized states to opt to provide such benefits but makes clear that states can exercise this option "only through the enactment of a State law after the date of the enactment of this Act which affirmatively provides for such eligibility." Section 411(d). Had Congress wanted to require States to enact legislation in order to provide Medicaid benefits to non-exempt qualified beneficiaries, Congress clearly knew how to draft such a provision.

Finally, as is discussed in Issue #1 above, due process and the explicit requirements of the Medicaid program require that States conduct redetermination reviews and provide notice and an opportunity for a fair hearing before Medicaid benefits are terminated. Nothing in the welfare law nullifies these procedural protections. The only provision which is arguably relevant is the phrase in Section 402(b)(1): "Notwithstanding any other law. . . ." This provision however cannot be read to mean that the procedural due process protections of Title XIX and the U.S. Constitution are nullified. As the Supreme Court has noted on frequent occasion, "such indefinite congressional expressions cannot negate plain statutory language and cannot work a repeal or amendment by implication." St. Martin Lutheran Church v. South Dakota, 451 U.S. 772, 788, 68 L.Ed. 612, 623, 101 S.Ct. 2142 (1981). This long-established canon of construction moreover, "carries special weight when an implied repeal or amendment might raise constitutional questions." Id. See NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 59 L.Ed. 2d 533, 99 S.Ct. 1313 (1979); Brown v. Consol. Rail Corp., 605 F. Supp. 629 (N.D. Ohio 1985)(where a statute is created to afford protection, passage of a later piece of legislation that at first glance may be construed to defeat earlier protections should not be deemed to repeal earlier conferred benefits).

In sum, qualified legal aliens remain eligible for Medicaid, unless states opt to discontinue coverage. States need not take any affirmative action to maintain the status quo.

b. States opting to cover qualified aliens under Section 402(b)(1) must comply with requirements of the Medicaid program.

Section 402(b)(1) provides "Notwithstanding any other provision of law . . . a state is authorized to determine the eligibility of an alien who is a qualified alien . . . ." Section

402(b)(1), however, does not give states authority to selectively repeal provisions of the Medicaid statute. As noted above, if Congress wanted to repeal the Medicaid statute or give states authority to do so, it must act "with clear and manifest intent." Watt v. Alaska, 101 S. Ct. 1673, 451 U.S. 259, 68 L.Ed. 2d 80 (1981). Thus, Section 402(b)(1) must be construed narrowly. Rather than a broad grant of authority to rewrite the Medicaid statute, it merely gives states the option of restricting eligibility on the basis of alienage or not. Support for this position is found in Section 433(a)(1), which provides:

> Nothing in this title may be construed as an entitlement or a determination of an individual's eligibility or fulfillment of the requirements for any Federal, State, or local governmental program, assistance, or benefits. For purpose of this title, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage.

(Emphasis added). [3] Accordingly, the only question for states is whether they intend to continue to provide Medicaid coverage for qualified aliens or not. If a state choses to continue coverage, it must comport with all Medicaid provisions (unless waived) including those regarding eligibility, statewideness and comparability.

c. States continuing coverage for qualified aliens who lose SSI cash assistance may continue Medicaid coverage under the state's existing state plan.

Under Section 402(a), qualified aliens who are neither refugees nor asylees, veterans nor on active duty in the armed forces or who have not worked 40 qualifiying quarters lose SSI cash assistance. Since SSI cash assistance recipients are deemed categorically needy under the Medicaid program, the loss of SSI will trigger a redetermination and could lead to a loss of Medicaid benefits. The loss of SSI benefits however is linked solely to the status of the recipient as an alien and not on any program eligibility requirement of Medicaid program. Thus, non-exempt, qualified aliens who lose SSI cash assistance are in much the same situation as "Pickle" people who lost Medicaid because a Social Security cost of living increase made them ineligible for SSI, or families with stepchildren who lost Medicaid because AFDC deeming rules made them ineligible for AFDC cash assistance. In both situations, Medicaid was restored for these beneficiaries by "deeming" them eligible for the respective cash assistance programs. Through this mechanism, these beneficiaries retained eligbility as "categorically needy."[4] The difference

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[3] Thus, the phrase "notwithstanding any other provision of law," must also be construed only to preclude operation of any law that would prohibit a state from not providing Medicaid benefits on the basis of alienage.

[4] Medicaid regulations incorporating the "deeming" requirements are found at 42 C.F.R. Section 435.113 (AFDC) and 42 C.F.R. Section 435.122 (SSI).

in the instant case is that Congress has delegated its authority to the States and given each state the option to continue providing Medicaid benefits to these enrollees.

The decision of a state to opt to continue coverage of non-exempt, qualified aliens, therefore, is effectively a decision to deem these individuals categorically needy and to continue to provide Medicaid as before. Stated alternatively, a state can continue to provide Medicaid benefits to qualified aliens who, "but for" their status as aliens, would be eligible for SSI cash assistance.

Absent the deeming approach, states would have to redetermine eligibility of those qualified aliens losing SSI under another existing category of their Medicaid program. However, only 35 states and the District of Columbia provide coverage to medically needy individuals, and only 29 states and the District of Columbia include optional categorically needy coverage in their state plans. At least six states have neither a medically needy nor optional categorically needy program. Thus, qualified aliens who lose SSI and who live in states without the full scope of optional Medicaid eligibility categories would lose Medicaid benefits unless the state amended its State Plan. Under Medicaid rules, however, if the state provides Medicaid to any individual in an optional group, the state must provide Medicaid to all individuals who apply and are found eligible in that group. 42 C.F.R. Section 435.201(b). Thus, in order to continue covering qualified aliens who lose cash assistance, states would actually have to expand Medicaid eligibility to all individuals within those other optional eligibility categories. Clearly, neither the automatic loss of Medicaid by recipients nor the mandated expansion of programs by states was intended by Congress.

In sum, states should not have to expand Medicaid eligibility to order to exercise the option to continue to provide Medicaid benefits to non-exempt, qualified aliens who previously received SSI. To require states to do so would effectively nullify Congress' intent and would produce extraordinarily harsh results. Instead, HCFA must issue guidance to the states informing them that if they opt to continue coverage for non-exempt qualified aliens, and such aliens qualify for SSI "but for" their alien status, they remain categorically needy under the Medicaid program.

ISSUE THREE: VERIFICATION AND REPORTING REQUIREMENTS

Policy: As a matter of sound public health policy, reporting and verification requirements in the welfare law must be construed narrowly.

Rationale: The welfare law contains new provisions relating to reporting and verification of the legal status of immigrants. These provisions are already raising concerns in immigrant communities and will deter aliens from seeking and obtaining treatment, even when they are lawfully entitled to care. To minimize the adverse impact of these provisions, HCFA must issue guidance to the States clarifying that these provisions do not impose any new requirements on

health providers and do not eliminate the confidentiality protections in the SAVE program. Of particular importance is the need to instruct states that persons seeking Medicaid emergency medical care including women in active labor are exempt from verification requirements. This interpretation is clearly supported by the language and structure of the statute itself.

In relevant part, Section 404 amends Title IVA of the Social Security Act, 42 U.S.C. Section 601 et. seq. by adding a new section which states:

> Each state to which a grant is made under section 403 [of the Social Security Act, 42 U.S.C. Section 603] shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information, on any individual who the State knows is unlawfully in the United States.

The welfare law contains similar reporting requirements for the Social Security Administration and Department of Housing and Urban Development. Significantly, however, there is no similar provision amending Title XIX or imposing any new reporting requirements on any health provider. Thus, by its terms, Section 404(b)'s mandatory reporting requirements apply only to the reporting of persons seeking AFDC services, not Medicaid services or health care.[5]

Section 432 provides additional support for maintaining the status quo with respect to undocumented aliens seeking health services. Under Section 432, the Attorney General, after consultation with the Secretary of Health and Human Services, must promulgate regulations requiring verification that an alien, who is not a qualified alien, is eligible to receive services under Section 401(b)(1). Section 432 further provides that "[s]uch regulations, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1137 of the Social Security Act."

Section 1137 codifies the requirements of the current verification system, the Systematic Alien Verification for Eligibility (SAVE) program. Recognizing that access to emergency care is a public health imperative, SAVE exempts Medicaid emergency medical care from the verification requirements. 42 U.S.C. Section 1320b-7(f). In addition, the statute prohibits INS from using information obtained through the verification system for civil immigration law

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[5]Arguably, these mandatory reporting requirements apply only when a person has sought AFDC benefits to which they were not entitled. See Doe v. Miller, 573 F.Supp. 461 (N.D.Ill 1983)(A provision requiring state AFDC agencies to report to the INS [persons who are ineligible to receive food stamps because they are unlawfully present were anti-fraud measures, requiring state to only report persons fraudulently seeking food stamps). In any event, Section 404(b) requires agency knowledge.

enforcement. 42 U.S.C. 1320(c)(1).

Although Section 434[6] of the welfare law appears to authorize an "open season" for reporting to INS, the language of Section 434 fails to evidence a clear and manifest intention to repeal SAVE. Nor does any other provision in the law repeal SAVE. Thus, Section 434 and SAVE must be read together. Read in this manner, Section 434 merely authorizes states and localities to exchange with the INS the information that they are currently authorized to collect.

In sum, nothing in the welfare law changes current reporting requirements or restrictions with respect to unqualified or qualified aliens seeking health care and benefits.

ISSUE FOUR: EMERGENCY MEDICAL CARE

Policy: HCFA must instruct States that aliens, regardless of immigration status, remain eligible for emergency medical care including care and treatment for labor and delivery.

Although undocumented aliens are barred from most public benefits, Section 401(b)(1)(A) makes an exception for "[m]edical assistance under Title XIX of the Social Security Act . . . for care and services that are necessary for the treatment of an emergency condition (as defined in section 1903(v)(3) of such Act)." Section 403(c)(2)(A) recognizes a similar exception for lawful aliens entering the country after the act takes effect.

Section 1903(v)(3) defines an emergency medical condition as "a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in -- (A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions; or (C) serious dysfunction of any bodily organ or part." 42 U.S.C.b(v).

Although the conference report contains some language that might be construed to narrow this definition to exclude women in active labor, such an exclusion is not apparent on the face of the statute. In fact, the statute is unambiguous. The definition of emergency medical condition is the definition currently in effect under Title XIX. Under well-established rules of statutory construction, indefinite Congressional expressions cannot negate the plain language of a statute. The language of the statute, and not the conference report, controls. St. Martin Lutheran Church v.

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[6]Section 434 provides:

> Notwithstanding any other provision of Federal, State or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

South Dakota, supra. Accordingly, states must be instructed that FFP for treatment of aliens who are experiencing an emergency medical condition, including active labor and delivery, will be provided under the same terms and conditions as before the passage of welfare reform.

ISSUE FIVE: WAIVERS

Policy: Under Section 114(d), states with waivers that affect eligibility for medical assistance have the option to continue to apply the eligibility criteria under the state's waiver after the date the waiver would otherwise expire. Section 114(d), however, does not repeal Title XIX.

Rationale: Section 114, the "Chafee-Breaux Amendment," contains critically important provisions designed to assure that low-income families continue to receive Medicaid. According to its chief sponsor, Senator Chafee, the amendment was designed to "assure that no low-income mothers and children who are eligible for Medicaid under current law, under the existing law, will lose their health care coverage under Medicaid if the state lowers its eligibility standards for cash assistance or AFDC." Congressional Record, S8345, July 19, 1996.

Sections and (a) and (b) direct states to use AFDC criteria in effect as of July 16, 1996. Section (c) addresses the treatment of transitional Medicaid, while section (d) refers to the effect of waivers. Specifically, Section 114(d) provides:

> In the case of a waiver of a provision of part A of title IV with respect to a State as of July 16, 1996, or which is submitted to the Secretary before the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and approved by the Secretary on or before July 1, 1997, if the waiver affects eligibility of individuals for medical assistance under this title, such waiver may (but need not) continue to be applied, at the option of the State, in relation to this title after the date the waiver would otherwise expire.

By its plain language, Section 114(d) merely gives states with waivers flexibility to continue using eligibility standards established in their approved waivers in lieu of rigidly applying the July 16, 1996 income and asset standards and methodologies. Thus, if a state has established resource limits or income standards for purposes of qualifying for welfare under a waiver that are different then the resource and income standards in effect as of July 16, 1996, and those standards also provide a basis for receipt of medical assistance, the state can opt to continue applying the standards as modified by the waiver.

Section 114(d) does not authorize states to utilize eligibility criteria for Medicaid that is not now permitted under Title XIX, nor can Section 114(d) be read to give states the option of applying TANF eligibility criteria to the Medicaid program. Such an interpretation would effectively give states authority to selectively repeal requirements of the Medicaid program and would undermine the Congressional intent to preserve Medicaid eligibility even if a state applies more restrictive criteria for TANF.

FACT SHEET #3

LINK BETWEEN MEDICAID AND THE IMMIGRATION PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY ACT OF 1996

Medicaid Eligibility of Legal Immigrants

The Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) identifies two categories of legal immigrants, "qualified aliens" and others.

"Qualified Alien" Defined: *A "qualified alien" is an alien who is lawfully admitted for permanent residence under various sections of the Immigration and Nationality Act (INA) including: an asylee, a refugee, an individual who has been paroled into the U.S. for a period of one year, an individual who has had his/her deportation withheld, and who has been granted conditional entry. This definition also includes battered immigrants, and/or immigrants who would be indigent without assistance, because their sponsors are not providing adequate support.*

States have the following options to cover legal immigrants, as long as these individuals meet the financial and other eligibility requirements of the program.

Immigrants Residing in the U.S.

States are not required to end Medicaid coverage or eligibility for any "qualified aliens" residing in the U.S. before August 22, 1996. If the State Plan already provides such coverage and eligibility, HCFA will presume the State will continue to provide Medicaid to these individuals, until a State Plan Amendment is submitted to the contrary.

- For immigrants who are "qualified aliens" receiving Medicaid benefits (were enrolled in the State's Medicaid program) on August 22, 1996, States must continue Medicaid coverage until at least January 1, 1997. After that date, HCFA will assume that States are continuing to cover these individuals, unless the State amends its State Plan to discontinue coverage of these individuals.

- For immigrants who are "qualified aliens" residing in the United States before August 22, 1996, but were not enrolled on that date, whether eligible or not, States have the option not to provide Medicaid beginning on August 22, 1996. To do so, the State must amend its State Plan.

- For other immigrants who are not "qualified aliens," Medicaid eligibility was terminated on August 22, 1996 under P.L. 104-193, except for those receiving SSI. For these immigrants, Medicaid eligibility continues until SSA redetermines eligibility (see page 4).

Excepted Groups of Immigrants

There is an excepted group of immigrants to whom the State *must* provide Medicaid coverage, provided the individuals are otherwise eligible. The following groups of immigrants are considered part of the excepted group.

- o Refugees -- For the first 5 years after entry to U.S. in that status
- o Asylees -- For the first 5 years after granted asylum
- o Individuals whose deportation is being withheld by the INS -- For the first 5 years after grant of deportation withholding
- o Lawful Permanent Residents -- After they have been credited with 40 quarters of coverage under Social Security (based upon their own work and/or that of spouses or parents) and no Federal means-tested public benefits were received by the individual in the quarter to be credited (or the spouse/parent on whose work record quarters were credited). Members of this group are not excepted if the immigrant arrives in the U.S. after August 22, 1996.
- o Honorably discharged U.S. military veterans, active duty military personnel, and their spouses and unmarried dependent children -- At any time.

Immigrants Admitted to the U.S. On or After August 22, 1996

There is a mandatory ban on Medicaid eligibility for immigrants who are "qualified aliens" newly admitted to the U.S. on or after August 22, 1996. The ban is in effect for the first five years they are in the U.S. in that status, unless the individual is a member of one of the excepted groups. After the five-year ban expires, an immigrant's access to Medicaid is at State option (for those otherwise eligible). For those who have individual sponsors who sign new, legally binding affidavits of support (required elsewhere in welfare reform, beginning no later than February 1997), States must deem the income and resources of the immigrant's sponsor (and sponsor's spouse) to be available to support the immigrant when determining the immigrant's eligibility for Medicaid. For most immigrants, deeming will not take effect for five years.

Individuals who have been credited with 40 quarters of work without receiving assistance are not considered an excepted group under these provisions.

Sponsor to "Qualified Alien" Deeming of Income and Resources

There is no deeming of sponsors' income and resources for individuals who entered the U.S. under the old affidavits of support. The new deeming requirements apply to Medicaid in the following situations:

- Deeming applies only to sponsors signing new, legally binding affidavits of support.
- The sponsor's and sponsor spouse's income and resources will be counted when determining the income and resources available to the immigrant they sponsor.
- Deeming applies only to immigrants who are sponsored by individuals.
- Under the omnibus appropriations amendments, deeming does not apply to battered immigrants or to those who would be indigent, defined as unable to obtain food and shelter without assistance, because their sponsors are not providing adequate support.
- Deeming continues until the earlier of naturalization by the immigrant or the immigrant's being credited with 40 quarters of Social Security coverage. Such quarters do not include any quarters after December 31, 1996 in which the immigrant (or the immigrant's spouse/parent on whose work record the immigrant is credited with quarters) receives Federal means-tested benefits.
- Sponsors must reimburse Federal, State, and local governments for the cost of means-tested benefits received by the sponsored immigrant during the deeming period, but excluding the costs of emergency medical services.

Emergency Services

Provided they meet the financial and categorical eligibility requirements, both qualified aliens and non-qualified aliens continue to be eligible for emergency services under Medicaid.

SSI/ Medicaid Connection for "Qualified Aliens"

Other provisions of welfare reform ban receipt of SSI cash benefits for both current and new otherwise eligible " qualified aliens," unless they are a member of one of the excepted groups listed above.

Individuals who continue to receive SSI cash benefits would be eligible for Medicaid under the usual rules. The Social Security Administration must redetermine the SSI eligibility of all immigrants within one year of enactment. Upon redetermination, the immigrant may lose cash assistance if he/she is not a member of one of the above excepted groups.

States are required to perform a redetermination of Medicaid eligibility in any case where an individual loses SSI and that termination affects the individual's eligibility for Medicaid. Those losing or barred in the future from receiving SSI cash benefits will find their Medicaid benefits affected in the following ways:

- A State that has opted under its Medicaid plan to cover non-cash SSI-related groups would automatically continue Medicaid for "qualified aliens" who fit into those groups.

- A State that has not previously opted under its Medicaid State plan to cover non-cash SSI-related groups could, as always, submit a State plan amendment to provide coverage for non-cash SSI-related groups. HCFA is exploring options to permit States to do this as simply as possible.

In addition, a State that opts to cover only SSI cash recipients may still be able to cover some of the "qualified aliens" under other provisions of current Medicaid law (i.e., poverty-related pregnant women and children, medically needy, etc.).

An immigrant who loses SSI cash benefits would continue to be eligible for Medicaid until the State conducts a Medicaid eligibility redetermination (which requires consideration of other bases for Medicaid eligibility for which the individual may qualify) and has found that the individual does not qualify for Medicaid by any other means.

Related Fact Sheets:

Link Between Medicaid and Temporary Assistance for Needy Families (TANF)

Link Between Medicaid and Coverage of SSI Children under Welfare Reform

Link Between Medicaid and the Immigration Provisions of the Personal Responsibility and Work Opportunity Act of 1996

FAX TRANSMISSION

CENTER ON BUDGET AND POLICY PRIORITIES
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To: Diana Fortuna **Date:** November 20, 1996

Fax #: 456-7028 **Pages:** 8, including this cover sheet

From: Cindy Mann

Subject: Medicaid coverage of SSI legal immigrants

AKA, the "bucket" issue.

As you may know, CBO had scored savings attributable to states not being able to cover under Medicaid some portion of the elderly and disabled legal immigrants who would no longer be eligible for SSI. We have just completed a memo analyzing CBO's score which shows serious problems with their estimates. CBO vastly overestimated the number of people who would not be covered and overstated the savings per beneficiary that would result from noncoverage. In addition, CBO did not score any savings attributable to states not exercising their option under the law to cover qualified legal immigrants who entered the country before August 22, 1996. While we do not know how many states will decide not to cover legal immigrants under Medicaid, we do know that several states are seriously considering not exercising their options and so it is reasonable to assume that some savings will result from these decisions.

I hope this memo is informative. Please call me or Jocelyn Guyer if you have any questions about it.

Are you talking to CBO?

30,000 Tex
x 5K
150,000

fax 5-3910

$2.5b - 7 yr total

CENTER ON BUDGET AND POLICY PRIORITIES

To: Interested Parties
From: Jocelyn Guyer
Subject: Fiscal Implications of Allowing States to Deem Legal Immigrants Who Lose SSI Categorically Eligible for Medicaid
Date: November 19, 1996

If the Administration allows states that choose to cover legal immigrants to deem legal immigrants no longer eligible for SSI categorically eligible for Medicaid, there may be concern that the federal government will have to forego considerable savings scored by CBO. A review of CBO's cost estimate, however, suggests that the anticipated savings were significantly overstated and also that CBO understated other sources of Medicaid savings in Title IV of the welfare law. For these reasons, fiscal concerns should not deter the Administration from giving states maximum flexibility to cover aged and disabled legal immigrants under Medicaid.

I. Background on CBO's Estimate

When CBO scored the new welfare law, it estimated that the provisions of Title IV restricting welfare and public benefits for aliens would generate total Medicaid savings of $5.3 billion between FY96 and FY2002.[1] Of this amount, roughly two-thirds to 75 percent — or $3.5 billion to $4 billion in savings — can be attributed to an assumption by CBO that states would not have the flexibility to extend Medicaid eligibility to legal immigrants who lose their SSI *unless* the state can offer them an alternative route to coverage (e.g., a medically needy program).[2] In making its estimate, CBO also assumed that *no* state would change the structure of its Medicaid programs in response to Title IV, either by expanding eligibility to pick up legal immigrants losing their SSI-related coverage or by exercising its option to not cover non-exempt qualified aliens under Medicaid.

To arrive at the $3.5 billion to $4.0 billion figure, CBO estimated the portion of

[1] CBO, *Federal Budgetary Implications of H.R. 3734, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, August 9, 1996.

[2] The two-thirds to 75% figure was provided by Robin Rudowitz of CBO in a personal communication, October 10, 1996. The remaining Medicaid savings from Title IV come from the provision imposing a direct bar on legal immigrants arriving in the United States on or after August 22, 1996, for their first five years in the country and from deeming provisions.

legal immigrants losing SSI who would re-qualify for Medicaid via existing, alternative routes to eligibility. They assumed that "most disabled and about half of the aged would retain Medicaid under state medically needy programs."[3] Then CBO multiplied its estimate of the number of people who would not have an alternative route to coverage by an estimated federal cost per beneficiary. Finally, it adjusted the result downward to take into account an expected increase in the cost of providing emergency care to legal immigrants who lose their regular Medicaid coverage.[4]

II. CBO's Estimate of Savings Attributable to Legal Immigrants Losing Medicaid is Too High

As noted above, CBO assumed that most of the disabled, but only about "half of the aged" would retain Medicaid. A review of the states that have alternative routes to coverage and of the distribution of legal immigrants among the states indicates that this latter assumption is far too low. As Table 1 shows, over 91 percent of legal immigrants reside in a state that offers them one or more major alternative routes to Medicaid, including 1) a medically needy program for the aged and disabled, 2) coverage of disabled and aged individuals with incomes below poverty, and/or 3) coverage of disabled and aged individuals who are income and resource eligible for SSI, but not receiving cash assistance. Thus, a much larger number of aged people will qualify for Medicaid under an alternative eligibility route than CBO assumed.

Furthermore, all states without a medically needy program provide Medicaid to institutionalized individuals with incomes below 300 percent of the SSI payment standard. In other words, all states *already* can cover legal immigrants residing in nursing homes either under a medically needy program or under the 300 percent of SSI rule. The implications of this potential coverage is two-fold. First, it means that even more legal immigrants may be able to qualify under an alternative eligibility route than is suggested by the 91 percent figure. More importantly, it also means that CBO's cost estimate should have taken into account that the most expensive subset of legal immigrants on Medicaid are virtually assured continued coverage in the absence of states exercising their option to terminate them from Medicaid. The omission is a significant one — in fiscal year 1994, for example, a third of non-DSH Medicaid expenditures were for nursing facility and ICF/MR services (HCFA Form 2082 data).

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[3] CBO, *Federal Budgetary Implications of H.R. 3734, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, August 9, 1996, p. 15.

[4] The law explicitly requires continued emergency medical care for aliens not classified as "qualified," qualified aliens subject to the five-year bar on receipt of federal means-tested public benefits, and those who lose their Medicaid as a result of a state exercising the option to deny eligibility to non-exempt qualified aliens. The law also prohibits deeming with regard to emergency Medicaid.

It should be noted that the alternative routes to coverage listed in Table 1 will not *always* serve as perfect substitutes for Medicaid eligibility based on SSI receipt — some people who now qualify for Medicaid based on their receipt of SSI will not qualify under an alternative eligibility category. Medically needy programs, for example, may impose income eligibility standards below SSI's. However, as Table 2 demonstrates, many of the states with large numbers of legal immigrants operate relatively generous medically needy programs (e.g., New York and California's medically needy income eligibility standards reach more than 90 percent of SSI levels).[5] To the extent that medically needy programs in some states do not pick up a small percentage of the legal immigrants who lose their SSI route to coverage, the savings to the federal government attributable to the loss of Medicaid for these individuals would be small. If these legal immigrants have high medical expenses then they will be able to "spend down" to the medically needy income eligibility threshold and qualify for coverage.[6]

III. CBO Did Not Consider Medicaid Savings that Will Be Realized Under Title IV of the Welfare Law

When CBO scored Title IV, it assumed that *no* state would exercise the option to stop offering Medicaid coverage to non-exempt legal immigrants. If, however, even a small number of states do exercise this option, the savings to the federal government will help offset the relatively small costs associated with assuring that states may treat legal immigrants losing SSI as categorically eligible for Medicaid. There is already some evidence from the initial TANF state plans that states will elect the option to terminate cash assistance for legal immigrants — five of the thirty states that had submitted TANF plans as of October 18, 1996 have decided to discontinue cash assistance to legal immigrants.

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[5] It also should be recalled that legal immigrants will be in need of an alternative route to coverage precisely because they have lost their SSI checks, a major source of income, which makes it particularly likely that they will qualify for Medicaid even under medically needy programs with very low income thresholds.

[6] Another reason why medically needy programs will not necessarily serve as a perfect substitute is that a small number of states offer benefits to the medically needy population that are less generous than those given to the categorically eligible population. The most significant difference in benefit packages is that in six states nursing facility services are not provided to the medically needy. For the issue at hand, however, this difference is irrelevant because all of these states cover institutionalized individuals with gross income below 300 percent of the SSI payment standard. The other, relevant differences in benefit packages appear to be relatively inconsequential from a fiscal perspective. Among the states with large immigrant populations, the only relevant difference in benefit packages is in California, which provides personal care services to the categorically eligible, but not to the medically needy.

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- *The option will relieve states of the administrative burden of redetermining the eligibility of large numbers of legal immigrants.*

  In the short term, the option will eliminate the burden on states of evaluating whether the non-exempt legal immigrants who now receive SSI have an alternative route to coverage. Over the longer term, the option will allow states to avoid the additional administrative costs associated with evaluating whether a legal immigrant has incurred enough medical expenses to allow him/her to qualify under a medically needy program instead of under SSI criteria. To administer the "spend-down" component of determining eligibility under a medically needy program entails gathering data on someone's medical expenses over a period of one to six months.

- *The option will allow legal immigrants to receive a broader benefit package in a small number of states.*

  A small number of states do not offer the same benefit package to medically needy and categorically eligible beneficiaries.[7] These states will not be able to continue to provide the same benefit package to legal immigrants who switch their basis of eligibility from SSI to medically needy without expanding their benefit package for *all* medically needy recipients.

[7] See footnote 7 for an explanation of why this does not have major cost implications.

Table 1: The Vast Majority of Legal Immigrants on SSI Live in States Offering One or More Major Alternative Routes to Medicaid Coverage

STATE	OPTION 1 Cover Disabled & Aged Below Poverty	OPTION 2 Cover Disabled & Aged Who Are Income & Resource Eligible for SSI but Not Receiving Cash Assistance	OPTION 3 Operate a Medically Needy Program for the Aged & Disabled	Share of Total Number of Legal Immigrants Receiving SSI (Column is filled in ONLY if a state offers coverage under options 1, 2 and/or 3)	State Covers Institutionalized Individuals with Gross Income up to 300% SSI
ALABAMA	-	-	-		yes
ALASKA	-	yes	-	0.10%	yes
ARIZONA	-	yes	-	0.95%	yes
ARKANSAS	-	-	yes*	0.04%	yes
CALIFORNIA	yes	-	yes	40.96%	
COLORADO	-	yes	-	0.67%	yes
CONNECTICUT	-	yes	yes	0.56%	yes
DELAWARE	-	-	-		yes
DISTRICT OF COLUMBIA	yes	yes	yes	0.13%	
FLORIDA	yes	-	yes*	9.92%	yes
GEORGIA	yes	-	yes	0.58%	yes
HAWAII	yes	yes	yes	0.57%	
IDAHO	-	yes	-	0.05%	yes
ILLINOIS	-	-	yes	3.34%	
INDIANA	-	-	-		yes
IOWA	-	yes	yes*	0.15%	yes
KANSAS	-	-	yes	0.19%	yes
KENTUCKY	yes	-	yes	0.08%	yes
LOUISIANA	-	yes	yes	0.36%	yes
MAINE	yes	yes	yes	0.08%	yes
MARYLAND	-	yes	yes	1.15%	yes
MASSACHUSETTS	yes	yes	yes	3.09%	yes
MICHIGAN	-	-	yes	1.01%	yes
MINNESOTA	-	yes	yes	0.87%	
MISSISSIPPI	yes	-	-	0.07%	yes
MISSOURI	-	-	-		yes (aged only)
MONTANA	-	yes	yes	0.03%	
NEBRASKA	yes	-	yes	0.08%	
NEVADA	yes	yes	-	0.31%	yes
NEW HAMPSHIRE	yes	yes	yes	0.04%	yes
NEW JERSEY	yes	yes	yes*	3.14%	yes
NEW MEXICO	-	-	-		yes
NEW YORK	-	yes	yes	15.69%	
NORTH CAROLINA	-	yes	yes	0.29%	
NORTH DAKOTA	-	-	yes	0.02%	
OHIO	-	-	-		yes
OKLAHOMA	-	yes	yes*	0.17%	yes
OREGON	-	yes	yes*	0.56%	yes
PENNSYLVANIA	yes	yes	yes	1.53%	yes
RHODE ISLAND	-	yes	yes	0.46%	yes
SOUTH CAROLINA	yes	-	-	0.08%	yes
SOUTH DAKOTA	-	-	-		yes
TENNESSEE	-	yes	yes	0.17%	yes
TEXAS	-	-	-		yes
UTAH	-	-	yes	0.17%	yes
VERMONT	yes	yes	yes	0.02%	yes
VIRGINIA	-	yes	yes	0.99%	yes
WASHINGTON	-	yes	yes	1.71%	yes
WEST VIRGINIA	-	yes	yes	0.03%	yes
WISCONSIN	-	yes	yes	0.59%	yes
WYOMING	-	-	-		yes
TOTAL		any of these open?		91.01%	

Source: CBPP estimates. Data on states with various eligibility categories are taken from the Medicaid spDATA System, December 1993. The portion of legal immigrants on SSI residing in each state are taken from SSA quality control data, Dec. 1995. Due to small sample sizes, estimates for small states may be subject to considerable error.

*Indicates the state operates a medically needy program that does not cover nursing facility services. All of these states also cover institutionalized individuals with gross income below 300 percent of the SSI payment standard.

Table 2: Income Eligibility Standards for SSI Versus Medically Needy Programs in Selected States/1

	State's Share of Legal Immigrants on SSI	SSI Income Eligibility Standard /2	Medically Needy Income Eligibility Standard /3	Medically Needy Standard as a % of SSI
California	40.96%	$620	$575	92.74%
Florida	9.92%	$434	$180	41.47%
Illinois	3.34%	$434	$283	65.21%
Massachusetts	3.09%	$563	$522	92.72%
New Jersey	3.14%	$465	$350	75.27%
New York	15.69%	$520	$525	100.96%
Total	76.14%			

1/States are included if they operate a medically needy program and account for more than 3% of legal immigrants on SSI.
2/SSI income eligibility standard is for an individual and includes states' supplemental SSI payments, 1993.
3/Medically needy income eligibility standard is for an individual; based on data from HCFA's spDATA System, 1993.

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DIY

Thanksg. - Ny?