Carol –

drop ref to ann NGA

would take it out

Convs w/ KT

forward to me email

Today – CR invite KT

maybe JM → to PR

Keep her posted via email

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

June 26, 1996

Mr. Robert W. Wright
Director
Illinois Department of Public Aid
100 South Grand Avenue East
Springfield, Illinois 62762-0001

Dear Mr. Wright:

I am pleased to inform you that your application for waivers under section 1115 of the Social Security Act for the demonstration entitled "Six-Month Paternity Project" is approved upon written acceptance of the enclosed Waiver Terms and Conditions. The project period for these activities is specified in the Waiver Terms and Conditions. The title IV-A waivers necessary to implement the demonstrations are identified on the enclosed listings.

This Administration believes that the Federal Government must give states the flexibility to design new approaches to their local problems, provided that these proposals meet Federal standards. We believe Illinois's proposals will add to the information base for new policy directions for welfare reform.

If you have any questions regarding this approval, please contact Leonard Rubin, the Federal Project Officer for these projects. His address is: Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447; telephone (202) 401-5066.

I commend you and staff of the Department of Social Services for seeking alternatives to improve the public assistance system and

to assist families in becoming self-sufficient. I look forward to working with you and your agency on the important initiatives the Secretary has approved today.

Sincerely,

Mary Jo Bane
Assistant Secretary
for Children and Families

Enclosures

cc: Ms. Marion Steffy
ACF Regional Administrator

WAIVER TERMS AND CONDITIONS

SIX-MONTH PATERNITY DEMONTRATION - ILLINOIS

SECTION 1: GENERAL ISSUES

1.0 The Department of Health and Human Services (hereinafter referred to as the Department) will grant waivers to the State of Illinois (hereinafter referred to as the State) under section 1115 of the Social Security Act, as amended, to operate "Six-Month Paterity Demonstration" (hereinafter referred to as the demonstration or SMPD) as set forth in these Waiver Terms and Conditions. The Department reserves the right, in its sole discretion, to withdraw any and all waivers granted by that Department at such time(s) that the Department determines that the State has materially failed to meet the requirements as set forth in these Waiver Terms and Conditions. The State also retains the right to terminate the demonstration.

1.1 Failure to operate the demonstration as approved and according to Federal and State statutes and regulations will result in withdrawal of waivers. The Federal statutes and regulations with which the State must comply in the operation of the demonstration include, but are not limited to, civil rights statutes and regulations that prohibit discrimination on the basis of race, color, national origin, disability, sex, age and religion, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act, and the nondiscrimination provisions of the Omnibus Budget Reconciliation Act of 1980. After waivers are granted, the Department reserves the right to withdraw them if agreement cannot be reached on any item(s) cited in this document as needing approval by the Department. The State also has the same right.

1.2 If Federal or State statutes or regulations that would have a major effect on the design and impacts of this demonstration are enacted, the Department and the State will reassess the overall demonstration and develop a mutually agreed-upon strategy for dealing with the demonstration in the context of such changes. If such a mutually agreed-upon strategy cannot be developed, the Department reserves the right, in its sole discretion, to withdraw any or all waivers at such time(s) as the Department determines.

1.3 The demonstration provisions will be implemented statewide no earlier than July 1, 1996, and no later than June 30, 1997. The implementation date of the demonstration shall be

the first day on which the first case is made subject to any of the provisions of this demonstration. For cost neutrality purposes, the demonstration shall be deemed to begin on the first day of the calendar quarter (hereinafter "quarter") which includes the implementation date, but for the purpose of calculating excess costs or savings for the initial quarter of the demonstration, only costs incurred beginning with the month that includes the implementation date will be counted. The demonstration shall end no later than the last day of the 20th quarter ending after the deemed beginning date. The demonstration provisions shall be as specified in Section 2. Waivers necessary for the demonstration are approved upon acceptance by the Department and the State of these Waiver Terms and Conditions. They will become effective as of the implementation date and will remain in effect until the last day of the 20th quarter ending after the deemed beginning date, unless the project is terminated earlier.

1.4 Federal approval of waivers, subject to these Waiver Terms and Conditions, shall not be construed to establish any precedent that either Department will follow in the granting of any subsequent request for waivers.

SECTION 2: IMPLEMENTATION

2.0 Under these Waiver Terms and Conditions, the State will operate a demonstration of SMPD statewide, with a random assignment evaluation conducted in McLean County, which will be deemed the research site. Within the research site, current AFDC recipients and new applicants will be randomly assigned to one of three groups: 1) an experimental group which will be subject to SMPD provisions; 2) a non-experimental treatment group, which will also be subject to SMPD provisions; and, 3) a control group subject to the regular program rules according to the State's approved AFDC and Medicaid State Plans and approved Food Stamp Plan of Operations.

In the remainder of the demonstration sites (i.e., outside the research site) AFDC recipients and new applicants will also be assigned to the non-experimental treatment group whose eligibility and amount of benefits for AFDC, Food Stamps (for AFDC cases only), and Medicaid will also be determined based on SMPD provisions.

The experimental and non-experimental treatment groups together will comprise the "treatment group"; the

experimental and control groups together will comprise the "research sample."

2.1 Under SMPD, the State will implement the following provisions:

1) Paternity establishment will include the use of administrative process. The State IV-D agency may delegate certain functions to caseworkers who are also performing the assistance payments or social service functions under Titles IV-A or XX of the Social Security Act. All applicants for or recipients of AFDC will be informed of the expectations for cooperation and the penalties for failure to do so, in writing, during intake, when adding a child to their grant, including cases where the new child is subject to the family cap, or, for current cases with a child for whom paternity has not been established, at any time beginning with the implementation date. At the time of notification, the caretaker parent will be required to identify the putative father and provide location information to begin proceedings to establish the paternity of any child in the assistance unit for whom paternity has not been established.

2) Caretaker parents applying for or receiving AFDC benefits must, upon notification, cooperate fully with the State in efforts to identify and locate the putative father and to establish paternity for children in the assistance unit for whom paternity has not been established. At any time during the first six months following notification, any failure to cooperate, without good cause, will result in a sanction of the noncooperating parent in accordance with current rules. Noncooperation, without good cause, that continues beyond this six-month period, or an instance of noncooperation that occurs after the six-month period following a period during which the caretaker parent was deemed to be cooperating (e.g., failure to appear in court, or failure to bring a child in for a blood test), will result in sanctions as follows:

a) If the caretaker parent was sanctioned for failure to identify the father or an instance of noncooperation, without good cause, at any time during the first six months following notification and noncooperation continues beyond the end of the sixth month, then:

- beginning with the seventh month following notification, in addition to continuing the current-law sanction earlier applied to the non-cooperating parent, the child's portion of the

family's AFDC cash benefits will be terminated; and

- o the sanction will be removed in the month following the date on which the caretaker parent cooperates.

b) If an instance of noncooperation without good cause, occurs after the end of the first six months following notification and the caretaker parent had not previously been sanctioned for noncooperation, then:

- o the current-law sanction will be applied to the noncooperating parent; and
- o if the caretaker parent then cooperates within the sanction month, the sanction will be removed for the following month. However, if noncooperation continues, the child's portion of the family's AFDC cash benefits will be terminated beginning with the next month, and the sanction will not be removed until the month following the date on which the caretaker parent cooperates.

c) If an instance of noncooperation, without good cause, occurs after the end of the first six months of the requirement to cooperate, following a period during which the caretaker parent was deemed to be cooperating, but the caretaker parent had at any earlier time following notification been sanctioned for noncooperation, then:

- o in addition to imposing the current-law sanction to the noncooperating parent, the child's portion of the family's AFDC cash benefits will be terminated; and
- o the sanction will not be removed until the month following the date on which paternity is established unless it is determined that the parent has provided identifying information related to the child's father and fully cooperated, and the failure to establish paternity is attributable to the State's failure to reasonably and promptly pursue establishment of paternity through the administrative process or other means following cooperation.

Signed attestation to lack of knowledge of the identity of the father will not be sufficient by itself to constitute paternity cooperation. An applicant or recipient shall be deemed to have not cooperated for failure, without good cause, to furnish a sworn statement setting forth verifiable information about the non-custodial parent, or if more than one person may be a non-custodial parent, about each such person. Such information shall include at least the name and the social security number of the non-custodial parent, or the name of the non-custodial parent and at least two of the following items of identifying information related to the non-custodial parent:

a) date of birth;
b) address;
c) telephone number;
d) name and address of employer, union, or trade association;
e) names of parents;
f) the manufacturer's model and license number of any motor vehicle owned by the non-custodial parent;

or, other information that the State determines is likely to lead to the establishment of paternity.

All recipients subject to the noncooperation sanction will have the same appeal rights, including a fair hearing, as any other recipient notified of an adverse action.

3) In addition to good cause exceptions for not cooperating already in use in Illinois, the State will establish criteria for determining cooperation in cases where the caretaker parent cannot reasonably be expected to know the identifying information related to the child's father.

4) Nothing in these waiver terms and conditions shall be construed as exempting the State from its obligations to pursue paternity establishment in accordance with 45 CFR 232.49 and the performance standards established for such actions by the Social Security Act and governing regulations.

5) Medicaid eligibility: all individuals in the demonstration will retain the same Medicaid eligibility that they would have had in the absence of the waivers.

2.2 For purposes of Quality Control, the eligibility of and amount of benefits for treatment group cases in SMPD will be

reviewed against the rules of the demonstration, in lieu of the rules being waived.

SECTION 3: EVALUATION

3.0 The costs of approved evaluation activities will be matched by DHHS at 50 percent for the duration of the evaluation and are excluded from cost neutrality requirements. Evaluation components not approved by the Department will not qualify for Federal matching funds. Evaluation costs will include all costs necessary to carry out the approved evaluation plan, including costs for evaluation activities carried out by State and local agencies as well as those carried out by the evaluation contractor.

3.1 Within 60 days after acceptance by the State of these Waiver Terms and Conditions, the State will submit to the Department, for approval, a draft Request for Proposals (RFP) for a contract to conduct an evaluation of the demonstration. The RFP must specify, in sufficient detail, the objectives of the project, the evaluation design, the specific tasks to be conducted, the time frames for conducting those tasks, and a schedule and list of deliverables. The research questions to be studied, the major variables to be measured, the data collection methodology, and the major data analyses to be performed must be clearly described.

The evaluation contractor must be an entity independent of the Executive Branch of the State government (State universities qualify under this provision), and must be qualified and have experience in evaluating social experiments of the design, scale, and duration of that proposed by the State.

The RFP will also indicate that the selected contractor will be required to address in its evaluation plan any potential problems inherent in the evaluation design related to analyzing the impact of the program interventions under this demonstration and the methodology it will employ to minimize such problems. This must include methods of analysis which adjust for, or minimize, the potential influence of any factors which might bias conclusions concerning project impacts.

Possible confounding effects from other demonstrations, if any, running concurrently with SMPD also must be addressed in detail. The RFP must indicate that the contractor will discuss the feasibility of evaluating the impact of

individual provisions of SMPD, as well as the impact of the project as a whole. The evaluation of the impact of individual provisions must be within the constraints of the existing control sample.

The RFP must indicate that the evaluation contractor will explain how entry effects can be determined and will describe the methodology which will be employed to determine the entry effects of SMPD (i.e., how SMPD affects the application rate for AFDC and how that affects the AFDC caseload).

3.2 The selected evaluation contractor will be required to develop, not later than 60 days after contract award, an evaluation plan that will be submitted by the State to the Department for approval. The evaluation plan must present the research questions to be studied, the major variables to be measured, the sources of data for these variables, the data collection procedures, and the major data analyses to be performed. The evaluation plan will specify the data that will be gathered and the analyses that will be performed.

3.3 For the purposes of evaluation, the State will submit to the Department for approval, not later than 30 days prior to the implementation date, a final sampling plan for AFDC cases active in the month containing the implementation date and for new AFDC applicant cases beginning with the implementation date. The plan will describe how families will be randomly assigned to the experimental and control groups (i.e., the research sample) in order to meet the objective that the families in the control group are, to the extent possible, comparable to the families in the experimental group. The plan will also describe how the evaluation contractor will monitor random assignment in order to ensure that it is carried out during the project in such a way as to prevent crossover of individuals between the experimental and control groups.

3.4 In the research sites, all AFDC cases active in the month of implementation will be randomly assigned to one of three groups: the experimental group, the control group and the non-experimental treatment group. At least 1,500 currently active cases will be assigned to the control group and at least an equal number to the experimental group.

3.5 Beginning with the date of implementation, all new AFDC applicant cases in the research sites will be randomly assigned to the control group, the experimental group, and

the non-experimental treatment group, using the same sampling ratios as were used for cases active in the month of implementation. Random assignment of new AFDC applicant cases will continue at least through the first 2 years of the demonstration and until at least 1,500 newly approved cases each have been assigned to the experimental and control groups.

3.6 All cases assigned to either the experimental or control group will maintain their assigned status for the full period of the demonstration as long as they reside in the research site. All cases assigned to the non-experimental treatment group will maintain their assigned status for the full period of the demonstration as long as they reside in the appropriate demonstration site. Specifically, if any case loses AFDC eligibility and reapplies for AFDC at any time during the demonstration, it must retain its originally assigned status. For cases that have been randomly assigned and then split (e.g., when minor parents start their own case), the prior treatment status will be maintained for both cases. For cost neutrality purposes, split cases will be counted as one ever-assigned case and benefits for both cases will be included in determining cost neutrality. Procedures to resolve treatment assignments when AFDC cases with different assigned statuses combine must be submitted to the Department for approval in conjunction with the submission of the sampling plan described in 3.2 above. To the extent possible, the designation of an AFDC case as experimental, control, or non-experimental treatment group will follow the head of the original assistance unit or household.

3.7 Outcome data will be collected for all cases assigned to the research sample, to the extent possible, for the duration of the demonstration, regardless of whether the cases continue to receive assistance or, with regard to applicant cases, ever receive assistance. Data stored in automated data bases available to the State, such as AFDC, Emergency Assistance, Food Stamp and Medicaid benefits and wage data, will be collected for all cases assigned to the research sample for the duration of the demonstration. Data that must be collected through surveys or other non-routine data collection efforts, such as data regarding new applicant cases denied assistance, will be collected in sufficient quantity to produce meaningful evaluation results, as specified and approved in the evaluation plan. Data collection may cease after it is determined that a family in the research sample no longer resides in the State. The State will submit, for approval, not later than 30 days

prior to the implementation date, a plan to track and collect data regarding cases in the research sample that no longer receive AFDC benefits.

3.8 The impact evaluations will compare the experimental and control groups for statistically significant differences on selected outcome measures and will test the following research questions:

- Does the demonstration affect AFDC, Food Stamp, and Medicaid participation and program costs? Outcome measures related to this question include, at a minimum: incidence of AFDC and Food Stamp benefit receipt; AFDC and Food Stamp payments; exit and recidivism rates for AFDC; receipt of Medicaid services; and sanction rates, including age and race of those subject to sanctions.

- Does the demonstration promote self-sufficiency? Outcome measures related to this question include, at a minimum: employment rates; length of employment; amount of earned income; child support collections; total family income.

- Does the demonstration affect cooperation with paternity establishment? Outcome measures related to this question include, at a minimum: child support cooperation rates, sanction rates, and length of sanctions.

- Does the demonstration affect family structure and stability? Outcome measures related to this question include, at a minimum: marriage and separation rates; homelessness of children and adults, rate and use of foster care, status changes between AFDC-UP and AFDC-Basic.

- Does the demonstration affect the well-being of children, including their long-term prospects for self-sufficiency? Outcome measures related to this question include: measures of child well-being such as reported child abuse and neglect, health and insurance status as in extant data available from local records and medical records, and school truancy.

With the approval of the Department, additional research questions and outcome measures may also be included.

3.9 To the extent that sample size allows, the impact evaluations will include the analysis of subgroups of the AFDC population with regard to the outcome measures described in 3.8. This subgroup analysis will include, but not be limited to, cases active in the month of implementation and new AFDC applicants and the characteristics of age and race.

3.10 The evaluation will include interim and final process studies that will describe how the parts of the demonstration were implemented and operated for both the experimental and the non-experimental treatment groups. This study will, as appropriate, examine the following aspects of the demonstration:

- The organizational aspects, such as the planning process; staffing structure; funding committed; level of acceptance by field staff; and methods of project implementation at various organizational levels including ongoing monitoring, oversight and problem resolution.

- The service aspects, such as the characteristics, roles, and training of the field staff (e.g., eligibility workers and case managers); the exemption and sanctioning process; type and duration of services provided; and timeliness and scheduling in the provision of project components and services.

- The contextual factors, such as the social, economic, and political forces that may have a bearing on the replicability of the intervention or influence the implementation or effectiveness of the demonstration.

- The differences between the experimental and control groups with regard to comparable resources, services, activities, staffing, etc.

3.11 The evaluation will include a cost-benefit analysis that will seek to determine whether the costs of the demonstration are justified by the benefits produced. Comparisons will be made from the viewpoint of the program participants, the various levels of government, and society as a whole. Analyses will involve quantifying program outcomes and projecting both costs and benefits into the future. Costs for all pertinent programs will be included, whether or not they are subject to the cost neutrality requirements in Section 4 of these Waiver Terms and Conditions. Data for the cost-benefit analysis will be from

administrative and case records, as well as other sources to be determined by the State and the Department.

3.12 Additional program changes that are not applied equally to treatment and control groups or that would substantially affect the evaluation of the demonstration must be approved by the Department.

3.13 A final evaluation report integrating the impact study, the process study, and the cost-benefit analysis will be due 9 months after termination of the demonstration. The State will also have the evaluation contractor produce and make available public-use data tapes, including documentation, containing data collected during the demonstration. Prior to the conclusion of the seventh quarter ending after the implementation date, the State will submit two interim reports, one for the impact study and one for the process study. Each report will cover the first six quarters of the demonstration. Additional reports may be proposed by the State and, subject to approval by the Department, may be considered allowable components of the evaluation of the demonstration.

3.14 Public release of any evaluation or monitoring reports funded under this agreement will be made only by the Department or the State. Prior to public release of such reports, the Department and the State will have at least a 30-day period for review and comment.

SECTION 4: COST NEUTRALITY

4.0 For activities prior to the implementation date specified in 1.3 above, the Federal government will match the administrative costs related to development of the demonstration project (otherwise called developmental costs) at the applicable matching rate. Such costs may include automated systems development and changes, policy procedures development, and staff training. Not later than 15 days after the State formally accepts these Terms and Conditions, the State will submit a plan, for approval by the Department, designating which administrative costs will be treated as developmental costs for purposes of this section. This section is not intended to supersede other requirements for Federal approval for administrative costs of the programs involved in the demonstration.

4.1 Except for costs of evaluating and developing this project (as specified in 3.0 and 4.0 above), beginning with the

deemed beginning date the operation of this demonstration is to be cost-neutral to the Federal government with respect to benefit and administrative costs for AFDC, Emergency Assistance, Food Stamps, and Medicaid. For purposes of calculating cost neutrality, child care costs made under section 402(g)(1)(A)(i) and (ii) of the Social Security Act, matchable at the Federal medical assistance percentage, are considered to be AFDC administrative costs. Also, for purposes of calculating cost neutrality: a) AFDC benefit costs will be net of child support collections retained by the State: and b) overpayments recovered from AFDC cases and Food Stamp claims collected from Food Stamp households will be considered as program savings to the applicable program.

4.2 Cost neutrality computations will be made by the State on a quarterly basis. These computations will determine the Federal share of excess costs or savings of the demonstration in total, as well as separately for each program, and separately for benefit and administrative costs. Excess costs or savings of the demonstration are relative to what costs would have been in the absence of the demonstration. All costs referred to in the rest of Section 4 are to be taken to mean the Federal share of costs. In the remainder of Section 4, the term "cumulative" in the context of costs will indicate that costs are to be summed for all quarters from the deemed beginning date through the quarter in question. Costs are to be accumulated only while a case remains within the research site. The term "total" in the context of costs will mean that all benefit and administrative costs are to be summed for the AFDC, Emergency Assistance, Food Stamp, and Medicaid programs.

4.3 At least 60 days prior to the implementation date of the demonstration, the State will submit, for approval by the Department, a cost allocation plan concerning how AFDC, Emergency Assistance, Food Stamp, and Medicaid administrative costs will be determined and assigned to experimental and control cases.

Calculation of Excess Costs or Savings

4.4 The calculation of the baseline benefit and administrative costs for the experimental group described in steps (1) and (2) below will be performed to obtain separate baseline costs for benefits for each program (AFDC, Emergency Assistance, Food Stamps, and Medicaid) and administrative costs for each program. This will yield eight separate

baseline costs, which will be determined cumulatively each quarter as follows:

1) Calculate the average cost per control group case by dividing the cumulative costs for control cases by the number of ever-assigned control cases.

2) Multiply the average derived in step (1) above by the number of ever-assigned experimental cases. The result is the cumulative baseline cost for experimental cases, as applicable, for each program's benefit and administrative costs.

4.5 Each quarter the total cumulative excess costs or savings will be calculated for the experimental group as follows:

1) For each program, for benefit and administrative costs, subtract the cumulative baseline costs, as derived in step (2) of 4.4 above, from the cumulative actual costs for those in the experimental group. This will yield a cumulative excess costs or savings figure for each program for benefits and administrative costs. If the resulting amounts are positive in value, the amount reflects an "excess cost;" if negative, the amount reflects "savings."

2) Calculate the total cumulative excess costs or savings for the experimental group by summing the excess costs or savings derived from the six calculations in step (1) above. In summing excess costs or savings, savings will be taken to be negative.

4.6 The total cumulative excess costs or savings for all cases will be calculated quarterly as follows:

1) Divide the total cumulative excess costs or savings for the experimental group derived in step (2) of 4.5 above, by the cumulative AFDC benefit costs for experimental cases to derive a single excess costs or savings ratio which is to be used to determine total cumulative excess costs or savings for all treatment cases.

2) Multiply the ratio derived in step (1) above by the amount of cumulative AFDC benefit costs of all treatment cases in the State. This equals the total cumulative excess costs or savings of the demonstration. Excess costs or savings will be reconciled as described in 4.7 through 4.13 below.

Reconciliation of Costs or Savings

4.7 For the period through the fourth quarter ending after the deemed beginning date the Federal government will provide Federal financial participation (FFP) and will not, during that period, recover excess costs.

4.8 Starting with the fifth quarter ending after the deemed beginning date, FFP will be limited so that the total cumulative excess costs will be recovered from the State and eliminated by the end of the demonstration. The State will not be allowed to owe the Federal government more than an allowable overage for any quarter. For each of the 5th through the 9th quarters ending after the deemed beginning date, the total allowable overage is $5 million. The allowable overage for each of the remaining quarters is:

1) the total cumulative excess costs at the end of the 9th quarter (adjusted for any net amount of excess costs reimbursed in prior quarters);

2) multiplied by the ratio of the number of quarters remaining in the demonstration to 10.

In no case will the allowable overage be less than zero.

Reimbursement will be made for the 5th through the 20th quarters ending after the deemed beginning date such that the total cumulative Federal payments through the quarter in question will equal the lesser of:

1) the total cumulative actual costs or

2) the total cumulative actual costs, minus the total cumulative excess costs, plus the allowable overage for that quarter.

4.9 A report showing the total cumulative allowable actual costs of the demonstration to date by program and calculations of the total cumulative excess costs or savings shall be submitted to the Department within 60 days following the end of each quarter.

4.10 Within 60 days after the end of the demonstration period, a final reconciliation will be done to ensure that there are no remaining excess costs. If there are savings at the time of final reconciliation, the Department agrees to authorize FFP for approved and matchable demonstration expenses to the

extent that the total of such FFP provided does not exceed the amount of savings. If there are remaining excess costs at the time of reconciliation, the State agrees to repay the excess costs in equal quarterly amounts over the next four quarters. At the State's request, the final reconciliation can be adjusted for a period of up to 2 years after the termination of the project if additional cost data become available.

4.11 Reimbursements of Federal excess costs in accordance with 4.8 and 4.10 above, or 6.2 below, shall be made as adjustments to AFDC, Medicaid, and Food Stamp claims submitted quarterly by the State (e.g., Form ACF-231 for AFDC claims), beginning with the fifth quarter ending after the deemed beginning date. The State will send the appropriate claim forms to the agencies as required under current Federal procedures; in addition, the State will send the Federal Project officer a copy of such forms, showing adjustments made. The Department will provide the State with a methodology for appropriately allocating the costs among the affected Federal programs.

4.12 If, at the time costs are calculated under 4.5 and 4.6 above, the data on Medicaid costs are incomplete, then another method, approved by DHHS, of estimating Medicaid costs will be used.

SECTION 5: MONITORING

5.0 For the purpose of monitoring the demonstration, the State will submit to the Department, for review and acceptance, an interim implementation status report prepared by the evaluation contractor.

At a minimum, the State will report on critical implementation tasks necessary for the operation of the demonstration as approved, interim factors associated with outcome measures, and tasks or data necessary to support the evaluation. The report is to include findings on:

- implementation tasks, including but not limited to: the development and implementation of automated systems required to carry out the demonstration provisions; adequate staffing levels; staff training; and issuance of revised policies and procedures;

- interim factors related to outcomes, including but not limited to: changes in the employment take-up rate

during the interim period; changes in the take-up rate of training programs; and changes in sanction rates; and

- o evaluation issues, including but not limited to: research sample attrition rate; the availability and reliability of data required to conduct analyses as proposed in the approved evaluation plan; and the adequacy of the random assignment methods implemented.

The report will cover the first 4 quarters ending after the implementation date and must be submitted no later than 90 days after the end of the 5th quarter.

5.1 The State shall submit quarterly progress reports throughout the project period summarizing project and evaluation activities and accomplishments during the quarter as well as interim findings from the evaluation, if available, the number of demonstration participants who have reached the time-limits imposed by the demonstration, and cost neutrality reports. The cost neutrality data shall be in an integrated format approved by the Department. The quarterly monitoring reports shall indicate issues or problems and resolutions regarding the implementation of the demonstration or evaluation as approved. These reports are due no later than 60 days after the conclusion of each quarter.

Every four quarters, the quarterly progress report will be supplemented with an annual overview, summarizing the progress over the previous four quarters in implementing provisions of the demonstration and carrying out the evaluation.

SECTION 6: TERMINATION PROCEDURES

6.0 Federal financial participation in demonstration activities requiring waivers will not be provided beyond the period approved by the Department.

6.1 No later than 90 days after acceptance of these Waiver Terms and Conditions, the State will provide, for the Department's approval, a plan to phase down and end the demonstration to ensure there are no waiver-related Federal costs incurred beyond the period approved by the Department. All activities requiring waivers must cease on the date decided by the Department if the project is terminated prior to the end of the 20th quarter ending after the deemed beginning date.

6.2 If for any reason the demonstration is terminated either by the State or by the Department prior to recovery of all of the total cumulative excess costs (as defined in Section 4: Cost Neutrality), the State agrees to repay the Federal government for all such remaining excess costs. Repayment will be achieved through adjustments to AFDC, Food Stamp, and Medicaid grant awards. Repayments will be made in no more than eight equal payments, starting with the first quarter after completion of the phaseout.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION FOR CHILDREN AND FAMILIES

OFFICE OF FAMILY ASSISTANCE

WAIVER AUTHORITY

STATE: Illinois

AFDC Program waivers are granted under the Social Security Act to the State of Illinois to operate the Paternity Establishment demonstration:

Section 402(a)(1) and various provisions of the regulations at 45 CFR 205.120(a): Statewideness --to allow the State to operate the program statewide for all applicants and recipients except for those assigned to the control group in the research site as set forth in section 2.0 of the Waiver Terms and Conditions.

Section 402(a)(26) and various provisions of the regulations at 45 CFR 232.12(b) and (d) and 233.90(b)(4): Non-Cooperation and Sanctions in Paternity Establishment -- to allow the State to impose cooperation standards and sanctions for non-cooperation in paternity establishment as set forth in section 2.1 of the Waiver Terms and Conditions.

Wisconsin's Waiver Request

Legal Obstacles

- Worker displacement and minimum wage issues.
- 60 day residency requirement to apply for assistance.
- Food Stamps waivers that make families worse off.
- Shift child-only AFDC cases to Foster Care. – delay issue, too.
- Denial of benefits to citizen children of noncitizens.
- Block grant funding -- AFDC and Medicaid require matching
- Evaluation/cost neutrality – legal?

40/515
321
160/515
486
350
320
300

Major Policy Issues

1) Assurances and due process

- Job slots and child care would not be guaranteed to eligible families.
- Most adverse actions could not be appealed to the State.
- No requirement for timely determination of eligibility and provision of assistance.

2) Benefits

- Benefits would not vary by family size, resulting in significant reductions for many.
- Child care co-pays could cause net benefits to decline as family size increased.

3) Time limits

- Extensions to the time limits would be at the discretion of the contractor.

4) Privatization

- Replacement of public sector workers with contractors. – not legal?

5) Medicaid

- Waiver application based on premise of block grant and no entitlement.
- Copayments and benefit reductions. – which? premiums?
- The elderly and disabled not affected.
- Should the Medicaid and welfare waivers be handled together or separately?

Approval Process

BN?

- Traditionally handled through "terms and conditions."
- Public comment period ends July 11.

FS?

Wisconsin's Waiver Request

Legal Obstacles

- Worker displacement and minimum wage issues.
- 60 day residency requirement to apply for assistance.
- Food Stamps waivers that make families worse off.
- Shift child-only AFDC cases to Foster Care.
- Denial of benefits to citizen children of noncitizens.
- Block grant funding -- AFDC and Medicaid require matching
- Evaluation/cost neutrality

Major Policy Issues

1) Assurances and due process

- Job slots and child care would not be guaranteed to eligible families.
- Most adverse actions could not be appealed to the State.
- No requirement for timely determination of eligibility and provision of assistance.

2) Benefits

- Benefits would not vary by family size, resulting in significant reductions for many.
- Child care co-pays could cause net benefits to decline as family size increased.

3) Time limits

- Extensions to the time limits would be at the discretion of the contractor.

4) Privatization

- Replacement of public sector workers with contractors.

5) Medicaid

- Waiver application based on premise of block grant and no entitlement.
- Copayments and benefit reductions.
- The elderly and disabled not affected.
- Should the Medicaid and welfare waivers be handled together or separately?

Approval Process

- Traditionally handled through "terms and conditions."
- Public comment period ends July 11.

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SPECIAL REPORT

A Publication of Families USA, June 1996

THE WISCONSIN WELFARE PROPOSAL'S MINEFIELD: A MEDICAID BLOCK GRANT

The State of Wisconsin has proposed a radical overhaul of its welfare program – a move that has drawn significant national attention. Overlooked in the debate about the Wisconsin welfare proposal is a Medicaid minefield: the proposed "Wisconsin Works" (W-2) program would convert Medicaid into a block grant.

In some key respects, the Wisconsin proposal's health coverage is more restrictive than the Medicaid legislation recently introduced by Congressional leaders that the President has pledged to veto – a legislative proposal (H.R. 3507) introduced at the behest of Republican governors generally and Wisconsin Governor Tommy Thompson in particular. As a result of the Wisconsin proposal, health coverage for low-income people in the State will be put in jeopardy and health funds will be diverted to other, non-health purposes.

In order to implement this radical new design, the federal government must waive the requirements of several federal laws. Wisconsin's application for these waivers is now pending at the U.S. Department of Health and Human Services (HHS). At least one portion of the Wisconsin proposal is beyond the scope of a waiver and requires a change in the federal statute. There are several other problems with the Medicaid portion of the W-2 proposal that HHS and Wisconsin should correct before any waiver is granted.

The W-2 proposal repeals the current Medicaid program for families and children and replaces it with the Wisconsin Works Health Plan. The W-2 Health Plan is a significant departure from current federal law. Key changes include:

- The guarantee of health care for all people who meet the eligibility criteria is eliminated.
- Many children and families will lose health care coverage.
- Every individual and family will be required to pay a premium which, for many, will be unaffordable.
- Health services for eligible sick children will be curtailed.
- Federal Medicaid funds will be diverted from health care to pay for non-health care services.

GUARANTEED HEALTH COVERAGE WILL BE ELIMINATED

The Wisconsin Works statute states that "notwithstanding fulfillment of the eligibility requirements for any component of Wisconsin Works, an individual is not entitled to services or benefits under Wisconsin Works." The waiver application requests that the guarantee to health care for eligible individuals found in current federal law be eliminated. Thus, the W-2 Health

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Washington, DC 20201

FAX COVER SHEET

DATE:

TO: **PHONE:**
Bruce Vladeck 690-6262 **FAX:**
Diane Fatima 456-7028

FROM: John Monahan **PHONE:** (202) 690-6060
Director **FAX:** (202) 690-5672

RE:

CC:

Number of pages including cover sheet: 2

Message:

7/9

R-O mats starting

NGA 30 day waiver resp.

Other exec acts next wk

LP – summarize + decs

*FS – granters will cost
– worse off

MA – just do the analogy to asset sec, single state ag, + expansion

Entitlement
Premiums, private
$36 cost – 1956
Try to do t+c lingo; if fails, then letter
7/10

Legal – Displacement not waivable
Res req

Policy
(piggy plug) mid grd – waiver + build back
– property, etc.
LP – state seems to hv intention
Ent + appeals – gradations
Time limits – hard to do usual bec of prior 2 county waivers
– hard to combine w/private cos making decs
lots of comments
Ben Pkge – worse off – flat grant, SSI parents, cap
– withdrawing
– OK
– ↓ Issue close to cap
– dont acknowledge value of testing 2 tiered
Labor – min wage 30 hrs + trg
HHS: – privatiz. – right of 1st selection for counties
BN – bg vs. declining baseline – maybe OK w/state?
– fs

Americans with Disabilities Newsletter®

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Howard Van Lenten, Editor-in-Chief

PRESS RELEASE

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HILLSDALE, NY, June 3, 1996 Legislation will be introduced in Congress this week that will allow Gov. Tommy Thompson to implement his controversial welfare reform proposals without having to receive federal waivers from the Department of Health and Human Services (DHHS) and without conducting any hearings or receiving testimony from affected parties and their advocates. In effect, the legislation would eliminate the role of the Department of Health and Human Services in reviewing the plan as well as the 30-day public comment period that the process typically requires.

Principal sponsors of the legislation in the House are Mark Newman and Scott Klug (R's-Wis); and in the Senate, Christopher S. Bond (R-Mo.)

In a press release issued today, Howard Van Lenten, editor of the ***Americans with Disabilities Newsletter*** (ISSN 1077-2987), says that "the overwhelmingly favorable press and the public support that Wisconsin Gov. Tommy Thompson's welfare reform plan (W-2) now enjoys would vanish in the light of informed scrutiny. It is that very light that Gov. Thompson and his fellow Republicans are trying to extinguish by subverting the normal review process."

Following is the full text of the release:

Fear of public scrutiny: that can be the only reason why Wisconsin Gov. Tommy Thompson is attempting to subvert a public review of Wisconsin's welfare reform legislation (W-2). Special legislation to be introduced in the House and Senate this week would:1) eliminate the role of the Department of Health and Human Services in reviewing the plan; 2) abolish the 30-day public comment period that the review process typically requires; and 3) grant Thompson the waivers he needs to implement the plan without any hearings or testimony from affected parties and their advocates.

A look at some of W-2's more egregious provisions reveals why Gov. Thompson fears rigorous public scrutiny:

(Continued on page 2)

- With respect to the plan's provisions for people with disabilities, Jean Rogers, Thompson's welfare guru, says that the reform plan is aimed at creating a "fair and equitable" system, not one that provides special treatment for a "separate group of people." But there is nothing in W-2 that does not separate, segregate, and stigmatize the poor, particularly the disabled poor.

- W-2 will create a submiminum wage labor force, an underclass of the government's own making. At a time when our national policy calls for the full inclusion of people with disabilities in all aspects of social life, W-2 would force people with physical, mental and developmental disabilities to work in sheltered workshops (i.e., segregated employment) at sub-minimum wages, many of them for the rest of their lives. Since 41 percent of the people affected are black, and many hundreds are disabled, the plan institutionalizes a system of wages based not on the quality or amount of work being done but on the personal characteristics - the disability or race - of the worker.

- An estimated 109,000 people - mainly women, children and people with disabilities - will lose their health care coverage under the plan. True, they can buy into a state-run HMO or employers' health plans. But those plans can deny claims for pre-existing conditions for up to 12 months, and require a waiting period of *any* length of time before *any* coverage becomes effective. These provisions pose enormous economic and health risks for all W-2 participants, but particularly family members who have disabilities. Bill Broydrick, of Children's Hospital of Milwaukee says that under W-2, his institution alone "could end up with an additional $1 million in charity cases each year." W-2 drops society's safety net to the floor. If adults fail the system, or the system fails them, both they and their innocent children will suffer.

- The bill condemns parents who, for whatever reason, cannot comply with W-2 by compelling the state to confiscate their children on a scale that the foster care system cannot possibly support. Clifford O'Connor, head of Milwaukee County's Human Services Department, estimates that 10,800 children will flood his county's foster care system if only 15 percent of AFDC households are judged "uncooperative" under the W-2 plan. (That was the percentage who failed the mandatory work program when Wisconsin ended all cash relief to childless adults.) O'Connor says, "We can't handle the 6,000 we have now, let alone any more. If a parent doesn't cooperate, or they use up their time-limited benefits, or their family is too large to support on the minimum wage, or they're mentally ill and can't work, what are we going to do with the children?" House Speaker Newt Gingrich knows: he will finally get the orphanages he has always wanted.

(Continued on page 3)

- The W-2 plan is openly eugenic. Parents who dare to have two children or more will receive the identical amount of support as parents who have had a single child. And parents who were foolish enough to bring their children into the world *prior* to W-2 will be penalized just as much as those who subsequently conceive and refuse to abort.

If these and other injustices integral to the bill were aired, public support for W-2 would quickly diminish. At the very least, some of its more horrendous provisions would be modified. It is the light of public scrutiny that Gov. Thompson and his fellow Republicans are trying to extinguish through this special Congressional legislation.

# # #

VOLUNTEERS OF AMERICA CHARTS A NEW COURSE

Americans with Disabilities Newsletter®

MAY-JUNE 1996 A PUBLICATION OF POSITIVE WORKFORCE FOR AMERICA, INC. VOLUME 3, NO. 4

Wisconsin on Family Values:

"Foster care is better than welfare...

Gov. Thompson's welfare reform plan will punish those who don't cooperate by a) forcing families to give up their children to foster care and b) sentencing people with disabilities to work in segregated work-shops at sub-minimum wages.

Page 4

...and nursing homes are better than living at home."

Legislation curtailing home health care services for people with disabilities could force thousands to leave their families and move into nursing homes.

Page 9

In This Issue

In Upcoming Issues

> Institutions vs. community living
> Workshops vs. supported employment

News Briefs

CORPORATE RESPONSIBILITY

MERCK OFFERS FREE AIDS DRUG

Merck & Co. has established a program to provide Crixivan, its powerful new AIDS drug, free of charge to eligible patients until an alternate payment source can be identified.

Crixivan is one of a new class of drugs called protease inhibitors that work by destroying one of the three enzymes that are critical to HIV's reproduction. Scientists emphasize that the new drug is not a cure for AIDS or even that it prolongs patients' lives. Nonetheless, studies have shown that the less HIV in the bloodstream, the better the patient's prognosis.

SUPPORT™, Merck's program to provide reimbursement assistance to patients, is designed to help people for whom Crixivan has been prescribed to identify third-party payor reimbursement and provide free medication to eligible patients until an alternate payment source can be identified. Patients and physicians can telephone 800-927-8888 (toll-free) for information on receiving Crixivan and on SUPPORT™. The drug is estimated to cost $12 per day or $4,380 annually. ■

EMPLOYMENT

800# CREATES JOB OPPORTUNITIES

A new referral hotline - 800-955-5432 - has been established for employers interested in hiring people with developmental and other disabilities. Supported Employment Education Designs (SEED), a human resource training and consulting firm, has received a grant to established the hotline from the State Council on Developmental Disabilities and the California Department of Developmental Services. The referral services will put California employers in touch with local representatives who will work with them to identify appropriate performance areas. These areas include a variety of jobs including entry level, high turnover positions or positions that are repetitive in nature. The grant also encompasses the formation of the California Business Initiative (CBI), in which experienced business mentors educate human resources personnel on hiring people with disabilities.

Supported Employment, a nationwide initiative, provides job analysis, job matching, on-site training, and ongoing technical assistance to businesses. The program has proven to be very effective. It has resulted in the employment of more than 120,000 persons with severe disabilities over the past 10 years.

For more information, call Mindy Oppenheim at 415-552-7439. ■

CORPORATE INITIATIVE

USED COMPUTERS GAIN NEW LIVES

The Minnesota Association of Life Underwriters (MALU) is sponsoring a year-long drive to collect, refurbish and distribute used computers to people with disabilities, disadvantaged youth and their families throughout Minnesota. MALU is working with DRAGnet, a

(Continued on page 3)

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NewsBriefs

(Continued from page 2)
non-profit computer recycling operation licensed by the Environmental Protection Agency. Restoration work will be done by disadvantaged students enrolled in DRAGnet's SCRAP - Student Computer Reward Achievement Program - who earn their own computer after completing 75 hours of volunteer work at DRAGnet. *For more information* on the program, telephone 612-338-2535. ■

BOTTOM LINE

COALITION CALLS ON CONGRESS TO INCREASE INVESTMENT IN REHAB

The National Center for Medical Rehabilitation Research (NCMRR) Coalition has called on Congress to make a "significant federal investment in rehabilitation research." Testifying before a House Subcommittee, Wise Young, PhD., MD., said that while the biomedical industry has "little motivation to reduce medical costs," the federal government and American citizens have the most to gain from significant strides in rehabilitation research.

Young said that a government investment of, say, $60 million in developing an effective solution for 2,000 ventilator-dependent quadriplegics could save $500 million in medical care, disability and welfare payments. Most private companies won't consider such research, says Young, because they cannot recoup development and marketing costs without setting high consumer prices.

While opponents of rehabilitation research contend it would only lead to more costly therapies, Young cited three examples of current or pending research - focusing on ventilator dependency, bladder paralysis, and chronic pain - that could save the U.S. a total of $13.5 billion.

Young also noted that dramatic progress on realistic, cost-effective therapies should be achievable in three years. ■

EFFICIENCY

EASTER SEAL SOCIETY TOPS CHARTS IN ALLOCATION OF PROGRAM DOLLARS

For the sixteenth consecutive year, the National Easter Seal Society is first among the National Health Council's Voluntary Health Agency members in the percentage of expenses devoted to client services.

The report shows that the Society spent $254,727,000 - 96 percent of its total program expenses on services that are designed to help people of all ages and all disabilities to achieve independence.

Easter Seal services are administered through 125 community-based affiliates and include physical, occupational and speech- language therapies; vocational evaluation and training; computer- assistive technologies; equipment loans; camping and recreation; and psychological counseling and support. ■

JOBS

IBM GRANTS WILL FUND PROGRAMS IN WORKFORCE DEVELOPMENT, TRAINING

IBM recently announced the award of grants to two non-profit workforce training programs that will benefit people with disabilities. The grants consist of the outright donation of IBM equipment and software, as well as IBM consulting assistance to develop the systems and know-how necessary to use technology effectively in workforce development and training. The two grants that will help train people with disabilities are:

El Centro College (Dallas) - IBM will provide technology to El Centro College to create a comprehensive career path in digital imaging. This program will provide leading-edge technology and training to all student populations, including the physically challenged. Faculty support and professional development will be accomplished through the use of interactive teleconferencing and on-line networking. Estimated value of grant: $156,000;

Michigan Career and Technical Institute (Plainwell, Mich.) - MCTI will coordinate the Michigan Workforce Support and Development Network which is a collaborative of six non-profit rehabilitation providers, each of which offer a particular and unique expertise in some aspect of vocational rehabilitation.

IBM technology will be used to create on-line training and employment systems for Michigan's workforce, especially workers with disabilities. Through the system, persons with physical disabilities - regardless of where they are located - will be able to access training opportunities and appropriate rehabilitation services . Emphasis will be on training for the automotive, pharmaceutical and food service industries.

Pilot testing of the network begins this fall, with full operation anticipated by January, 1997. Dr. Bob Leneway, MCTI's development director, says the grant and the network itself will establish a greater community-based presence for the rehabilitation facilities and help leverage shrinking funding for rehabilitation services. Estimated value of grant: $200,000 ■

THAT's YOUR MONEY!

WALL STREET BECKONS SOCIAL SECURITY

For the first time in its history, the Social Security system - which pays benefits to 43 million retirees and people on disability - would invest some of its money in the stock market if the government follows the recommendation of an advisory council. But the Social Security Advisory Council is divided on whether individual workers should decide which stocks to buy. One plan would invest in broadly based index funds to minimize government interference in private business; in another, workers would choose how to invest funds; in a third, funds would be held by private investment firms. Currently, funds for Social Security are invested in special-issue U.S. Treasury securities. ■

WELFARE REFORM

WISCONSIN DROPS THE SAFETY NET

Sub-minimum wages in segregated workshops is the only option for the severely disabled.

In April, 1996, Gov. Tommy Thompson signed legislation that would eliminate, by September, 1997, benefits that 65,000 Wisconsin families currently receive under the Aid to Families with Dependent Children program (AFDC) along with their Medicaid health care coverage. Those affected are, for the most part, single-parent women, as well as many adults and children with physical, mental and developmental disabilities.

The legislation, called Wisconsin Works, or W-2, requires that all former AFDC beneficiaries - including people with disabilities - get a job and make co-payments for health care insurance and child care. It has been estimated that at least 20,000 families would lose money under the plan.

To be implemented, the state must receive various waivers from federal legislation. At this point, it is uncertain whether the Clinton administration will grant them or require modifications.

*In this issue, **ADN** provides an overview of the new law, and outlines some of the difficulties it will pose, particularly to families that include adults or children with disabilities. In the next issue, an attorney specializing in disabilities law will present a more detained analysis of the legislation's implications for people with disabilities, as well as reactions from welfare advocates, disability advocates and others.*

BEHAVIOR MODIFICATION Governor Tommy Thompson says the Wisconsin welfare reform plan he signed into law last month is designed to "reinforce appropriate behavior." That means getting a job. If you do not cooperate, or if you enter the program and mess up, neither you as parent nor your children get anything.

"Appropriate behavior" also means limiting the number of children that you have. With just one, the dollar amount of the benefits you receive under W-2 will be greater than what you got under AFDC. Behave "inappropriately" by giving birth to more than one child and you'll get less than you did under AFDC. Moreover, W-2 cash benefits will not vary with family size. No matter how many children you have, the amount will be the same.

All who enter the system, including people with physical and developmental disabilities, will be assigned to one of four job options by Financial and Employment Planners (FEPs), who will be employees of the county or of private agencies contracted to serve as local agencies of W-2. The entire program will be administered by the Department of Industry, Labor and Job Development, the new state agency charged with administering the program.

The FEPs' stated goal is to enroll people at the highest possible, least subsidized level of work and move them up to the next level at the earliest opportunity. The jobs to which applicants would be assigned include the following:

1) *Unsubsidized employment* in the private sector. In a stagnant job market, it has been estimated that only 15 percent of eligible participants will find such jobs.

2) *Trial Jobs* (*Subsidized Employment*) in the private sector at minimum hourly wage (currently $4.25) for those without a work background. The state would pay employers up to $300 a month to hire such workers. Participants would receive food stamps as before, but would have to make co-payments for health care and child care. An individual could participate in a trial job for a maximum of three months, with a possible three-month extension. At the end of the three months, employers would be expected to make good faith efforts (but not required) to hire the individuals as regular, unsubsidized employees. The state anticipates that trial jobs would be made available to approximately 10 percent of eligible program participants.

3) *Community service jobs*. The state anticipates that up to 75 percent of eligible participants will be required to work a 30 to 40 hour week in community service jobs, slotted "for those who need to practice the work habits and skills necessary to be hired by private business." Hourly pay: $3.19 (75 percent of minimum wage). Total monthly benefit: $555, regardless of family size, plus food stamps. Participants would be required to make co-payments for health and child care. Time limit on participation is six months, with a possible extension to nine months, and a lifetime limit of 24 months, which can be waived in the event of an economic turndown. After this, program recipients would have to find jobs in the private sector. If the recipient is not hired by the private sector, all assistance - cash benefits, food stamps, health care coverage and child care - would cease.

4) *W-2 Transitions (W-2T)*, reserved for those "unable to perform independent, self-sustaining work" even in community service jobs. This includes people with temporary or permanent physical, mental or developmental disabilities, or who must care for severely disabled children. It is unclear how many people currently receiving

(Continued on page 5)

AFDC benefits fall into this category. To receive benefits, W2-T participants would have to work 28 hours each week, and participate in education or training activities for up to 12 hours a week. The type of work provided would, in the language of the bill, "be consistent with their capabilities," but it is expected that most W-2T participants would be placed in sheltered, segregated workshops for people who are disabled. Hourly wage: $2.98 (70 percent of minimum wage). Total monthly benefit: $518, regardless of family size. Time limit for participation in a W-2T job is 24 months, with possible extensions.

Mothers of newborn children would receive a monthly grant of $555, again regardless of family size, for a period of 12 weeks following birth. After that, they would be placed in one of the four employment categories.

PENALTIES For every hour of unexcused absence from work, participants in all but the first category of work would be docked one hour of pay. If a participant failed to pay the monthly health care premium, coverage would end. And if participants did not show up for work on three separate occasions without good cause, or otherwise indicated "uncooperative behavior," benefits would be terminated - permanently.

Regarding the various time limits established for participation in W-2 work programs, the FEPs could grant extensions depending on individual circumstances and/or conditions in the labor market. If none were granted, program participants would have to find jobs in the private sector. If no such jobs were available, all assistance - cash benefits, food stamps, health care coverage and child care - would cease.

With extensions, it is quite possible that people in Community Service or W-2 Transition jobs will be forced to work at sub-minimum wage for their entire lifetimes.

One of the most egregious penalties that falls on parents who do not participate in W-2 - aside form the total loss of benefits - is the possibility that they could be forced to give up their children to the foster care system. (See "Foster Care," below).

In Wisconsin under W-2, there is no safety net. Says Rebecca Young, a Democrat who represents District 76 in the Wisconsin legislature: "If you fail the system, or the system fails you, there's no due process, there's no recourse. You're on your own."

APPEALS Despite their lowly status, FEPs would have enormous power and discretion to make decisions regarding eligibility for child care, health care, disability determinations, food stamps and placement in a work category. Under AFDC, a person has recourse to a fair hearing if aid is denied. Not under W-2. The FEPs' decisions will be subject only to a paperwork review to determine if the right law had been applied.

HEALTH COVERAGE Former AFDC recipients would no longer get Medicaid. If a participant worked for a private employer that offered a health insurance plan and paid at least 50 percent of the premium, participants would have to apply for such insurance and pay the balance of the premium, regardless of cost.

Employers could require a waiting period of any length of time before a W-2 employee was covered. Employers could also deny coverage for the pre-existing conditions of W-2 employees or their dependents for as much as 12 months after enrollment. During these "blackouts," employees would have to pay the bills for any medical care received by them or their dependents.

Absent an employee-sponsored plan, workers could sign up for the state-run W-2 health plan. Monthly co-payments would range from $20 to $143, depending on income and family size. If a participant failed to make the co-payment in any month, coverage would end.

Former AFDC recipients who become ineligible for W-2 benefits after using up their lifetime benefit limit, or who are denied participation in W-2 for whatever reason, would have to rely on charity to fill their health care needs. Bill Broydrick, a spokesperson for Children's Hospital of Milwaukee, is quoted in a Wisconsin newspaper as saying that under W-2, his institution alone "could end up with an additional $1 million in charity cases each year."

One final twist: while W-2 encourages small families (remember, you get more money than you did under AFDC if you have just one child, less money if you have more than one), it also excludes coverage for abortion procedures, whether health care is provided by an employer or by the state.

CHILD CARE Anyone participating in W-2 would be eligible for child care services if they meet certain tests: income less than 165 percent of the poverty level and family assets no greater than $2,500, excluding a home and vehicles valued at a total of $10,000 or less. The asset limit is firm; no exceptions are made for such costly items as modified vehicles and special medical equipment used by many people with disabilities. For those with the lowest income, co-payments for child care would be pegged at 7-1/2 percent of the actual cost and rise in increments of one percent for every one percent increase in income.

FOSTER CARE Just as W-2 is designed to "reward" socially acceptable behavior, it will punish families who are judged "uncooperative," in many cases by taking their children away from them. In a recent Wisconsin newspaper article, Michael Malmstadt, chief judge of Milwaukee County's Children's Court, is quoted as saying that "if we're going to take away income from a parent who refuses to cooperate [with W-2], and I see three small kids in that home and no money coming in, I'm going to have to take them into custody."

(Continued on page 7)

Welfare Reform

(Continued from page 6)

Clifford O'Connor, who heads Milwaukee County's Human Services Department, believes that an additional 10,800 children would flood his county's child protection system if only 15 percent of AFDC households failed W-2's mandatory work plan. That would put enormous strains on an already overburdened system, to the point where case workers (whose case load is five times the national average) must often place children in public shelters for up to 11 months at a time before finding room for them in foster homes.

DISABILITIES IMPACT Advocacy groups in Wisconsin are particularly concerned about the impact of W-2 on AFDC families headed by a person with a disability, or families that include children with disabilities. To address that impact, the Wisconsin Council on Developmental Disabilities developed a list of issues affecting people with disabilities under W-2 and recommended changes in the law to address these issues. Neither these recommendations nor any of the "softening" amendments proposed by W-2 opponents in the Legislature were incorporated into the final bill. The reason that no consideration was given to the special needs of people with disabilities, according to Jean Rogers, the governor's welfare expert, is that W-2 is aimed at creating a "fair and equitable" system, not one that provides special treatment for a "separate group" of people.

Following is a summary of the issues that the Council raised:

Additional costs - What is the safety net for a family whose costs of caring for a child with a disability at home exceed their ability to pay? Will W-2 protect children from foster care placement based solely on the lack of family income?

Health Care - Under what circumstances can employers' insurance companies exclude coverage for pre-existing conditions?

Work Requirements - Will a parent with a medically fragile child be excused from W-2? Will there be a time limit? If a parent so excused has a number of other children, what is the safety net to ensure adequate shelter, food, clothing and the additional costs related to the child with a disability? Will the parent of a medically fragile child be required to go to work after 12 weeks? If the child is not yet home from the hospital after 12 weeks? How will W-2 accommodate parents who might be deemed "uncooperative" but might actually have cognitive disabilities? At the W-2 Transitions level, sheltered workshops are mentioned as an option for some workers who need extra help. Will there be an equal opportunity for people at this level to participate in supported work programs with community businesses and employers?

Sick Leave - Will W-2 provide sick leave to parents who must stay home with a sick child or must take the child to a doctor or therapy?

Early Intervention - Will work requirements be flexible enough to allow a W-2 participant who has a young child with a disability to take part in the existing Birth to Three program of early intervention? How will such services be provided in the home if the parent is required to work a 40-hour week?

Access to Child Care - What happens if no child care is available for a child with special needs? If more expensive child care is the only option, will the parent be required to pay the difference? Will a parent with a medically fragile child still be required to find child care? What provisions have been made for after-school supervision of children with disabilities older than the age limit set by W-2? What happens if the parent can't find safe and appropriate after-school care? Are there any planned accommodations in work hours for a parent who has a school-age child who has a severe disability or is medically fragile and cannot be placed in child care?

Cognitive Disabilities - Will the Financial and Employment Planners receive specialized training in working successfully with adults with cognitive disabilities? Will they be available on an ongoing basis to parents who need repetitive opportunities for learning? Will parents with cognitive disabilities be unfairly punished for their inability to fully understand and comply with the rules? What assistance will be available to help parents with daily decision making to balance the work requirement and the care of their child? For example, help in understanding the severity of a child's illness, and what to do about it in relation to their work obligation?

What are the public policy implications of W-2? Does it violate the ADA? In the next issue of ***ADN****, a former fellow of the Bazelon Institute for Mental Health Law will present a critique of the Wisconsin legislation.* ■

Clifford O'Connor, who heads Milwaukee County's Human Services Department, believes that an additional 10,800 children would flood his county's child protection system if only 15 percent of AFDC households failed W-2's mandatory work plan.

A MORE VISIBLE ROLE IN PUBLIC POLICY

VOLUNTEERS OF AMERICA CHARTS A NEW COURSE

President Gould wants the VOA to address the root causes of social problems.

Two millions of Americans, the organization known as Volunteers of America (VOA) calls up images of Sidewalk Santas collecting money on street corners during the Christmas season.

Few who drop their coins and bills into the collection buckets know that VOA is the nation's largest non-profit provider of affordable housing for low-income families, the disabled and the elderly; or that it manages 210 programs in supported employment, assisted living and home health care services for people with disabilities in 97 cities around the country.

Now celebrating its 100th anniversary, VOA - along with virtually every other social service organization in the country - is re-examining its mission in the light of unprecedented changes in public policies and attitudes affecting those in need, and in the respective roles of charitable organizations, business and government in meeting those needs.

The VOA's new president, Charles Gould, says the organization's centennial "is a reminder that we've been quietly on the job for more than a century - helping people in need and giving others rewarding opportunities to serve their communities."

VOA was established by Ballington and Maud Booth, son and daughter-in-law of the founder of the Salvation Army. The Booths balked at the Army's rigid, hierarchical structure, which was modeled on the British military system. Instead, they envisioned a more democratic organization, national in scope but controlled in, and responding to the specific needs of, local communities. Their mission in 1896: "to go wherever we are needed and do whatever comes to hand."

THE NEED That basic mission hasn't changed in 100 years. What has changed is America. Today, the need appears to be everywhere, in every community; and the tasks at hand seem innumerable. Through the medium of mass communications, the problems of one community have become the problems of all. Perhaps it is only our perceptions that have changed; perhaps we only think that the problems of our society loom larger, are more intractable than those of any previous period in our history. But perceptions have a tendency to become reality. And for many, that reality is stark indeed. Each day, 60-million Americans go hungry; three million are homeless; 86-million are substance abusers; 40-million live below the poverty line, currently defined as an annual income of $13,000 for a family of three.

In the not distant past, say 20 years ago, the public service roles played by individuals, non-profit groups like the VOA, business and government meshed to create a *de facto* safety net. It was not infallible, but it did work to provide benefits and services to millions of adults and children in time of real need.

Today, however, even society's collective efforts and resources seem to be outstripped by the growing numbers of people who need help. Government at all levels, businesses, churches and social service organizations appear to be confounded by the systemic nature of the problems society faces: attacking one seems to have little ameliorative effect on any of the others.

In the past, VOA focused on helping people who fell through society's cracks, who dropped through the safety net. Today, according to many, the safety net has dropped to the floor. For the Volunteers and many organizations like it, the immediate challenge is how to spread limited resources among an ever increasing number of people who need help?

Some politicians and pundits say that churches and charities can - and should - fill the role formerly exercised by government. In fact, analysts like David Tuerck, executive director of the Beacon Hill Institute, a conservative think tank at Suffolk University, says that in cities where religious groups and charities cater to the poor,

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Who are the Volunteers?

Volunteers of America has approximately 20,000 volunteers and 9,000 full-time employees. Its 49 community-based service organizations are active in 220 cities and towns in 37 states.

Combined revenues in 1995 were $357.4 million, of which $311.7 million, or 87.2 percent, was spent directly on program services.

In 1995, VOA provided services to approximately 33,000 persons with disabilities through 210 programs in 26 states and 97 cities. Of its total revenues, approximately $86 million, or 24 percent. was spent on programs that benefit people with disabilities.

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"there's every reason to believe that the poor, on balance, would be better off."

But VOA's new president, Charles Gould, says such ideas are, at best, unrealistic. "It's difficult to imagine how we could dramatically expand our services overnight, simply because government has reduced its contribution."

Having less money overall to meet increasing needs is a reality that Gould finds "very troubling." And while devolution may be politically correct, Gould says that "we share the concerns of many service and charitable organizations about whether the states are in every case prepared to deal with the new responsibilities being proposed, and about their commitment to exercising them."

For many of those reasons, Gould believes that VOA must amend its mission statement. "For 100 years, we've been very effective at helping people on a one-to-one basis. But the core problems remain and more and more people need help. What we must begin addressing are the root causes of social problems, so that we can catch people before they fall, not after."

VOA is undertaking a number of initiatives to do just that.

- First, by establishing a new office in Washington, DC, it will be taking a much more public stance on issues affecting its core constituency;
- second, to support that strategic objective, VOA will soon be moving its national headquarters from New Orleans to a location more accessible to policy shapers and colleague organizations;
- third, the Volunteers will become proactive in helping to educate the nation's youth, as well as church and community groups, about the problems facing the nation and the role they can play in alleviating them;
- finally, the Volunteers will be making much greater use of the media, not solely to promote itself and its successes, but to educate people nationwide on the social problems facing the nation, and on the role individuals and community groups can play in helping to solve them.

Perhaps the most significant step is the establishment of a presence in Washington, DC. "If we hope to get at the root causes of social problems," says Gould, "we have to have a voice in shaping public policy on those issues. I'm very alarmed about the content and tone of the current political debate, about all of the accusations and assumptions being thrown about. And I'm especially concerned that the people we represent are not themselves well-represented in public policy debates."

Gould believes a presence in Washington is essential for the VOA as it enters its second century. "It's where all of America's social problems are debated. Because we believe that so many of those problems are inter-related, and because we have a lot of experience in addressing them successfully," says Gould, "Washington is a natural place for us to share our ideas with others and to have a positive impact on the outcomes of those debates."

To head the new office, Gould has appointed Carol Frazer Fisk to the newly-established position of Director of Public Policy. Fisk appears to be ideally suited to the challenge. She served from 1990 to 1995 as the first Executive Director of the Assisted Living Facilities Association of America and, for five years prior to that, as U.S. Commissioner on Aging, appointed by President Reagan.

What qualifies VOA to participate in public policy debates? "We have real knowledge about people that are most needy," says Fisk. "We have 100 years of experience working with people who are disabled, elderly, homeless, with children, the mentally ill and mentally retarded, and with substance abusers. These are society's most vulnerable citizens. We know a lot about what works and what doesn't in helping them become self-sufficient. I think that qualifies the Volunteers to educate, to lobby and to advocate on their behalf."

Fisk says that a presence in the Capitol will also "help us to build relationships with others who share our goals, serve as the eyes and ears of our affiliates and assist them in their dialogues with state governments and local communities."

Establishing a national presence for an organization that has traditionally worked

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Housing Leader

At age 36, Earl Hegginbotham has lived in 20 different settings, including a huge, state-run institution. Today, Earl has a one-bedroom apartment in a supported living program sponsored by VOA. He works in a nearby nursing home. Having lived in one himself, Earl says he knows have important it is to take special care of people.

> "I love living on my own. My apartment has a blue upholstered couch and my refrigerator has plenty of ice cream in it. I don't ever want to live like I did before. I've always wanted to be on my own. And now, finally, I am. My place is special because it's all mine. I spend a lot of time at work, I'm the first one there in the morning. I like taking care of the old people. I push them in their wheelchairs wherever they want to go. It makes my heart feel good. My daddy used to tell me that I couldn't keep a job for two days. But now I've got one and I'm going to keep it. I'm proud of it."

Since 1982, VOA has invested $49.4 million in specialized housing for people with physical and developmental disabilities or chronic illnesses. Fifty-nine apartment complexes have been built or are under construction. VOA's Independent Living Initiative combines expertise in housing and human services. Local VOA agencies provide residents with services such as supported employment and training in living skills.

PERCEPTIONS OF WISCONSIN

DISABILITIES READINGS

Excerpts on disabilities issues from a variety of sources

NEWSPAPER ARTICLE

Families Make Pleas For Disabled Services

Excerpts from an article by David Callender that appeared Feb. 22, 1996, in the **Wisconsin State Journal**.

Martha Desjardins fought back tears as she tried to tell a panel of officials from the [Wisconsin] Department of Health and Social Services what new cost controls on home care services have meant to her and her 36-year-old disabled daughter.

"I wish I knew who to hate," she said. "I want all of you to know how bad I feel. We are being made to jump through hoops..."

Desjardins was one of about 40 people who vented their frustrations...over a new state law that limits how much Wisconsin will spend on home care for elderly and disabled people.

The policy affects an estimated 1,300 people...most ...concentrated in Dane County, which has traditionally offered the highest levels of service to people with...disabilities.

In Martha Desjardins' case, the 10 hours of help a day her daughter Terri receives from an attendant has allowed Terri Desjardins to...work toward a degree in medical coding.

Without the help, Martha Desjardins, who has severe arthritis, and her aging husband wouldn't be able to care for their daughter.

The new cost controls, officially known as community care caps, were enacted by Republican lawmakers and signed by Gov. Tommy Thompson as part of the 1995-97 state budget. Lawmakers who backed the caps included then-Sen. Joe Leean,...who is now secretary of DHSS.

Leean and other officials have said previously that the caps are needed to keep Medicaid spending in line. Without the caps, Leean and others contend, there are no limits to how much the state can spend to care for a single disabled person.

Disabled and elderly people are subject to the caps if their state-funded home care costs exceed $2,325 a month - which is the state-funded average cost of a nursing home bed. Individuals whose costs exceed the caps are supposed to find ways to cut corners.

Those who can't cut their costs enough to fall under the $2,325 a month cap run the risk of being sent to a nursing home....

The state has provided some exemptions....Disabled people now receiving home care who fall under the caps can apply for an exemption if the 10 "closest" nursing homes within a 50-mile radius of their homes won't accept them.

But that policy - and the related "hoops" Desjardins referred to - have caused people...agony, uncertainty, and confusion....

In Dane County, for example, some

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behind the scenes in local communities will not be easy. But the local VOA affiliates will be doing their part back home. Both Fisk and Gould noted that the presidents of the affiliates are being encouraged to get more involved in broadcasting their successes and to develop measurable criteria for quantifying them, in terms that the general public and public officials can understand and appreciate.

VOA has even turned to the media to help spread awareness of its role as a social problem solver. In March, a documentary film that examines the history and work of the organization began airing on public television nationwide. The program is a two-part episode of The Visionaries, the Public Broadcasting System's acclaimed series on the volunteer spirit in America.

Finally, the Volunteers are moving into the nation's classrooms. In connection with its 100th anniversary celebrations, VOA has developed an in-depth study guide entitled "The Spirit of America." Its purpose is to educate young people about the social problems facing the country; and give them an opportunity to choose, plan and implement a project aimed at making a difference in their own community. Says Gould, "We think it's important to impart those values to young people."

For an organization that has traditionally carried out its role with little fanfare, VOA's new public posture is a marked departure from the quiet, discrete role it has played in the past. Gould emphasizes that "it's not about promoting ourselves but about communicating our experience in solving real problems in communities across the country.

"A lot of people think that it's genius that creates significant breakthroughs. But it's really the incremental application of sound ideas that creates positive change," says Gould. "We know something about a lot of the problems facing the country. Now we're ready to share them."

For more information about the Volunteers of America, or for a copy of the study guide, write: VOA, 3939 N. Causeway Blvd., Suite 400, Metarie, LA 70002; TEL: 800-899-0089; Internet: **hhtp://www.voa.org** ■

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clients deliberately avoided calling certain nursing homes...known to have available beds...because the[y] had a poor reputation for caring for disabled adults.

State officials now say that clients must call those homes or risk losing their Medicaid home-care funding.

...DHSS officials...blamed the Legislature for enacting an unclear law.

Originally, clients were supposed to call the 10 nursing homes to see if there were beds available every six months....[C]lients [now] have to call once a year.

Diane Stevens...attended the session on behalf of her 25-year-old daughter Heather, who requires attendant care because of a brain injury she suffered in an auto accident.

The notion of sending her daughter to a nursing home troubles Stevens, who said she reluctantly placed her aging parents in a nursing home several years ago.

"It practically killed my dad. I can't conceive of it. Heather is severely disabled, but she has a wonderful sense of humor, and she just enjoys life. It would just kill us," she said.

NEWSPAPER ARTICLE

A Law that Destroys People's Lives

Excerpts from an article by Molly Cisco, who identifies herself as a registered voter and taxpayer, that appeared in the Apr. 1, 1996, issue of the **Wisconsin State Journal**.

There is an old saying that...[i]f you have a weak stomach, there are two things you should never watch being made - laws and sausages.

I recently took the time not only to watch laws being made, but also to join with hundreds of others who participated in the process....We realized that an unjust law had been created that would deny freedom and dignity to more than 1,500 elderly and disabled people....If providing care to people in their own homes costs too much, this law will force them, against their will, to move into nursing homes (which do not have the same cost rules).

Fortunately...Judge Moria Krueger [has] issued a temporary injunction stopping the caps until the state holds hearings and submits its rules to legislative review.

I, and many others, believed that this law should be repealed, and that we should have...a voice in our government and be heard at our State Capitol on this issue. That seemed to be my first mistake....

Because of the appalling performance I witnessed over the past several months and especially the highlights of the March 25 and 26 Assembly floor session, I have created the first annual Laws and Sausages Awards.

Laws and Sausages Award No. 1 to Gov. "Let's Stick It to 'Em" Thompson for coming up with the idea of home care caps to begin with.

Laws and Sausages Award No. 2 to the members of the Legislature's Joint Finance Committee for endorsing and expanding the home care cap....Next time, ask a few questions. That would save a lot of heartache.

Laws and Sausages Award No. 3 again goes to Gov. Thompson, whose abusive veto power changed a bad law into a mean and vicious law....

Laws and Sausages Award No. 4 to Secretary Joe Leean....Now that you are secretary of the Department of Health and Social Services, you figured out a way to implement the cap in the most cruel and confusing way. When asked why, you blamed legislators who passed it (weren't you one of them?).

Laws and Sausages Award No. 5 again to Joint Finance for burying the bill to repeal the home care caps. Constituents flooded the Capitol with phone calls and letters asking for your help. All you did was make empty promises and run away from the issue. What were you afraid of?

Laws and Sausages Award No. 6 to Rep. Carol Owens (and all others who agreed with her), who, in her Assembly floor speech, insulted the people with disabilities by suggesting that their participation in the democratic process was only a manipulation by the minority party....Just because people use wheelchairs doesn't mean they stop being citizens.

And finally, Laws and Sausages Award No. 7 to the entire Republican Party....You were faced with a tough issue. Shame on you for not taking a stand on a law that is destroying people's lives....

Now that this legislative session has come to a close...I hope we have the courage to face the tough issues in the questions we ask candidates.

For me, I will ponder the lesson in civics I learned this winter and become even more committed to democracy than ever before. I also plan on making sausage because -- after what I just watched -- it can't be all that bad.

EDITOR'S NOTE *Lynn Breedlove, who heads the Wisconsin Coalition for Advocacy, says that the bill placing caps on home health care services "simply lines the pockets of the nursing homes." It was the Coalition that recently won a court ruling that postpones the implementation of the caps until the legislature holds hearings on the measure and develops formal rules governing its administration. Breedlove says the issue has brought together the elderly and people with disabilities in common cause. "They are united in supporting the right of people to live in their own homes and in opposing a measure that forces them into nursing homes against their will." Advocacy groups for the disabled and the elderly plan to make the bill a major issue in the November, 1996, election in which all members of the Wisconsin Assembly and half of the Senate are up for re-election.* ■

DISABILITIES LAW

RECENT COURT CASES

Summaries of important decisions in workplace legal actions

DO EMPLOYER'S CORRECTIVE STEPS PRECLUDE A HARASSMENT CHARGE?

In accordance with a college policy limiting part-time employee hours, plaintiff - who has a disability - was dismissed along with two other instructors when they exceeded 1,040 hours of work. Plaintiff sued under the ADA, claiming discrimination and workplace harassment. *On the discrimination charge, the court ruled that summary judgment in favor of the defendant was appropriate*, stating that "where the defendant puts forth a legitimate non-discriminatory reason for the adverse action, the plaintiff must demonstrate the proffered reason was a pretext for discrimination. Plaintiff has offered no such evidence. Plaintiff's contention he was subject to discriminatory comments from fellow employees...does not establish pretext because the comments were not made by any decision maker." *On the harassment charge, the court also granted summary judgment for the defendant.* The court stated that while there as sufficient evidence of harassment, "plaintiff must show that the employer knew...of the alleged conduct, and failed to take prompt and remedial action. "Both times plaintiff complained to supervisors [about fellow employees calling him "Hop Along" and "cripple"], corrective measures were taken [supervisor who made comments was transferred to another department and plaintiff given a new supervisor, and other employees were reprimanded]." And while one employee's comments continued, "there is no evidence plaintiff made [his supervisor]...aware of this fact...[and] no material evidence that management condoned or ratified the discriminatory comments..." **Spells v. Cuyahoga Community College, U.S. District Court, Northern District of Ohio, Eastern Division, June 21, 1994.**

CAN CORPORATE OFFICERS BE HELD PERSONALLY LIABLE FOR DISCRIMINATION?

Seven former employees of steel company were dismissed in a cost-cutting program 'to lay off some of the more costly, older and less healthy' workers and sued under the ADA and age discrimination act. In this action, individual defendants move to dismiss plaintiff's complaints against them personally, arguing that as a matter of law, they cannot be held personally liable under these statutes. Plaintiffs contend that defendants are liable based on the ADA's definition of an employer as 'a person engaged in an industry affecting commerce who has 15 or more employees...and any agent of such person.' *The Court ruled in favor of dismissing the charges as they apply specifically to the individual defendants*, stating that while "several Courts of Appeal have addressed this issue...they have failed to reach consensus." Nonetheless, the court noted 'a particularly influential opinion' addressing this question issued by the Court of Appeals for the Ninth Circuit 991 F.2d 583 [61 FEP Cases 948]. Quoting from that decision: 'The statutory scheme itself indicates that Congress did not intend to impose individual liability on employees. Title VII limits liability to employers. Title VII limits liability to employers with 15 or more employees...in part because Congress did not want to burden small entities with the costs associated with litigating discrimination claims. If Congress decided to protect small entities with limited resources from liability, it is inconceivable that Congress intended to allow civil liability to run against individual employees.' **Hrosik v. Latrobe Steel Co., U.S. District Court, Western District of Pennsylvania, April 25, 1995.**

DOES DIABETES QUALIFY AS A DISABILITY UNDER THE ADA?

Dismissed from her job in a county tax collector's officer, after 14 years employment, plaintiff alleges she was fired because of her diabetes and sued under the ADA, alleging discrimination on the basis of a physical disability. In this action, the defendant moves to dismiss on the grounds that the plaintiff does not have a legitimate claim. *The court denied the defendant's motion.* It quoted the ADA's definition of disability as including 'a physical or mental impairment that substantially limits one or more of the major life activities of the individual...[i.e.,] significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which an average person in the general population can perform that...activity. Moreover, the existence of an impairment is to be determined without regard to mitigating measures such as medicines...' "Plaintiff alleges that because of her diabetes, she is 'forced to rely on medical assistance to perform major life activities and to survive' and that she 'would lapse into a coma without insulin.' "The Court finds that Plaintiff has stated a claim under the ADA." **Canon v. Clark, U.S. District Court, Southern District of Florida, April 25, 1995.**

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IS A SUIT UNDER STATE LAW PREEMPTED BY ERISA?

Two days after he told his employer that his daughter required a liver transplant, plaintiff was fired for allegedly playing a computer game during work hours, which was against company policy. Employee sued, claiming he was terminated because his employer wished to avoid paying for his daughter's medical treatment, in violation of the unlawful discrimination provisions of both the California Fair Employment and Housing Act (FEHA) and the ADA. Employee sued in state court, and in this action, employer contends that the Employee Retirement Income Security Act (ERISA) preempts employee's cause of action and should be the sole governing statute. The Court ruled that ERISA does not PREEMPT action under FEHA and the ADA. The Court said that while "ERISA preempts state laws as they relate to any employee benefit plan," but cited a Supreme Court decision (*Shaw v Delta Air Lines, Inc.* 463 U.S. 96), which held that "if the state law prohibits conduct which is unlawful under federal law, then the state law is not preempted." The Court held that while Shaw dealt with a state statute that was parallel to Title VII, the same reasoning applies to a state statute that is parallel to the ADA....The pivotal question...is whether or not plaintiff's allegation, that he was fired to avoid payment of medical benefits for his daughter's liver transplant violates the ADA. It appears that such conduct does violate the ADA... [in which discrimination is defined as 'excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship....Plaintiff's...cause of action is not preempted by ERISA and the Court must remand the case to state court." **Le v. Applied Biosystems, U.S. District Court, Northern District of California, April 27, 1995.**

DOES AN 8 A.M. BOARD MEETING DISCRIMINATE AGAINST THE DISABLED?

Defendant, the board of directors of a county mental health center, was sued by an advocacy group on behalf of mental health consumers for discriminatory action under the ADA in holding its meetings at 7 a.m. Plaintiffs contend that the meeting time effectively eliminates participation by persons whose medications for mental illness have a sedative side effect and who cannot function before 10 a.m. In response to consumer complaints, the Board changed its meeting time to 8 a.m., provided time for public input after 9 a.m., scheduled quarterly "town-hall meetings at rotating times and places; and videotaped its sessions for free distribution to the public." Plaintiffs argue that such accommodations were insufficient to address their primary concern, i.e., to observe and participate during the board's decision making process and subsequently file this action. The court found that plaintiff had proven that both the 7 a.m. meeting time and the accommodations offered in lieu of full attendance at board meetings were not sufficient. "The burden was on the [defendant]...to establish, by a preponderance of evidence, that changing the board meeting time from the current time of 8 a.m. to 9 a.m. or later would cause an undue burden or fundamentally alter the nature of the board. There is no [such] evidence..." **Dees v. Austin Travis Cty. Mental Health, U.S. District Court, Western District of Texas, Austin Division, June 16, 1994.**

IS UNLAWFUL PUNISHMENT FOR ZONING VIOLATIONS AN ABUSE OF THE ADA?

After plaintiff sought several zoning variances to operate a home for recovering addicts, he alleges that zoning officer, who owned a home near plaintiff's and feared variances would reduce property values, tried to force him to leave the township. Zoning officer issued various zoning violations against plaintiff and a township police officer sought plaintiff's involuntary commitment to a mental institution. Plaintiff was involuntarily committed, released four days later and left the township, fearing further action against him. Upon his return, he again sought variances (some of which were granted). He alleges that zoning officer then enlisted the aid of plaintiff's neighbor in getting him involuntarily committed. As a result, plaintiff was again committed to a mental institution, and his home was boarded up and declared unfit for human habitation. Upon his release, he sought injunctive relief from this court, resulting in the parties stipulating that he could return to his home if he completed certain repairs. In this cause of action, plaintiff sues under the ADA, claiming defendants unfairly applied the state's involuntary commitment provisions and the township's zoning ordinances against the plaintiff. Defendants claim that 1) this allegation is insufficient to make out an ADA claim; 2) that plaintiff is not a person with a disability, and 3) that they could not have discriminated against him because they were authorized by law to cite him for zoning violations and to commit him involuntarily. *This court denied the defendant's motion*, stating that the claim (1) that "by attempting to drive him away from the Township, boarding up his home, and seeing that he was involuntarily committed, the Township treated him differently from others who violate...zoning ordinances....[thus qualifying] as discrimination, or differential treatment, by a public entity." The court found re: claim (2) that, "by alleging that his disability entitles him to disability benefits, plaintiff has sufficiently alleged that his disability substantially limits a major life activity." Re: claim (3), the court stated that "...plaintiff does not allege that he never violated Township land use regulations....[T]he allegations center upon the Township's alleged decision to inflict unlawful punishment upon him...." **Musko v. McCandless, U.S. District Court, Eastern District of Pennsylvania, May 1, 1995.** ■

Americans with Disabilities Newsletter®

P.O. Box 365, Hillsdale, NY 12529 - 0365 Telephone/FAX: 518-325-5260

Howard Van Lenten, Editor-in-Chief

5 June, 1996

Bill White
Public Liaison for People with Disabilities
The White House
Old Executive Office Building
Washington, DC 20502

Dear Bill:

Enclosed is a copy of a press release distributed on June 3, 1996, relating to the Republican bills that would exempt Wisconsin's welfare reform legislation from federal review and the 30-day public comment period.

Also enclosed is a copy of the May-June, 1996, issue of our newsletter, with a major article on the legislation.

If I can be of any assistance on this matter, please telephone me at 518-325-5260.

Sincerely,

Howard Van Lenten
Editor-in-Chief

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

14-Jun-1996 09:21pm

TO: justice

FROM: owner-justice

SUBJECT: Wisconsin Welfare Waiver

Weird SSI / non-dis kids
Dis child - stuck in
lowest ring)
must be out
of house

Ring 4

Justice For All

beckyo@names.org

Wisconsin Welfare Waiver

JFA recently wrote about the Wisconsin Waiver request and the destructive things it would do to the Medicaid program. We have learned more troubling aspects of this waiver as it applies to the work requirements. Individuals desiring to comment to their respective Members of Congress or to the Dept. of Health and Human Services can utilize the information as they see fit.

Wisconsin Works (W-2) legislation would differ from any other in the nation. Under this program, instead of offering cash aid, a W-2 agency would offer eligible families a subsidized job or a position in a work program. While this may sound attractive/appealing on the onset, upon further study there are a number of very troubling features.

W-2 would provide no assurance of work slots for unemployed parents or of needed child care assistance. Under the legislation, no family would be entitled to benefits or services. As a result, there would be no responsibility to offer a work slot to a parent who needed one. If program costs were higher than anticipated, or an economic downturn resulted in an unanticipated increase in the number of needy families, the state would have no responsibility to provide employment positions or guarantee the availability of child care assistance for W-2 participants or any other working family. Even if there is no funding shortfall, there is no assurance of employment positions or needed child care under the legislation.

For most program participants, W-2 would provide a flat grant (either $555 or $518) a month if the parent fully complied with program rules. The same grant amount wuld be paid regardless of family size. The result would be a reduction in the assistance level to all families with four or more members(currently about 28% of Wisconsin's AFDC families). Families with three members could also be poorer if they incur child care costs, since all families are required to contribute to the cost of child care under W-2.

Under current law, if a parent with two children is disabled and

receiving SSI, the state makes a month assistance payment of $440 for the children. Under W-2, that payment would be reduced to $154.

Many families in which a parent is working and earning minimum wage will be made poorer. Under current law, a parent earning minimum wage may qualify for AFDC as an income supplement; as an AFDC recipient, the family qualifies for child care assistance and Medicaid. Under W-2, the family will no longer qualify for an AFDC income supplement, and will face copayment requirements for child care and health care. As a result, one effect of W-2 is to make the poorest working poor families poorer.

Under W-2, families in which a parent or other family member is incapacitated would receive a grant of $518, subject to a 40-hr. work week participaton requirement and reduced by $4.25 for each hour of nonparticipation without good cause. For any family with two or more children, the effect will be to reduce aid for those in full compliance with program rules. 56% of Wisconsin AFDC families have two or more children.

An overview of employment positions to be offered for those that cannot find their own line of work, the W-2 agency will offer the following:

*trial jobs, in which the W-2 agency would provide a wage subsidy of up to $300 a month for full-time employment for employers who employ the individual at a rate of pay no less than the minimum wage, and who agree to make a good faith effort to retain participant after the wage subsidy terminates;
*community service jobs designed to provide work experience and training. Individuals could be required to work up to 30 hours a week in a community service job(CSJ) and could be required to participate in education and training for up to 10 hours a week. The individual would be paid a monthly grant of $555, with the amount reduced by $4.25 for each hour that the participant fails to participate in a required activity without good cause;
*transitional placements for those who have been or will be incapacitated for at least 60 days, are needed in the home because of illness or incapacity of others, or are incapable of performing a trial job or CSJ. Individuals may be required to participate for up to 28 hours a week in work activities(such as a community rehab program, a job similar to a CSJ, or a volunteer activity) and in other activities, such as alcohol or drug evaluation, assessment and treatment, mental health activities, counseling or physical rehabilitation, or other activities consistent with individual's capabilities. Individuals may also be required to participate in education or training activities for up to 12 hours a week. Participants will receive $518 a month, reduced by $4.25 for each hour that participant fails to participate in a required activity without a good cause.

Drug dis child - lower benefit

Parents of Infants under W-2 program are the only exception to the requirement to participate in an employment position to receive a grant will be for families with a child less than 12 weeks old.

The time limits in each W-2 component would generally be limited to 24 months, with case-by-case exceptions possible. After sixty months, an individual would be ineligible for any W-2 employment position, with case-by-case exceptions possible. Since there is no legislative requirement tht eligible families receive an employment position, it is possible that assistance for an

eligible family could be terminated before the family reached a 24-month or 60-month limit.

Further, families in which a parent is working will be left in deep poverty because they will not qualify for the federal Earned Income Tax Credit. Most participants in W-2 employment positions will be paid a grant rather than wages. Participants in trial jobs will receive wages, but the state estimates that most participants unable to find unsubsidized employment will be in community service jobs or transitional placements, where wages are not paid. These program participants will not qualify for a federal Earned Income Tax Credit. If a family of three was instead paid a wage of $555 per month, the family would have a gross annual earnings of $6660, and qualify for a federal EITC of $2664. However, since such a family will not qualify for the EITC, the family will be left with earnings far below the poverty line of $12,980 for a family of three.

Ring 3+4 - not wages

If anyone is interested in writing comments to the Dept. of Health and Human Services please do so. There is much more to this plan and if interested, HHS can mail out complete copies.

JUSTICE FOR ALL!!!

Becky Ogle
E-mail: beckyo@names.org
Voice: 703-836-6263

but No EITC for welfare pymt either!

Background on Wisconsin Welfare Waiver (W-2)

- W-2 is based on state legislation that would eliminate the AFDC program by 1999. W-2 instead offers placement in jobs, child care, and health care coverage to families.

- Payment amounts are based not on family size, but on job placement according to a 4-step career ladder: unsubsidized, trial job, community service, transitional placement. Parents with a child less than 12 weeks old are exempt from work requirements.

- Participation in job placements is limited to 24 months, with extensions at the state's discretion. Lifetime participation is limited to 5 years.

- Like many waiver requests HHS has received, the waiver does not provide protections for those who "play by the rules" but are unable to find work when they hit the time limits. This has been a sticking point in several states (Massachusetts, Virginia). HHS has always insisted that there be exceptions to the time limits in such cases.

- The state would not guarantee employment or child care to all eligible families. The state would replace the AFDC fair hearing process with one that would allow individuals to appeal to the state decisions on financial eligibility only, would not continue benefits while an appeal decision is pending, and would not restore incorrectly lost benefits.

- The state proposes a 60-day residency requirement, which may have constitutional problems.

- The state proposes to weaken protections for regular employees against being displaced by W-2 participants, but this does not appear to be legally waivable.

- Children whose parents get SSI would have their monthly payment reduced from $248 per month to $77 per month.

- There is a potential ADA issue in that the lowest rung in the 4-step job ladder ("Transitional Placement") pays a lower benefit than the next step up the ladder ("Community Services" jobs). To the extent that the state plans to limit people with disabilities to the lowest rung, there may be an ADA claim. However, it should be possible to ameliorate this concern.

- The state would not exempt from work in a systematic way parents who are needed in the home to care for disabled children. Also, it is not clear whether child care would be available for children with disabilities.

- The state would require copayments for child care based on family income and category of care used. The concern has been raised that, since these copays are more than merely nominal, this will give families an incentive to choose substandard care.

- Work assignments in the Community Services and Transitional Placements programs might be compensated at less than the minimum wage.

- Private companies would be selected to run eligibility and benefit programs.

Health Care

- Medicaid for AFDC recipients is replaced with a health plan that would cover families with incomes up to 165% of the poverty level. Families participating in W-2 will remain eligible for health benefits until their income exceeds 200% of the poverty level for 2 consecutive months.

- All W-2 enrollees are required to enroll in managed care. There is no guarantee of a choice of plans.

- Families must pay premiums to retain their health coverage. The premium is $20 per month for families earning up to 159% of poverty. The premium rises to $143 per month for families earning up to 200% of poverty. In past waivers, HHS has allowed states to impose premiums on those made eligible through the waiver, but not on categorical eligibles.

- Families who fail to pay premiums lose health coverage. HHS has insisted on good cause exceptions in past waivers.

- W-2 work participants whose employers offer them private health insurance must accept it, and will lose Medicaid, as long as they are not required to pay more than 50% of the cost of the coverage.

- There are no minimum standards for employer-sponsored private health plans.

- Benefits are more limited than the current Medicaid package. The treatment component of EPSDT is restricted to those services covered under state plan amendment. There are also limits on home care, skilled nursing care, and treatment of drug abuse/alcoholism.

- W-2's health plan will cover more people than the current AFDC Medicaid program.

- There are severe sanctions for failing to cooperate with child support. Under current Medicaid law, only non-cooperating adults lose eligibility, while the children n of those adults maintain Medicaid eligibility. Under W-2, children would lose eligibility.

- It is not clear whether the waiver is budget neutral by the Administration's standards. However, it is difficult to know without considerably more information from the state.

HEALTH CARE FINANCING ADMINISTRATION

ADDRESSEE:
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Diana Fortuna
Chris Jennings

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FROM: Meg Holland for Kathy King

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C+5	395-3888 456-7431	6/14/96

REMARKS:

For the 1:00 Conference Call.

WISCONSIN WORKS (W-2) PROPOSAL
MEDICAID ISSUES AND CONCERNS

Eligibility

We are concerned that the elimination of categorical eligibility for AFDC- related Medicaid eligibility will have adverse impacts on current categorical eligibles despite the program's eligibility expansion to 165 percent of the Federal Poverty Level. This could occur under the following scenarios:

- Under W-2, eligibility to receive health care services would be contingent upon the mandatory payment of premiums, with the loss of health services for any month which premiums are not paid with no forgiveness of any kind. Under current Medicaid law, no premiums can be imposed on categorically eligible people with the exception of a limited premium for the transition benefit. In addition, the W-2 premiums would even apply to families with pregnant women and children.

- The employment-related requirements proposed under W-2 also require that categorical eligibles accept employer subsidized health benefits, (50 percent or greater), and unsubsidized employer health benefits (if offered) after twelve consecutive months of employment even if the health benefits are less comprehensive than Medicaid and the premiums may be beyond their ability to pay. Eligibility for health benefits under W-2 will be denied to individuals (including current categorical eligibles) who have had access to employer-subsidized health insurance in any of the 18 months prior to applying for the W-2 Health Plan.

- Low income individuals who disenroll from the W-2 Health Plan may not become eligible again for 6 months, regardless of income and thereby denying health benefits to those who would be otherwise eligible for Medicaid. Although, these restrictions do not apply to pregnant women and children under age 12, they appear to apply to families with children between ages 13 and 18.

The imposition of cost sharing through either premiums for the W-2 Health Plan or premiums for employer health benefits could result in low income individuals losing access to health care. Has the State considered special arrangements to assure access to health care for individuals who cannot afford cost sharing or lose eligibility for the W-2 Health Plan?

The State should provide its estimates of how many current eligibles would lose eligibility for Medicaid under W-2, and what the estimated range of cost sharing would be under employer-sponsored health benefits.

Child Support Sanctions

In the W-2 proposal, there are severe sanctions for failing to cooperate with child support. Under current Medicaid law, only non-cooperating adults lose eligibility, while the children of those

adults maintain Medicaid eligibility. Current law also allows non-cooperating pregnant women to keep eligibility until 60 days after the pregnancy. However, under W-2, non-cooperating adults, pregnant women, and their children all would lose eligibility. How will the State assure that pregnant women and their children will gain access to needed health services?

Time Limits

We are concerned that the imposition of a 60 month lifetime limit for participation in all the W-2 employment programs could result in the loss of health benefits for current categorical eligibles if they are either not placed in a W-2 subsidized position, or at the end of the 60 month lifetime limit they do not have independent self-sustaining work and have not been granted an extension. We need clarification if these individuals will be provided access to health coverage. Will the State help these individuals get needed health care or access to health insurance coverage?

Reduction in Services

We are concerned that the benefit package for categorical eligibles is less comprehensive than what is currently offered under Medicaid. Under W-2, the State will not be required to offer children any medically necessary health care identified as a result of an EPSDT screening. Other reductions in services include limits in home care, skilled nursing services, and alcohol and drug abuse services. In addition, without a guarantee that the employer insurance and W-2 Health Plan have similar benefit packages, categorical eligibles may be forced to choose between a bare bones plan (for which they could face substantial premiums) or no coverage at all. How will access to needed services be achieved? Will the State provide any assistance to individuals seeking information on health care coverage?

Access

While the state anticipates that most W-2 recipients will live in areas in with two or more HMOs, there is no guarantee that recipients have of a choice of health plans. The W-2 proposal also does not provide information on access to services provided by current Medicaid providers (i.e. certified nurse practitioners, nurse midwives, and Federally Qualified Health Centers). Please clarify how access to these services will be achieved. We also need additional information on how Native Americans will have access to health care under the W-2 program.

Administration

Despite the mandatory enrollment into managed care, there is no information provided on the structure and oversight of the managed care network. Will the State continue its current quality assurance requirements and monitoring? Will the plans be required to submit person-level encounter data?

The program will be administered by a local, non-government agency without apparent oversight, monitoring, or accountability of the State Medicaid Agency. What will be the role of the State Medicaid Agency in oversight and monitoring of the local agencies?

We are concerned that there is also no appeal and review process under the W-2 Health Plan either for eligibility or for benefit decisions that may result in a negative impact on categorical eligibles.

Budget Neutrality

Because the State is proposing an eligibility expansion, we will need to agree on budget caps which will assure the demonstration is budget neutral from a Title XIX perspective. The State will need to provide HCFA with 5 years historical data on the per capita Medicaid cost for the affected populations and projected demonstration with and without the waiver.

Health Insurance Coverage/Premium Fact Sheet For Wisconsin W-2

We were hoping to have Wisconsin specific answers to each of the following questions. Unfortunately, within the time allotted, we were only able to find national level data for most of the questions. The Office of Management and Budget is in the process of analyzing data from the Current Population Survey to develop Wisconsin specific estimates that can be used to answer some of these questions. They anticipate having these data sometime on June 14th.

What percentage of employees are offered health insurance by their employers?

Nationally, 70% of workers are offered health insurance by their employer.[1]

Of those who are offered health insurance, what percentage accept the insurance?

Nationally 88% of those offered insurance by their employer accept the insurance. Of the 12% who do not accept, 10% are already insured though a spouses employer or other source. Only 2% of those who reject the insurance offered remain

What percentage of individuals are covered by employer health insurance?

Under the W-2 proposal, applicants with incomes above 165% FPL are not eligible to enroll in the health care plan. However, already-eligible participants may continue in the plan until their income exceeds 200% FPL.

In Wisconsin:

- 19.1% of individuals with family incomes less than 100% FPL
- 53.1% of individuals with family incomes between 100% and 199% FPL, and
- 83.8 percent of individuals with family incomes between 200% and 399% FPL

were covered by employer health insurance.[2] Note that these figures are based on all non-elderly individuals, whether employed or not.

---

[1] 1993 data from Transfer Income Modeling (TRIM) Database - Urban Institute

[2] Three year merged March CPS: 1991, 1992, and 1993 - from Urban Institute

What is the average premium paid by employees for family coverage?

Under the W-2 proposal, the maximum a participant will be required to pay is $143. This is intended to approximate the total monthly out-of-pocket costs (premium, deductibles, and/or point of service co-payments) that are typical of the private sector.

Nationally, the average family premium paid by an employee was $107.42 in 1993.[3] We do not have an estimate that includes total out-of-pocket costs.

The premium for the W-2 health plans is estimated to be $399/month in July 1997. According to the Health Insurance Association of America[4], the average premium for family coverage in 1992 was $436 for conventional insurance plans, $390 for IPA HMOs, $390 for staff/group HMOS, $399 for PPOs, and $414 for point of service plans.

Of those employers that offer health insurance, what percentage of employers pay at least 50% of the premium?

Nationally, between 94% and 92% (depending on average payroll) of employers who offer insurance pay 50% or more of the premium for employees.[1]

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[3] Personal communication with Bill Wiatrowski - Bureau of Labor and Statistics

[4] HIAA Survey 1992

WISCONSIN WORKS DEMONSTRATION PROGRAM (W-2)
-- MEDICAID ISSUES --
June 6, 1996

BACKGROUND

Wisconsin has submitted a section 1115 waiver request to replace the current AFDC and Medical Assistance programs with Wisconsin Works (W-2). The proposed implementation date for W-2 is September 1997. Under W-2, Wisconsin would basically eliminate all AFDC-related Medicaid, including the poverty level related groups of pregnant women and children. Families with children and pregnant women enrolled in W-2 would be required to participate in a work program to receive cash grants, food stamps, child care, and health insurance either in a subsidized or an unsubsidized W-2 position. The objective of the W-2 program is for participants to reach independent, self-sustaining work in unsubsidized employment by the end of 60 months. Subsidized positions under W-2 include trial jobs, community service jobs, and W-2 transition jobs. There will be a maximum 24-month time limit for each of the subsidized W-2 work options and a 60-month total lifetime limit for participation in all of the W-2 employment programs. However, some extensions will be granted both within the work options and in the lifetime limit.

Under W-2, the State will expand eligibility for health benefits (the W-2 Health Plan) to 165 percent of the Federal Poverty Level (FPL), and families participating in W-2 will remain eligible for health benefits until their income exceeds 200 percent of FPL for 2 consecutive months. There will be a mandatory enrollment of all W-2 participants into Health Maintenance Organizations and the program will be administered by a local, non-government agency. The benefit package offered to participants will be less comprehensive than Medicaid and will include cost-sharing for categorical eligibles.

ISSUES AND CONCERNS

The Medicaid Entitlement for the AFDC Population - The W-2 plan would end the entitlement to Medicaid for the AFDC population. Essentially, Medicaid for this population would be eliminated and replaced by the W-2 Health Plan. There is no categorical eligibility and health services are only provided upon payment of mandatory premiums. (The Medicaid program would remain unchanged for all other categorical recipients). At the same time, eligibility is being expanded to include groups with higher income, although with significant restrictions.

Eligibility Restrictions - To be eligible for the W-2 Health Plan, one must be a pregnant woman or a custodial parent of children below age 18 and have an income below 165 percent of poverty (as compared with the current income limit of 133 percent of poverty). Once enrolled in the W-2 Health Plan, enrollee income can grow up to 200 percent of poverty before recipients become ineligible.

BN maybe gd issue

The following employment-related eligibility requirements apply:

- Eligibility is restricted to those who have had no opportunity in the past 18 months to purchase employer-subsidized insurance coverage, defined as any health coverage for which the employer pays at least 50 percent of the premiums.

- With certain exceptions, individuals who have been offered subsidized health coverage (employer pays at least 50 percent of the premiums) are not eligible for the W-2 Health Plan.

- If an individual is employed for 12 consecutive months and the employer offers the individual an employer health plan (unsubsidized), there is no W-2 Health Plan eligibility.

In addition, if someone disenrolls from the W-2 Health Plan, then they may not become eligible again for 6 months, regardless of income. However, these restrictions do not apply to pregnant women and children under age 12, although they appear to apply to families with children between ages 13 and 18.

These limitations are problematic because poor employees who turned down employer-sponsored insurance due to its high cost (a 50 percent subsidy could leave the employee with substantial premium payments) would be denied W-2 health coverage.

Benefits Package - The W-2 benefits package is more limited than the Medicaid benefits package. The treatment component of EPSDT would be restricted to only those services which are covered under the state plan amendment. Until now, the Administration has not been willing to alter current law EPSDT provisions (except for Oregon). Other restrictions include limits on home care, skilled nursing care, and treatment of alcoholism or drug abuse only up to the amount, duration and scope required by Wisconsin insurance law (it is not yet known how Wisconsin law and Medicaid differ for these services).

In addition, there appear to be no standards for employer-sponsored insurance plans. As discussed above, any employee who has access to employer-sponsored insurance with at least a 50 percent subsidy is ineligible for the W-2 Health Plan and those eligible for employer-sponsored insurance with any subsidy level are eligible for only one year of the W-2 Health Plan. Yet without a guarantee that the employer insurance and W-2 Health Plan have similar benefit packages, employees may be forced to choose between a bare bones plan (for which they could face substantial premiums) or no coverage at all.

Premiums - All families enrolled in the W-2 Health Plan up through 159 percent of poverty must pay a $20 monthly premium. Beyond 159 percent of poverty, the premiums increase so that families at 200% of poverty would face premiums of $143 a month. Under current Medicaid law, no premiums can be imposed on categorically eligible people. Yet the W-2 premiums would even apply to families with pregnant women and children. Enrollees would lose W-2 Health Plan

eligibility for any month in which they do not pay premiums. There is no premium forgiveness of any kind.

Child Support Sanctions - There are severe sanctions for failing to cooperate with child support. Under current Medicaid law, only non-cooperating adults lose eligibility, while the children of those adults maintain Medicaid eligibility. Current law also allows non-cooperating pregnant women to keep eligibility until 60 days after the pregnancy. However, under W-2, non-cooperating adults, pregnant women, and their children all would lose eligibility.

Choice of Health Plans - Wisconsin intends to place all of its W-2 enrollees in HMOs. While the state anticipates that most W-2 recipients will live in areas in with two or more HMOs, there is no guarantee that recipients have of a choice of health plans.

Administration - Although there will be mandatory enrollment of all W-2 participants into Health Maintenance Organizations, there is little information on the structure and oversight of the managed care network. The program will be administered by a local, non-government agency selected either through a competitive or sole source procurement process. The oversight role of the State Medicaid agency is not discussed. There will be no appeal and review process for the W-2 Health Plan regarding eligibility or a benefit decision.

Time Limits - It appears that time limits for W-2 job program benefits do not affect eligibility for W-2 health benefits. However, this issue will require further clarification.

Budget Neutrality - The proposal does not include a discussion of budget neutrality caps.

Wisconsin--W2

- I was pleased to hear that the state of Wisconsin has recently submitted a bold welfare reform plan to the federal government.

- While we don't yet have sufficient detail to judge all the parts of the plan, I am excited by its basic thrust.

- Instead of simply providing cash to a family that applies for benefits, the state would guarantee work along with the necessary supports such as child care to enable work. We look forward to working with the state to realize a vision of welfare based on work, that protects children and is fair to families that work.

- Work in the private sector would of course be the primary objective, but where that was not available, the state would provide work that the recipient would be required to perform to get assistance.

- Just as I urged two weeks ago, to better prepare young parents for their responsibilities, the Wisconsin plan would strengthen its current requirements for minor parents to be in school with tougher rules for requiring them to live at home.

- Work with necessary supports, rather than unconditioned welfare certainly represents my values and the values of the American people.

Talking Points: President's Visit to Wisconsin

- My Administration is committed to working with States to allow flexibility in the design of new approaches to their local welfare problems while assuring that proposals are legally allowable and meet Federal standards.

- Supporting, encouraging, and requiring employment should be the keys to any serious approach to reform welfare. The essential elements of Wisconsin's proposed amendments to their current welfare reform demonstrations, Pay For Performance and Work Not Welfare, appear to aim for those objectives.

- Expanding necessary supports such as child care for working families and those struggling to join the work force is a critical element of significant welfare reform, and I applaud Wisconsin's intention to do this.

- I am especially pleased that Wisconsin is following my directive to the States to require teenage parents on welfare to live with their parents or with other responsible adults. Parents or other caring adults should assist, support, and guide their parenting teenage children, and Wisconsin appears ready to put such a plan into action.

- We are aware that there is some controversy surrounding elements of Wisconsin's most recent plan. We have already heard from state legislators including members of Wisconsin's Black legislative caucus; religious organizations including the Archdiocese of Wisconsin and the Interfaith Conference of Greater Milwaukee; and the American Federation of State, County, and Municipal Employees. Our welfare reform application process includes a 30-day public comment period, and we are committed to considering public comments on all welfare reform proposals.

- Our staff at the Department of Health and Human Services has already begun to work with staff at the Wisconsin Department of Health and Social Services to discuss elements of the proposed waiver amendments.

  Issues to be further discussed and resolved include the following:

  . The proposal does not appear to ensure that individuals who, through no fault of their own, cannot obtain or maintain employment would be allowed an extension to the AFDC time limits. This Administration has approved time limits as part of state welfare reform demonstrations only when we are convinced that they protect children and do not punish families in which the adults are playing by the rules.

- It appears that benefit levels for parents who are disabled may be lower than those for other participants. This would be unfair and would violate the Americans With Disabilities Act.

- Many labor and religious organizations have contended that work might be at less than the minimum wage.

- We are concerned that larger AFDC families in Wisconsin would experience a benefit reduction at the same time that these parents are required to increase their work efforts to ready themselves and their families for unsubsidized employment.

- There are potential legal and policy issues related to required co-payments for child care.

- Further, we are concerned that the State would deny children's benefits in the first instance when an adult does not comply with the program. Other states have implemented more progressive sanction schedules so that children's benefits are not be jeopardized when an individual is first sanctioned.

- Finally, there is a legal problem with the proposal to provide foster care benefits rather than AFDC benefits to a child who is eligible for AFDC.

o My Administration is proud of the way we have worked with States to implement and test alternative approaches and policies to the current welfare system. I am committed to trying to resolve these issues and any others that arise.

o We will work with Wisconsin in a spirit of partnership as we continue to identify sound approaches for aiding low income families and children to attain their full potential.

WISCONSIN WORKS DEMONSTRATION

Background

The Wisconsin Works (W2) project is based on state legislation which would eliminate the AFDC program by January 1999. W2 would replace the AFDC cash and health care entitlements with work requirements in subsidized or unsubsidized jobs. ACF received an application to amend the Pay For Performance and Work Not Welfare demonstrations on May 9, 1996, and is reviewing the application.

Description

According to Wisconsin State legislative materials, W2 would:

- Guarantee placement in subsidized/unsubsidized jobs, child care and health care coverage to families whose gross income does not exceed 115% of the federal poverty level (FPL).
- Raise the resource limit to $2,500 and the vehicle equity limit to $10,000.
- Determine payment amount not according to family size, but rather according to job placement: unsubsidized, trial job, community service, transitional placement. Parents with a child less than 12 weeks old would have no work requirement.

disabled?

- Limit participation in job placements to 24 months, with extensions. Limit lifetime participation to 5 years.
- Replace regular Medicaid coverage for AFDC recipients with a health plan that would cover families with incomes below 200% of FPL that spend down to 165% of FLP.

Issues

- It is not clear what elimination of the entitlement means, unless it simply means that recipients will have to work to receive benefits and that there will be a time limit.
- We have not yet dealt with the issue of whether a State may disregard family size in determining the AFDC grant; i.e., we must determine whether a waiver is required, and if so, what our policy position should be.
- There could be minimum wage issues involved in the payment schedules proposed by the State.
- There do not appear to be reasonable protections for recipients that are doing everything they can to obtain and retain employment but are unable to find a job.
- There may be issues involving required co-pays for health care and child care.

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

17-Jun-1996 06:19pm

TO: Elizabeth E. Drye

FROM: Carol H. Rasco
Domestic Policy Council

CC: Diana M. Fortuna
CC: Jill Pizzuto

SUBJECT: RE: Women Appointees briefing

Thanks!

I sure need to make sure I get the Wisconsin q and a by tomorrow night along with other typical questions/a's that Bruce and others can think of....

1-Assurance + process rights + guar + ent; - No E/J no coop, but cert rights
2-time limits + extension
3-Many waiver off - circ Mon
-give [illegible]

DRAFT

Wisconsin Works (W2) - Waiver application

Talking to State

Of the 69 AFDC, child care, and child support enforcement waiver provisions requested in the W2 application, 54 appear to pose no legal or policy problems for the Administration, 7 pose some legal or policy difficulties which can probably be resolved, 4 merit discussion but may not result in actual policy issues, and 6 pose significant legal/policy problems. In addition there are Medicaid and Food Stamps waiver provisions in W2 which appear to raise significant policy/legal issues (based on AC's preliminary analysis, without input yet from HCFA or FCS).

Correction on - [illegible]

Significant problems

write assurance might be OK

1) The State would not guarantee W2 employment or child care to all eligible families. The State's plan should assure work and necessary services that would enable a needy family to support itself when it plays by the rules and has no other option to earn adequate income.

status + G-K

ent.

2) The State would replace the AFDC fair hearing process with one that would allow individuals to appeal to the State decisions of financial eligibility only, would not continue benefits while an appeal decision is pending, and would not restore incorrectly lost benefits. The combination of weakening due process, providing great discretion to the local service providers who would operate W2, and not providing the assurance of needed financial support, poses great risks that individuals will be subjected to arbitrary negative decisions. In addition, constitutional issues are raised. To ensure equitable treatment, there should be objective standards for the provision of benefits and services, and the ability to appeal negative decisions to a responsible state agency.

Wisc has 2 tiered waiver in leg.

3) The State would impose a 60-day State residency requirement for eligibility. This has potential constitutional problems.

4) The State would limit participation to 24 months in any employment position and limit lifetime W2 participation to 60 months, with very limited extensions on a discretionary case-by-case basis. The Administration has approved AFDC time limits only when they protect children and do not punish families in which the adults are playing by the rules but simply unable to find work.

clear?

5) The State would weaken protections for regular employees against being displaced by W2 participants in certain cases. These provisions are in a section of the Social Security Act that is not subject to section 1115 waiver authority.

6) The State's evaluation would be limited to a process analysis. Given the radical nature of the change W2 represents, the state

OK how our sec affect state leg

+ HC FS BN

Bridge proposal

*Get Ebeler pc. CJ

7-10 days options

we want outcome as well as process

evaluation should at least include an assessment of outcomes achieved and produce early an regular reports on these outcomes.

Difficulties that can probably be solved with further discussion

OK if allow to count SSI / is waivable / Frontiest

1) The State would provide children whose parents are SSI recipients a payment of $77 instead of the regular AFDC payment for family of one, $248. This poses an equal treatment concern. If the State could be allowed to count some portion of parents' SSI benefits, they might be willing to amend their State plan to establish child-only payment standards that would be applied to all child-only cases.

prob resolve

2) The State would count all income for eligibility purposes from a wide variety of statutes that exempt particular types of income for AFDC purposes. While these statutes are not subject to 1115 waiver authority, we are willing to explore other ways to resolve this obstacle.

Frontiest NYB-bg

3) The State would merge AFDC and Medicaid funds and reallocate them for other services. While transfer of funds between programs is illegal and federal matching rates for AFDC and Medicaid cannot be waived under 1115, the cost-neutrality structure allows for savings in one program to offset costs in another.

4) The State would assign individuals with severe barriers to regular employment to the Transitional Placement component, which would pay a lower benefit than the Community Services Jobs based on the required hours of work. Under the Americans with Disabilities Act, individuals must be given access to employment opportunities that would allow them to earn the same benefits as others in W2. Also of concern is that the State would not exempt from work activities parents who are needed in the home to care for disabled children.

term meant for those unable to work

OK if you do need are to let them in

other JKA : WI would want to JR

5) The State would provide financial support under authority of title IV-E of the Social Security Act rather than under title IV-A to an AFDC-eligible child who lives with a non-needy non-legally responsible relative. While we cannot approve this provision because it would require waiving provisions of the Act not subject to 1115 waiver authority, we may allow the State to transfer administrative responsibility for these cases to their foster care agency.

can be solved if they're willing

6) The State requests a waiver of AFDC Quality Control (QC) requirements, which we cannot approve because it would require waiving provisions the Act not subject to 1115 waiver authority. We can, however, allow the State to develop a broader quality assurance system and to reinvest QC disallowances in the program.

7) The State would limit Emergency Assistance (EA) for certain homeless persons to once in a 36-month period unless the

homelessness was caused by domestic abuse. While we cannot waive EA provisions under 1115, it is not clear that the State requires a waiver to do this.

OK?

Items and questions for further discussion

1) The State would require co-payments for child care based on family income and the category of care used. In the past we have denied this sort of request based on the legal requirement that AFDC be a cash payment. The policy issues with this proposal are that the co-payments would not be nominal, and because the co-payments would be based on a percentage of the cost of care, families would be more likely to choose lower quality care.

2) The State would increase required CWEP participation up to 40 hours per week. It is unclear how this activity would be implemented along with the Community Services Program and Transitional Placements, which would have work requirements of 30 and 28 hours a week respectively. More important, this could result in work assignments for less than the minimum wage.

3) The State would sanction the entire family for non-participation in a W2 employment position beginning with the first instance of noncompliance. It is not clear how this interacts with pay for performance. We have generally approved more progressive approaches to denial of children's benefits when an adult does not comply with program requirements.

4) As a consequence of the way state proposes to deal with child only cases, it appears to deny benefits to citizen children of undocumented aliens. If this is indeed the case, it could raise a severe constitutional issue.

POTENTIAL MEDICAID ISSUES

1) Eliminates the entitlement to Medicaid.

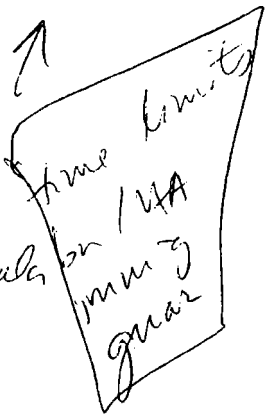
2) Requires all recipients to pay premiums.

3) Denies children Medicaid benefits if their parents fail to cooperate with child support enforcement.

FS

5 waivers : all approvable in part

1. Cash out - OK - any $
2. work/fare - hrs > - but
3. work regist exemptions -
   - adv in AFDC
   - Learnfare
   } OK
   <12 wks
4. Grad bens - more ↑
   disregard
   actual cost vs formula
   potential cost



Bonnie
- can't be waived off

5. privatization

Merit system in current law -
waivable, we think

* Money shift is main issue
- Eval.
- Indigents

CBO didn't do #s

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"WISCONSIN WORKS" OR "W-2"

The following are the major areas where AFSCME opposes Wisconsin's W-2 legislation and waivers needed for implementation:

- **Public Administration:** HHS has never before considered waiving the requirement that decisions concerning eligibility for benefits and therefore access to basic subsistence for poor families be made within a governmental system with employees hired on the basis of merit. (SSA sec. 402(a)(5)) W-2 would allow private, for-profit companies to decide who to serve in the context of a non-entitlement program, what services or payments recipients will receive, if any, and who to cut-off when a time limit is reached in the absence of mandated, objective criteria for extending benefits for families who have met all program requirements and still cannot find a job. It is particularly illogical to end public administration when the county-run system in Wisconsin has been so successful in reducing AFDC caseloads throughout the state over the past several years.

- **Unrealistic Work Requirements:** W-2's requirement that the entire caseload, except parents with a child under 12 weeks old, participate in 40 hours of work-related or other required activity is also unprecedented and just won't work. Very few other states require parents of kids as young as three months old to work, and those that have this rule don't require full-time work. Even current federal legislative proposals have rejected 35 or 40 hour per week work requirements in recognition of insufficient available work and the prohibitive child care costs. It's estimated that the state will be approximately 73,000 jobs short for all those expected to find jobs, and a whopping 40,000 jobs short just in Milwaukee, which is home to half of the state's AFDC caseload. According to the Wisconsin Legislative Fiscal Bureau, the State Department of Health and Social Services projects that 87% of applicants who don't find unsubsidized employment will be placed in community service jobs or transitional placements. This in turn will lead to shrinkage in real, wage-paying jobs in the public sector to make room for massive workfare. The Economic Policy Institute has estimated that this flooding of the low-wage labor market will also cause a 8.3% wage depression for the bottom one-third of

Wisconsin's workforce.

- **Weakened Protections for the Current Workforce Against Displacement:** In this context, it is extremely troubling that W-2 proposes to weaken the anti-displacement protections contained in current federal law. (SSA sec. 484) We are proceeding under the assumption that HHS will not retreat from its long-held, firm position that the anti-displacement protections in federal law are not waivable under sec. 1115. Although the "nonsupplant" language in W-2 seems similar to that contained in sec. 484, several significant differences exist. Most fundamentally, under W-2 displaced workers would have to prove that vacancies were created for the purpose of hiring community services job participants, a nearly impossible burden to meet. Current federal law solely requires that the effect of a layoff or other reduction in force was to fill the vacancy with a participant. The W-2 anti-displacement provisions also does not protect against partial displacement such as a reduction in hours, wages or employment benefits, or protections against infringement of promotional opportunities for the current workforce. And, W-2 does not establish a grievance procedure for resolving complaints by regular employees alleging violations of the anti-displacement protections.

- **Unfair Work Requirements:** Under W-2, some of those placed in "community service jobs" or "transitional placements" would receive less than the minimum wage for the work they perform if they don't participate in a non-work program requirement. For example, if a community service placement misses five hours of required job search, she would be docked $21.25 ($4.25 x 5) of her $555 per month grant. And, many poor families would receive smaller monthly grants even if they comply with the required 40 hours of work and work-related activities because they are only being "paid" for a portion of required activities and their grant amount would no longer reflect family size. And, Governor Thompson used his partial veto power to eliminate required payment of at least the minimum wage to food stamp recipients participating in work activities. We urge HHS to continue to reject waiver requests to pay less than minimum wage to welfare recipients placed in work programs.

- **Entitlement:** Until W-2, no state had asked to do away with an entitlement to services and benefits for families who are eligible and play by the rules. When the next recession hits Wisconsin (or sooner), the state would have no legal obligation to provide any assistance to needy children. This runs counter to the Clinton Administration's stated commitment to protect poor children.

- **Time Limits:** Although several states have been granted waivers to limit receipt of AFDC benefits, no state has been given approval to end benefits to parents who have done all the program asked of them and still cannot find a job. W-2 could cut-off benefits in as little as two years if no work slot is offered, or after a lifetime time limit of five years. This waiver request also runs counter to this Administration's insistence that any time limits be linked to objective standards for extensions, including unavailability of work.

W-2 goes beyond the kind of experimentation we have seen in the 38 states which have been allowed to waive provisions of federal welfare law. For this reason, we urge HHS to proceed slowly and cautiously in its review of the W-2 waivers and ensure any approved plan is phased in slowly. Most important, HHS must hold to the principles that have guided the waiver process so far under this Administration: a mandatory safety net for those who play by the rules which will not be taken away so long as they remain in compliance, and a commitment to the well-being of children no matter what the behavior of their parents.

HOW THE CLINTON ADMINISTRATION CAN BLUNT THE WORST ASPECTS OF W-2 BUT STILL BE TOUGH ON WORK

Suggested Arguments

- **W-2 would hurt kids, including those who parents did everything required of them but still couldn't find employment before the time limit:**

  - Time limits must not punish kids for the acts of their parents or punish parents who played by the rules. While not opposed to the concept of time limits, objective standards must be mandated including extensions if there is compliance with program rules.

- **Given W-2's radical approach, at least the basic provision of services should be constant and subject to public accountability.**

  - Counties, which have been administering Wisconsin's many welfare reform demonstration pilots, have received much praise for their successes in reducing welfare caseloads. This track-record is ignored in W-2, where a county opt-out and then competitive bidding would replace the publicly-administered system. Given the radical program changes including no entitlement to benefits and time limits imposed subjectively on a case-by-case basis, at least until the program is firmly in place and evaluated, the counties should continue to administer it statewide.

- **The W-2 work requirements are extreme and even go beyond what is being proposed by congressional Republicans:**

  - Congress is only proposing 25 hour per week work requirements while W-2 is requiring 40, even of mothers of 3 month old kids. Congress's more modest proposal reflects an understanding that there's a limited amount of work available and that infant and toddler child care costs are prohibitive. Several studies exist showing that throughout the state, but particularly in Milwaukee County, there won't be enough jobs for all welfare recipients expected to work. This "job gap" will be particularly acute when the state's now-strong economy sours.

- **Don't play musical chairs with a limited number of jobs.**

  - Strong displacement protections prevent the spectacle of current workers losing their jobs to welfare work placements, creating a newly unemployed worker who may herself be forced to apply for welfare. The American public is not clamoring for the elimination of

permanent jobs paying decent wages in favor of more minimum wage or subminimum wage "community service" work slots.

- **There is a building consensus that those who work should be paid a minimum wage adequate to pay for the basic necessities of life.**

  - W-2, on its own terms, is a work-based program. As such, basic worker protections should apply to participants, including a guaranteed payment of at least the minimum wage. These workers are as much in need of a livable wage as any other low-wage workers.

- **W-2 represents such a radical approach to welfare reform that there should be an opportunity for Wisconsin residents to voice their opinions about the waiver request:**

  - This waiver should not be rushed through to meet a Republican-imposed deadline. Given the length and complexity of W-2, several months of comment and review is not only reasonable but necessary. HHS should help to facilitate hearings in Wisconsin at which residents could voice their concerns about the waiver requests.