

Crossroads II

New Directions in **Social Policy**

Acknowledgments

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The mission of the American Public Human Services Association is to develop, promote, and implement public human service policies and practices that improve the health and well-being of families, children, and adults.

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Crossroads II

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Executive Summary

The 1990s was a decade of profound change for public human service programs. Aid to Families with Dependent Children cash assistance and child care entitlements were replaced by block grants; employment and training programs were reconfigured into a Workforce Investment Act (WIA); child support enforcement was strengthened and expanded; the State Children's Health Insurance Program (SCHIP) and the Ticket to Work and Work Incentives Act were created; the Adoption and Safe Families Act established outcomes for the child welfare system; Medicaid waiver authority was broadened; eligibility for the Food Stamp Program (FSP) and Supplemental Security Income was narrowed.

In 2001, the American Public Human Services Association (APHSA) published *Crossroads: New Directions in Social Policy*, containing a host of recommendations for the 107th and 108th Congress and the Bush Administration. Since its publication, Congress has reauthorized the FSP, the Promoting Safe and Stable Families Act, and Adoption Incentives Payments. However, a number of major programs slated for reauthorization in the 2001 edition of *Crossroads* are still pending before the 109th Congress—the Temporary Assistance for Needy Families (TANF) and the Child Care and Development Block Grants, and WIA. Reform for federal financing for child welfare programs and services, and changes in the distribution rules applied to child support enforcement collections have yet to be addressed.

In 2002, when the FSP was reauthorized, Congress incorporated most of the reform recommendations advanced by APHSA, including simplifying eligibility, restoring benefits for noncitizens, reforming the FSP quality control program, and establishing a new system of bonuses and transitional benefits. Previously, it was thought that simplifying eligibility would result in increased fraud in the FSP; however, the experience to date has been to the contrary. Taken together, implementing the policies enacted in 2002 resulted in a significant increase in FSP participation and, at the same time, states achieved the highest levels of accuracy in determining eligibility for this critical program. Future food stamp reform should enhance simplification, broaden coverage and support (particularly for the elderly), and complete the transition from process to performance measurement.

In the 2001 *Crossroads* publication, APHSA called upon Congress to renew and increase federal support for Promoting Safe and Stable Families, and the program was reauthorized with these changes in 2002. One year later, the Adoption Incentives Program was reauthorized and our recommendations to update the baseline for determining state bonuses, as well as retaining an enhanced bonus for adopting special needs children, were included in the renewed law.

While dozens of recommendations made in the 2001 edition of *Crossroads* were incorporated in various pieces of congressional legislation to reauthorize the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), more commonly referred to as the welfare reform law, Congress did not act to reauthorize the law as scheduled in 2002. Instead, the federal laws governing the funding and administration of TANF, child care, and transitional Medicaid have been extended numerous times over the past several years. The 109th Congress will have the opportunity to renew and revise PRWORA and WIA and to consider changes to federal child support enforcement rules as well. With respect to welfare reform, work should continue to be the centerpiece of the TANF program and federal law should not only support clients' entry into the workforce, but their retention and advancement as well. Child care is a key to clients' success in employment as well as in child development. In the years since the passage of welfare reform, states invested in child care services

and in efforts to enhance the quality of those settings. Any increase in work requirements under TANF must be supported with increased federal funding for child care.

Family economic success can be achieved by implementing a number of strategies. For example, continued federal support for the Earned Income Tax Credit and increased child support distributions to families can lift low-income working families out of poverty. And, services provided through WIA One-Stop centers can provide individuals with a continuum of employment and training resources so that they may reach their earnings potential. WIA reauthorization should facilitate cross-program administration and collaboration. Finally, Congress should strengthen programs so that working-age Social Security beneficiaries with disabilities can realize financial independence and their full potential.

In the years since the first *Crossroads*, there have been other noteworthy changes in the growth and the administrative structure of federal human service programs. Medicaid covers more than 53 million low-income Americans, including children, adults, and individuals who are elderly and who have disabilities. Enrollment in the program has increased 40 percent in the past five years. After a period of relatively modest growth in the Medicaid program, costs have increased significantly in recent years due in large measure to the double-digit increase in the costs of prescription drugs and increased costs associated with the serving the dual-eligible population—those low-income elderly and individuals with disabilities who are eligible for both Medicaid and Medicare. In fact, the Medicaid program comprises the greatest share of state budgets, exceeding elementary and secondary education as the largest single expenditure in state budgets.

The costs associated with providing services to the elderly and disable enrollees—about one-third of all Medicaid eligibles—consume more than 70 percent of all program costs. State administrators have few mechanisms available to them in controlling the costs of this program since rules are prescribed in federal law. The growth in long-term care costs, coupled with demographic trends in an aging nation, has heightened the need for broad reform in the Medicaid program by state and federal administrators alike.

The SCHIP has also expanded in size and scope. In some states, the federal allotments that contribute to the cost of extending health insurance coverage to millions of children have been maximized. In other states, where programs did not exist before enactment of the federal program, programs are just reaching their potential. Aggressive outreach efforts have resulted in an unprecedented number of enrollees in both SCHIP and the Medicaid program. The 109th Congress will take up proposals to reauthorize SCHIP, and issues such as eligibility, federal funding, and administration will be considered.

Child welfare remains a program in need of fundamental reform. While the Adoption and Safe Families Act established a new process for assessing state performance in the critical areas of safety, permanency, and child well-being, federal financing fails to support the initiatives set forth in the state program improvement plans. The federal Title IV-E funding stream does not support program objectives; this funding stream supports out-of-home care, which is the very part of the system states are seeking to minimize to achieve greater permanence for children. The IV-E funding stream should be reformed so that in addition to foster care, states may also use these funds to support prevention and permanency strategies.

Since 1996, federal support for IV-E foster care has declined significantly, failing to keep pace with inflation, in large measure due to the fact that eligibility is linked to an outdated Aid to Families with Dependent Children standard. Today, while federal statute places numerous mandates on states and expectations for improved outcomes for children, the federal government supports services for fewer than half the children served in the child welfare system. At the very least, child welfare reform should ensure that the federal government supports all children in need.

New challenges in state administration of these programs have arisen as a result of all the program changes that have been enacted over the past decade. For example, at the state and local levels of government, programs are often blended to make them more accessible to those seeking assistance. However, rigid and often conflicting program regulations, data reporting requirements, and goals pose barriers to state efforts to pursue human service program integration strategies. Moreover, federal rules not only add layers of complexity but administrative costs as well. Over the years, there has been an increase in federal requirements without concomitant funding to support newly created mandates. Efforts to manage these programs more efficiently through implementation of various technologies have been impeded by federal procurement and funding rules. Recommendations for simplification of program administration are included in the “Human Service Program Operations” section of this report. Recognizing the increased role that tribal governments have played in the delivery of human service programs, this report includes cross-program recommendations to expand the authority of and increase support for tribal administration of human service programs.

In many respects the nation is at a critical crossroads in charting new directions for the delivery of critical public human service programs. *Crossroads II* describes current program challenges and recommendations that may require both congressional and administrative action. In charting future policy directions, APHSA urges federal policymakers to consider these recommendations; to act on program areas requiring fundamental reform; to preserve funding and financing and enhance the flexibility of current programs; to examine the potential cross-program implications; and to focus on outcome measures, not process, to evaluate program effectiveness. In the end, the success of human service programs will be measured by the health and well-being of America’s families, children, and adults.

Glossary

21 st CCLC	21 st Century Community Learning Centers
ABAWDs	Able-Bodied Adults Without Dependents
ACF	Administration for Children and Families
ADA	Americans with Disabilities Act
AFCARS	Adoption and Foster Care Analysis and Reporting System
AFDC	Aid to Families with Dependent Children
APD	Advance Planning Document
APHSA	American Public Human Services Association
ASFA	Adoption and Safe Families Act
ASP	Average Sale Price
AWP	Average Wholesale Price
BBA	Balanced Budget Act of 1997
BIA	Bureau of Indian Affairs
CACFP	Child and Adult Care Food Program
CNA	Certified Nursing Assistant
CAP	Combined Application Project
CAPTA	Child Abuse Prevention and Treatment Act
CBO	Congressional Budget Office
CCDBG	Child Care and Development Block Grant
CCDF	Child Care and Development Fund
CDBG	Community Development Block Grant
CFSR	Child and Family Services Review
CMIA	Cash Management Improvement Act
CMS	Centers for Medicare and Medicaid Services
CSBG	Community Services Block Grant
CSPIA	Child Support Performance and Incentive Act of 1998

E&T	Employment and Training
EBT	Electronic benefit transfer
EITC	Earned Income Tax Credit
EPE	Extended Periods of Eligibility
FFL	Federal Financial Liability
FFP	Federal Financial Participation
FIDM	Financial Institution Data Match
FMAP	Federal Medical Assistance Percentage
FNS	Food and Nutrition Service
FPL	Federal Poverty Level
FPLS	Federal Parent Locator Service
FSNE	Food Stamp Nutrition Education
FSP	Food Stamp Program
HSA	Health Savings Account
HCBS	Home- and Community-Based Services
HHS	U.S. Department of Health and Human Services
HIFA	Health Insurance Flexibility and Accountability
HIPAA	Health Insurance Portability and Accountability Act
HUD	U.S. Department of Housing and Urban Development
ICF/MR	Intermediate-Care Facilities for the Mentally Retarded
ICPC	Interstate Compact on the Placement of Children
ICWA	Indian Child Welfare Act
IDA	Individual Development Account
IEVS	Income and Eligibility Verification System
IHCIA	Indian Health Care Improvement Act
IHS	Indian Health Service
IPIA	Improper Payments Information Act of 2002
IRP	Individual Responsibility Plan

IRS	Internal Revenue Service
IRWE	Impairment-Related Work Expenses
JARC	Job Access and Reverse Commute Grants
JOBS	Job Opportunities and Basic Skills Training
MBI	Medicaid Buy-In
MCO	Managed Care Organization
MCSWG	Medical Child Support Working Group
MEPA	Multi-Ethnic Placement Act
MIG	Medicaid Infrastructure Grant
MMA	Medicare Modernization Act
MMIS	Medicaid Management Information Systems
MOE	Maintenance-of-Effort Level
MRS	Market Rate Surveys
MSIS	Medicaid Statistical Information System
NCANDS	National Child Abuse and Neglect Data System
NEMT	Nonemergency Medical Transportation
OASDI	Old-Age, Survivors, and Disability Insurance
OCSE	Office of Child Support Enforcement
PAM	Payment Accuracy Measurement
PAS	Personal Attendant Services
PERM	Payment Error Rate Measurement
PIP	Program Improvement Plan
PMPRB	Patented Medicine Prices Review Board
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act of 1996
PSSF	Promoting Safe and Stable Families Act

QC	Quality control
SACWIS	Statewide Automated Child Welfare Information Systems
SCHIP	State Children's Health Insurance Program
SGA	Substantial Gainful Activity
SMI	State Median Income
SPAs	State Plan Amendments
SSA	Social Security Administration
SSBG	Social Services Block Grant
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
TANF	Temporary Assistance for Needy Families
TCM	Targeted Case Management
TFAG	Tribal Family Assistance Grant
TMA	Transitional Medical Assistance
TWWIA	Ticket to Work and Work Incentives Act
UPL	Upper Payment Limit
USDA	U.S. Department of Agriculture
UWR	United We Ride
WIA	Workforce Investment Act
WIC	Special Supplemental Nutrition Program for Women, Infants, and Children
WOTC	Work Opportunity Tax Credit
WtWTC	Welfare-to-Work Tax Credit

Medicaid and Health

Current Program

The Medicaid program, created by Congress in 1965, was designed primarily to provide health care coverage to people who qualified for cash assistance. Over nearly 40 years, Medicaid has grown to cover millions of families and individuals who are elderly and disabled. Today, Medicaid is the country's major public health program for low-income Americans, financing health and long-term care services for more than 50 million people. Specifically, Medicaid is a source of health insurance for 38 million low-income children and parents; it is also an essential source of acute and long-term care coverage for 12 million individuals who are elderly and disabled, including more than 6 million low-income Medicare beneficiaries ("dual eligibles"). The cost to the federal government, states, and territories for Medicaid was more than \$300 billion in fiscal year 2004, making Medicaid the largest funding source for medical and health-related services for America's low-income population.

Today, Medicaid is the country's major public health program for low-income Americans, financing health and long-term care services for more than 50 million people.

In recent years, Medicaid has become the largest and fastest growing component of state spending. In fact, Medicaid expenditures currently represent approximately 22 percent of all state spending nationwide. Although the benefits and eligibility rules vary from state to state, the Medicaid program is vital for children living close to the poverty line and for millions of low-income elderly and individuals with disabilities who need access to long-term care and prescription drugs.

Although Medicare is known as the health insurance program for the elderly and individuals with disabilities, it is actually the Medicaid program that covers the majority of seniors' long-term care costs. Medicaid has become the single largest source of funding for long-term care, including home health and nursing home services. Due to their complex medical conditions and often fragile health, dual eligibles (those individuals eligible for both Medicare and Medicaid) account for a disproportionately large share of all Medicaid costs. A significant portion of these dual-eligible beneficiaries reside in nursing homes. According to the Centers for Medicare and Medicaid Services (CMS), Medicaid pays for 50 percent of all nursing home care costs in the United States, which represents more than \$90 billion in 2004.

The last 25 years have witnessed a tremendous rise in the use of pharmaceuticals for the treatment of a variety of illnesses. When legislation enacting Medicare and Medicaid was first passed in 1965, there was little consideration of the costs of prescription drugs, since at that time they were mostly used on a limited basis for relatively short periods of time—such as antibiotic treatments for bacterial

respiratory infections. Today that has changed. The rate of spending on pharmaceuticals has grown exponentially. In 1990, drug expenditures nationwide were approximately \$45 billion. In 2002, this figure ballooned to \$140.6 billion. According to data from CMS, overall drug spending is expected to reach as high as \$519.8 billion by 2013.¹

In December 2003, the Medicare Modernization Act of 2003 (MMA) was enacted, which added an outpatient prescription drug benefit to the Medicare program. This law will be fully implemented

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with the advent of the new prescription drug program beginning on January 1, 2006. Final MMA regulations, issued on January 21, 2005, require that state Medicaid programs have an independent process in place for determining beneficiary eligibility for the low-income subsidy. Also, states will be required to perform ongoing eligibility and appeals functions for low-income clients who request them to do so. States have been working with CMS and the Social Security Administration (SSA) to determine the scope of the administrative costs and requirements associated with MMA; initial indications are

that the costs will be substantial. Implementation of MMA requires that state Medicaid agencies work closely with CMS and SSA. While federal agencies received \$1.5 billion for the cost associated with implementation, states received no enhanced funding.

States have long argued that the federal government ought to assume responsibility for the costs associated with the dual-eligible population. However, MMA did not contain such a change. Instead, the federal government will assume a share of the pharmaceutical needs of the dual-eligible population in the new Part D drug benefit. States will be required to continue to pay significant costs for pharmacy benefits for dual-eligible beneficiaries under the phased-down state contribution or “clawback.” States will pay 90 percent of adjusted costs for 2006, phasing down to 75 percent in 2014.

The MMA’s phased-down state contribution provision, instead of providing states with expenditure relief, may actually increase states’ prescription drug spending for dual eligibles, particularly in the initial years of the benefit. In CMS’ regulatory analysis in the MMA final rule, CMS estimates (which potentially underestimate states’ obligations) indicate that states will face an additional \$100 million in MMA’s first year—an average of about \$2 million per state. These costs will come at a time when Medicaid spending is already straining state budgets and when proposals have been made to limit states’ flexibility to finance their share of Medicaid spending. CMS’ analysis of the effect on state spending estimated that all states’ calendar year 2006 MMA-related spending, including the phased-down state contribution, will total \$10.7 billion. This spending would rise to \$15.4 billion by 2010, even with state obligations phasing down over this period from 90 percent. By 2010, CMS estimates that states will have repaid aggregate clawback and other MMA costs of \$64.8 billion.² Federal spending for that five-year period is estimated to exceed \$292 billion.

The Balanced Budget Act of 1997 (P.L. 105-33) created the State Children’s Health Insurance Program (SCHIP) under Title XXI of the Social Security Act. This new program enabled states to initiate and expand health insurance coverage for uninsured low-income children. SCHIP benefits became available on October 1, 1997, and provided \$40 billion in federal matching funds over 10

¹ *National Health Expenditures, Aggregate and Per-Capita Amounts for Selected Calendar Years*, Centers for Medicare and Medicaid Services, Office of the Actuary, 2004.

² *Federal Register*, Vol. 70, No. 18, January 28, 2005, Regulatory Impact Statement, Table 4-3. Estimated Net Federal Budgetary Effects of Medicare and Medicaid Benefit Spending, CY 2006–2010.

years. This federal support, at a higher matching rate than for Medicaid, helps states expand health care coverage to children whose family income is less than 200 percent of the federal poverty level (FPL). The SCHIP expansions are financed through the state's traditional Medicaid program or through separate, stand-alone SCHIP plans. The introduction of SCHIP in 1997 presented states with an opportunity to extend health care coverage to greater numbers of low-income children. States welcomed the flexibility that has allowed them to employ a variety of approaches for providing children with health insurance. States that started their state Medicaid program at a higher FPL percentage do not receive an enhanced Title XXI match. The current Title XXI statute effectively bars a significant segment of income-eligible children from SCHIP participation—the children of state and local employees. Title XXI also limits to 10 percent the amount of the state's annual SCHIP spending for administrative expenses, outreach activities, and special health initiatives. SCHIP is widely considered to be a success; since 1998 enrollment has increased rapidly, growing from 898,000 to more than 3.9 million by December 2003.³

The CMS developed special waivers and demonstrations so that more uninsured children and families would be able to obtain health insurance coverage. The Health Insurance Flexibility and Accountability (HIFA) initiative, announced on August 4, 2001, by the U.S. Department of Health and Human Services (HHS), was developed as a Medicaid/SCHIP waiver under Section 1115 of the Social Security Act. The primary goal of the HIFA demonstration initiative is to encourage new comprehensive state approaches that will increase the number of individuals with health insurance coverage within current-level Medicaid and SCHIP resources. Particular emphasis is placed on broad statewide approaches that maximize private health insurance coverage options and target Medicaid and SCHIP resources to populations with incomes below 200 percent of FPL. Although the HIFA waivers provide some degree of flexibility, states would like more flexibility in using HIFA waivers to allow the uninsured to buy into Medicaid or SCHIP.

Challenges

States report that as their revenue begins to recover from the recent recession, demands for Medicaid spending are outstripping those gains. Over the years, states have implemented a variety of policy and program changes to control the rising costs of the program, such as managed care, preferred drug lists, and pooled purchasing agreements. Also, states have historically administered Medicaid very cost effectively; per-capita Medicaid beneficiary acute care costs have increased between 2000 and 2003 an average of 6.4 percent, a much lower rate of increase than employer-sponsored health insurance, which posted average gains of 12.6 percent. In addition, with administrative costs in the 4 to 6 percent range of paid claims, Medicaid has consistently out-performed the private sector, where administrative costs for indemnity health insurers can be four times higher and health maintenance organizations' costs average 10 to 12 percent higher. Yet, Medicaid finds itself under renewed attack to control spending and growth, and to do it with even fewer federal resources. Over the past several years, the federal government has increased its focus on state administration of the Medicaid program. Approvals of Medicaid State Plan Amendments (SPAs) have been delayed; audits have increased; and new Payment Error Rate Measurement (PERM) systems for state Medicaid and SCHIP programs have been proposed. New unfunded mandates, such as implementation of the Medicare Part D benefit and the Health Insurance Portability and Accountability Act (HIPAA), have also imposed new financial burdens.

³ Vern Smith, David Rousseau, and Molly O'Malley, *SCHIP Program Enrollment: December 2003 Update*, Kaiser Commission on Medicaid and the Uninsured, 2004.

New proposals call for states to receive Medicaid administrative “allotments,” which would replace the current open-ended federal match states receive for administrative expenses. This proposal accompanies new administrative mandates, such as eligibility determination for Part D and the potential for many new Medicaid-eligible beneficiaries being identified by Part D outreach and enrollment. These proposed caps on states’ administrative expenditures could undermine or jeopardize states’ vigorous cost-control initiatives, including Medicaid Management Information Systems (MMIS) investments, disease management, managed care, and an array of home- and community-based service program innovations. Capping states’ administrative expenditures would seriously affect state MMIS expenditures. MMIS costs are currently matched at the 90 percent federal/10 percent state ratio, and many states would be unable to bear increased costs for these longer-term costs. MMIS improvements are important sources of continued administrative savings and innovation. As many as 24 states are actively engaged in MMIS procurements, which may hold the most promise for improved administration, dramatic cost reductions, and better medical care management.

Medicaid administrative caps are only one of the measures proposed to limit states’ ability to fund Medicaid and care for some of the nations’ most needy citizens. Other proposals threaten to further ratchet down state use of legitimate revenue sources, such as the phase-down of the Safe Harbor Tax; reform of the managed care tax; and cost-based reimbursement for public providers. Although states support all federal efforts to address abusive inter-governmental transfers and other illegitimate funding mechanisms to leverage or recycle federal matching funds, they are concerned by what appears to be a concerted effort to pare back legitimate funding mechanisms. For instance, a recent proposal to reduce (phase-down) the Safe Harbor Tax from 6 percent to 3 percent would further reduce states’ legitimate Medicaid matching sources. Under the Safe Harbor Tax, states are permitted to tax health

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care providers up to 6 percent of gross revenue provided the tax is applied uniformly to all providers in the same class. As the name implies, this tax was considered an appropriate and sanctioned Medicaid funding approach. Phasing down this tax while imposing administrative caps will be a double blow to state Medicaid programs that will force states to reduce services for people who already have no alternative sources of care.

Moreover, other proposals further restrict states’ access to Medicaid funding sources, potentially limiting funding for legitimate as well as illegitimate users. One proposal targets the use of a tax on managed care organizations (MCOs) that under current rules can be applied non-uniformly to MCO Medicaid business, excluding non-Medicaid business. The proposal would require that the MCO tax be applied to all providers, effectively eliminating it as a legitimate source of state

matching funds (taxing non-Medicaid MCOs would exacerbate already rapidly rising premiums and likely add to beneficiaries’ cost-sharing obligations, an undesirable outcome). In addition, yet another proposal would restrict state payments to government providers (facilities) to cost-based reimbursement. Upper payment limit (UPL) regulations are in place already to assure that states do not “recycle” provider payments to extract greater federal matching funds. This proposal will further limit states’ ability to provide appropriate matching funds.

States cannot continue to shoulder the annual increases in the Medicaid program. The aging of the U.S. population will exacerbate future fiscal pressures. In six years, the 77 million Americans in the baby boom generation will begin to turn 65. About one in six Americans (17 percent) who reach age

65 will eventually need some type of long-term care service. Fundamental change is necessary and new ways to manage the Medicaid and Medicare programs should be aggressively explored.

Recommendations

MEDICAID FINANCING ISSUES

PROPOSAL

Congress should reject proposals to reduce the federal share of Medicaid funding. Additional state flexibility in administering the program could help alleviate the potential rapid rise in state Medicaid costs.

EXPLANATION

As noted earlier, the majority of Medicaid program costs are spent on a minority of program eligibles—individuals who are elderly and disabled. Given demographic changes, rising pharmacy and long-term care demand and costs, a federal cap on Medicaid expenditures should be rejected.

Congress should work with states to develop program efficiencies and other policies that can save money for both state and federal governments, rather than shifting costs to states through budget cuts, caps, or other mechanisms.

As the National Governors Association has noted, “the Medicaid program is growing rapidly because health care inflation is running two to three times the general inflation rate and the caseload has grown 33 percent over the last four years...Governors have little control over these two cost drivers, and do not want to be in the position of having to choose between funding health care programs for grandparents or programs for their grandchildren. The Medicaid program needs to be rethought and reformed. It needs to redefine the federal-state role in a way that makes the states’ financial commitment sustainable over the long-run.”

Many states are far from able to meet their current Medicaid obligations without additional service demands and rising medical costs. These state programs already face deep service cuts, and further funding restrictions or limits will devastate these programs.

PROPOSAL

Provide states with clear guidance on appropriate Medicaid financing approaches and support states’ existing provider taxing mechanisms at current rates, including the Safe Harbor Tax and managed care provider taxes.

EXPLANATION

Although state economies are recovering, national economic growth is uneven and many states have seen limited revenue growth. Many states are far from able to meet their current Medicaid obligations without additional service demands and rising medical costs. These state programs already face deep service cuts, and further funding restrictions or limits will devastate these programs. Reforming and eliminating states’ Medicaid financing options will handicap states’ means to match federal shares at a time when states are already struggling. Recent proposals to restrict public providers to cost-based

reimbursement would affect states that are compliant with UPL regulations as well as those states that might have “recycling” arrangements in place. CMS has been effective in using the SPA approval and state budget review processes to monitor state UPL approaches without the use of the proposals to limit public facilities to cost-based reimbursement. Similarly, proposals to phase-down over three years the Safe Harbor Tax from the currently allowed 6 percent to 3 percent would further limit the ability of some states to receive Medicaid matching funds from the Safe Harbor Tax.

Proposals to bring MCOs under the same requirements as other providers also would adversely affect some states’ ability to match federal contributions. This proposal also seems to contradict some initiatives to encourage states and Medicare beneficiaries to adopt managed care as a cost-effective service delivery approach. Under the MCO tax, states were granted an exception to the uniformity requirement under provider taxes so that some states with large managed care participation (waivers) could help to raise Medicaid matching funds. The MCO-tax states have been able to expand coverage and eligibility for low-income, but optional, populations. Without the ability to differentially tax MCOs’ Medicaid business units, states will lose this revenue source, thus forcing them to find other revenue sources. In addition, states facing large Medicaid shortfalls and contemplating a MCO tax would have to reconsider their plans. In either case, some of the most aggressive and innovative state Medicaid programs will be forced to reduce coverage or significantly pare eligibility. Now that this funding mechanism has been established to encourage states to accept managed care, it seems contradictory to rescind the exemption and jeopardize managed care states’ programs.

PROPOSAL

Explore implementation of a new prescription drug payment mechanism.

EXPLANATION

Under current law, the state formula uses the average wholesale price (AWP) as a major factor in setting reimbursement. A December 2004 Congressional Budget Office (CBO) report indicates that using AWP has resulted in substantially inflated pharmaceutical reimbursement costs for both states and the federal government. In essence, this proposal would parallel the reimbursement approaches codified in the MMA, Section 303. If enacted, this proposal could lead to substantial savings for both the federal and state governments.

PROPOSAL

Preserve targeted case management (TCM) as a means to connect vulnerable populations to needed medical, social, educational, and other services.

1. Oppose any proposal lowering the federal matching rate for TCM services.
2. Oppose any prohibition on particular populations that can be targeted for receiving TCM services.

EXPLANATION

The TCM target population groups in many states include some of the most vulnerable citizens—including those who are mentally ill, abused and neglected, seriously emotionally disturbed, sensory impaired, with HIV/AIDS, and addicted to alcohol and other drugs. The case management services these vulnerable individuals require are much more specialized. Therefore, reimbursement for services to these groups at the regular Federal Medical Assistance Percentage (FMAP) rate is consistent with the higher level of care required to meet their needs.

According to the federal statute that allows TCM, targeting may be done based on age, type, or degree of disability; illness or condition; or any other identifiable characteristic or combination thereof. This broad range of possible populations that can be targeted is necessary to cover the different types of vulnerable individuals that may require TCM services. Historically, states have been appropriately applying TCM services to targeted groups approved by CMS through state plan amendments.

PROPOSAL

Coordinate Medicare- and Medicaid-funded services.

EXPLANATION

The passage of MMA and the issuance of the final rule implementing the law have resulted in the federal government funding outpatient prescription drugs for the first time. However, Medicaid will continue to be the primary payer of services for the dual eligibles, including their long-term care needs. States will continue to pay 90 percent, phasing down to 75 percent over 10 years, of prescription drug costs for dual eligibles under the MMA phased-down state contribution system. Because of the joint role of Medicaid and Medicare in funding care for the dual eligibles, these two programs are inextricably linked. As the new Medicare Part D program is implemented, it is important for the federal government to receive input on implementation from state Medicaid administrators.

Although Medicare will be funding a portion of the prescription drug costs for the dual-eligible population, Medicaid will still be responsible for funding the majority of their long-term care costs.

Although Medicare will be funding a portion of the prescription drug costs for the dual-eligible population, Medicaid will still be responsible for funding the majority of their long-term care costs. The federal government can enhance opportunities for states to manage these long-term care costs. The lack of coordination between Medicare and Medicaid contributes to fragmentation of acute and long-term care. Individuals in long-term care settings generally have many acute care needs as well. This lack of coordination can lead to preventable hospitalizations and higher costs for both Medicare and Medicaid. Over the past decade, several states have been granted federal waivers to test models linking acute care and chronic care benefits into a single management structure for persons eligible for both programs.

The coordination of Medicare and Medicaid can lead to better, integrated care for dual-eligible beneficiaries and to cost savings to the federal government and states. APHSA suggests the following approaches:

1. The federal government should support state waiver proposals to integrate care for persons eligible for both Medicaid and Medicare. In computing the budget neutrality of such waivers, the federal government should recognize the potential cost savings not only for Medicaid, but also for Medicare, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI). Assessing cost neutrality based only on Medicaid expenditures does not provide an objective assessment of the success of waiver programs of all types in achieving cost savings. A more objective assessment of cost neutrality could also result in greater innovation among the states in creating new programs.

2. Current law requires a two-year waiting period for individuals with disabilities to become eligible for Medicare. The two-year period begins once SSA makes the determination that the individual is eligible. APHSA recommends phasing out the two-year waiting period for persons with disabilities and those with life-threatening illnesses to become eligible for Medicare.

PROPOSAL

Oppose any proposals to reduce federal reimbursement for Medicaid administration, such as an allotment or cap on state administrative expenditures. In addition, oppose proposals to reduce annual reimbursement for Medicaid administrative expenditures by the amount states received in their TANF block grant allotments.

EXPLANATION

Proposals to end or reduce the federal match for Medicaid administrative costs would dramatically impede states' ability to manage the program, comply with federal mandates, and deliver services to those enrolled in the program. The administrative claiming or "expenditure allotment" proposal would threaten many initiatives that could help save Medicaid (both state and federal shares) billions of dollars. Many of these initiatives, such as MMIS system redesigns and updates, would provide states with substantial new tools to better manage their programs and better coordinate medical care and other services. Although the administrative claiming proposal would appear to continue matching MMIS expenditures at the 90 percent federal rate, states' allotments might quickly be exhausted by these large investments. With nearly half of states in the process of implementing large-scale system redesigns in the next two years, an administrative allotment or cap could quickly block these important investments or force states to choose between providing services for critically ill beneficiaries or investing in innovations to ensure the program's future viability. Also, states would not have access to the resources necessary to comply with the federal mandate to enroll millions of low-income elderly into the new Medicare Part D benefit due to take effect in January 2006.

APPROACHES TO ACHIEVING PROGRAM EFFICIENCIES

PROPOSAL

There is growing consensus that achieving enhanced program efficiencies in Medicaid could produce both federal and state cost savings. These efficiencies could potentially be realized through changes to benefit design; better program management; and adjustments in prescription drug purchasing, an important cost driver for Medicaid over the last several years.

EXPLANATION

One major area in which states could make changes to address rapidly rising Medicaid costs is through changes to the currently mandated benefits package. For example, states could use limited resources more efficiently if they are granted additional latitude in designing specific benefit packages. This increased latitude might include the ability to determine "amount, duration, and scope" of the program, statewide availability, and eligibility rules without the need for a waiver. The issue of cost neutrality, which has been addressed previously, is also important to fostering innovation. Allowing states to design benefit packages that may not be cost neutral to the Medicaid program itself, but are cost neutral when taking into account all federal and state spending, would allow states to create more innovative and cost-efficient programs.

Changes to program management may provide the best approach to achieving additional efficiencies. For example, while waivers have allowed states to be highly innovative in addressing the needs of their Medicaid populations, the use of waivers has also been criticized as inefficient, particularly due to the substantial administrative burdens that waiver programs must shoulder. If the waiver process were largely eliminated and replaced with specific statutory authority under Title XIX, states would be able to offer optional services to broader populations. For the waivers that remain in place, greater efficiencies could be achieved by making the waiver process less complex, more transparent, and more predictable with respect to timeframes and the approval process.

Between 2000 and 2003, cumulative growth in prescription drug spending by Medicaid was 36.4 percent. By comparison, inpatient hospital spending increased by 14.3 percent during the same period. Increasing pharmacy costs are the number-one cost driver for increases in Medicaid expenditures. One solution to this issue, consistent with our recommendation that the HHS secretary be permitted to negotiate drug prices, is that states should be given greater ability to use the purchasing leverage of Medicaid and other state programs (as well as other states) to achieve better pricing. At the present time, there are at least two multistate pharmacy purchasing pools in place attempting to realize such economies of scale. Another means to address reducing pharmaceutical pricing is to encourage pharmaceutical manufacturers to increase Medicaid rebate programs.

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EASING STATE BURDENS IN THE MEDICAID PROGRAM

PROPOSAL

Expand the efficiency of the Medicaid program and require CMS to follow the formal rulemaking process with respect to the Medicaid program.

EXPLANATION

The Medicaid statute has evolved more slowly than the health care system, current medical practices, and the needs of state Medicaid programs for enhanced flexibility. States must have greater latitude to manage the Medicaid program with respect to eligibility, benefits, cost sharing, and coordination with private-sector insurance. To help states make the best use of Medicaid laws, the federal government should follow prescribed administrative processes and issue regulations through notices of public rulemaking.

PROPOSAL

Oppose the proposed Payment Error Rate Measurement (PERM) system.

EXPLANATION

The Improper Payments Information Act of 2002 (IPIA) requires federal agencies to annually review and identify those programs and activities that may be susceptible to erroneous payments, estimate the amount of improper payments, and submit those estimates to Congress. IPIA requires that HHS establish a nationwide improper payment rate. The Payment Accuracy Measurement (PAM) project

was the precursor to PERM. PAM was a three-year pilot program that used a claims-based sample and review methodology to estimate a state-specific payment error rate. The state-specific error rates were subsequently used to make national-level payment estimates. While IPIA requires determination of a national error rate, there is no specific requirement for a state-specific error rate. PERM is a comprehensive non-risk-based model that was designed solely to determine an error rate for the Medicaid program and SCHIP. Most of the PAM project states believe that the project was neither beneficial nor cost-effective in addressing improper payments. Furthermore, states are concerned that the PERM model design will cause state agencies to redirect resources from high-risk areas that result in significant savings and recoveries to traditionally low-recovery areas.

PROPOSAL

The federal government should permit states to replicate demonstrations previously approved in other states; the process for waiver approval should be streamlined so that it is more predictable across states and regions.

EXPLANATION

With increasing frequency in recent years, states have been denied approval for demonstration authority for the same programs approved and successfully operating in other states. States have based their applications on these other state models and have carefully coordinated with the other states, but their applications are then rejected. States should routinely be permitted to replicate successful demonstrations approved in other states. This would improve efficiency and give states additional control and predictability over Medicaid programs.

PROPOSAL

Proposed SPAs should not be used a mechanism to review and sanction states' unrelated Medicaid activities.

EXPLANATION

Delays in approving SPAs have hampered states' ability to maintain their Medicaid programs and added significant additional costs for defending their requests and operations. This practice has had the chilling effect of dampening states' innovation efforts and their willingness to risk having an SPA embargoed while federal agencies investigate a whole range of issues unrelated to the SPA under consideration. Written guidance should be developed that clarifies federal policy related to SPAs. The current "trial-and-error" process is costly, cumbersome, and confusing to state policymakers.

MMA AND PRESCRIPTION DRUG COSTS

PROPOSAL

APHSA recommends seeking statutory or regulatory change, as appropriate, to establish a single MMA Part D eligibility point of contact.

EXPLANATION

This proposal would entail repealing federal mandates on states to determine eligibility for the Medicare Part D program. The burden of eligibility determinations cannot be overstated. Specifically, determining low-income subsidy eligibility will not be a one-time event but will require redetermination on a regular basis, given the fluctuations in beneficiary assets and income levels. When these additional costs are coupled with expected outreach and education efforts, the costs to states associated with implementation will be significant. Moreover, with recent proposals calling for an overall cap on state administrative costs, states are concerned that there will be even less funding available to meet obligations under Medicare Part D.

Medicaid coverage, as well as federal financial participation in 2006, should not expire for dual eligibles until they have voluntarily enrolled in a Part D plan or until CMS or the state has automatically enrolled them in a plan.

PROPOSAL

The federal government should adequately fund state costs associated with implementing Medicare Part D.

EXPLANATION

Under current law and regulations, states have not received additional funding for the implementation costs associated with MMA. Given the emphasis on states' roles in outreach to beneficiaries, education efforts, and eligibility determinations, among other state responsibilities, states require additional funding to meet their obligations.

PROPOSAL

APHSA recommends seeking statutory or regulatory change, as appropriate, to allow states to contract with SSA for Part D low-income subsidy eligibility determinations and appeals.

EXPLANATION

Current law requires states to have in place a parallel system for determining eligibility for the low-income subsidy. This duplication, although explicitly required by law, constitutes an unneeded redundancy that could potentially be addressed through a contractual agreement.

PROPOSAL

Medicaid coverage, as well as federal financial participation in 2006, should not expire for dual eligibles until they have voluntarily enrolled in a Part D plan or until CMS or the state has automatically enrolled them in a plan. In addition, there should be a transition period of 60 to 90 days for individuals taking prescription drugs for chronic and other long-term conditions.

EXPLANATION

This type of interim period is essential to help ensure continuity of care for full-benefit dual-eligible beneficiaries. Such an interim period is especially important for patients who are on medications that are taken for extended periods of time and that are not included on the prescription drug formularies from plans available in their areas. In addition, this approach could be a contingency plan for difficulties that may occur in the eligibility and enrollment process for prescription drug plans.

A grace or other interim enrollment period is essential to help assure continuity of care for full-benefit dual-eligible beneficiaries. In the case of drugs that require lengthy periods to determine “stable” doses, a prescription transition to another drug in the same class could have adverse health effects for some beneficiaries, including some dual-eligible patients who are frail and unstable. Drug categories for patients that might require additional transition time include psychotropic compounds, HIV/AIDS medications, cardiac regimens, and anti-convulsants. In addition, such an interim period is especially important for patients on medications that are taken for extended periods of time and that are not included on the prescription drug formularies offered by prescription drug and Medicare Advantage plans available in their areas. This approach could also be a contingency plan for difficulties that may occur in prescription drug plans’ eligibility and enrollment processes.

PROPOSAL

CMS should require that prescription drug plans providing benefits under Medicare Part D share prescription drug data with state Medicaid programs regardless of whether these programs directly provide payment for prescription drugs.

EXPLANATION

The MMA final rule encourages, but does not require, MMA sponsors to share prescription drug utilization data with Medicaid programs. APhSA believes that state Medicaid programs should have access to this information from prescription drug plans, since these data are critical to states’ ability to manage the total health care of Medicaid recipients as well as the costs of other aspects of health care states continue to fund.

PROPOSAL

CMS should include drug rebates and cost-containment savings attributable to the calendar year 2003 baseline clawback calculation.

EXPLANATION

The final regulations issued by CMS indicate that the prescription drug expenditures for the full-benefit dual-eligible population in 2003 will be based on Medicaid Statistical Information System (MSIS)–reported data as adjusted by drug rebate benefits. Although CMS does specify how it will consider drug rebate savings in the phased-down state contribution, its process understates the amount of states’ actual 2003 rebates. Drug rebates reported on the CMS-64 reports for 2003 may not reflect all rebates attributable to their prescription for drug expenditures for full-benefit dual eligibles. In addition, a number of states have implemented new laws and prescription drug cost containment programs, such as preferred drug lists, fail-first, and pre-authorization. In some cases,

the benefits of these pharmacy cost-containment initiatives fail to appear in 2003 data, but will show up in subsequent years' data and result in lower Medicaid drug costs. APHSA encourages CMS to take these factors into account and modify the phased-down state contribution accordingly.

PROPOSAL

Because of the significance of MMA's phased-down state contribution baseline number for state budgets in the foreseeable future, CMS should consider developing a separate appeals process for the phased-down state contribution calculation.

EXPLANATION

This appeals process should enable states to challenge final phased-down state contribution calculations based on all available evidence and data. The appeals process should also allow for a trigger for states to argue that their clawback calculation does not achieve budget neutrality.

PROPOSAL

APHSA recommends that Congress consider the financial benefits of reimporting prescription drugs and consider legislation to permit states and other localities to reimport prescription drugs.

EXPLANATION

Many believe that drug reimportation offers a potential solution to the high prices paid by American consumers for prescription drugs. In fact, in recent years, the percentage growth of prescription drug spending has exceeded that of other health expenditures. Specifically, prescription drug spending grew at an inflation-adjusted rate of 14.5 percent from 1997 to 2002.

This translates into a 10.5 percent share of total national health care expenditures in 2002 versus only 5.8 percent in 1992. Prices for patented prescription drugs are lower in other countries such as Canada, Great Britain, and in European Union countries. For example, Canada's Patented Medicine Prices Review Board (PMPRB), which regulates drug pricing, estimates that U.S. prices were 67 percent higher on average than Canadian prices for the same compound in 2002. This disparity has led some American consumers to purchase drugs from Canada for personal use. If this practice could be expanded to a commercial reimportation system, it is possible that consumers could realize significant price savings on pharmaceuticals. By some estimates, allowing open pharmaceutical markets could save American consumers at least \$38 billion per year.

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PROPOSAL

APHSA proposes a modification in MMA to provide the federal government with authority to negotiate prices with drug companies.

EXPLANATION

The MMA contains a provision prohibiting the federal government from negotiating drug prices with drug manufacturers. This provision should be modified to allow such negotiations. Allowing the provision preventing the federal government from negotiating with drug manufacturers undermines one of the strongest controls on drug pricing. Recently released figures estimate the cost of Medicare's Part D benefit during FYs 2006 through 2015 illustrate the consequences of not being able to control drug spending. Specifically, CMS estimates that the Part D benefit will cost \$1.2 trillion during that period. Even when accounting for offsets from states and premiums that are paid by beneficiaries, this figure is \$754 billion. Proponents have argued that the emergence of managed care in pharmacy benefits would help stem the tide of increasing prescription drug costs. Allowing the government to negotiate prices for pharmaceuticals would likely result in lower prices because of the sheer size of the federal government's buying power. Other agencies, such as the Department of Defense and Veterans Affairs, have authority to negotiate pricing directly with drug manufacturers.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM

PROPOSAL

Oppose any changes to SCHIP that would result in a loss of funding for states to administer this vital program for insuring low-income children.

EXPLANATION

Proposals have been made to reauthorize SCHIP before it formally expires and to reduce the length of time states have to spend their SCHIP allotments from three years to two years. These changes, taken together, could have a devastating effect on SCHIP programs by drastically reducing the funds available to states. Compounding the dilemma is a proposal to spend \$1 billion on outreach over two years to get more children enrolled in SCHIP. The combination of decreased federal support for SCHIP and increased demand for program enrollment would exacerbate the fiscal pressures on the program.

PROPOSAL

Revise and reauthorize the State Children's Health Insurance Program.

EXPLANATION

1. SCHIP eligibility definitions should be examined to consider coverage of children of low-income public employees.
2. A standard formula should be established that is based on state population and other specific state information such as SCHIP enrollment, SCHIP population, remaining SCHIP dollars, and needed SCHIP dollars.
3. Title XXI should be amended to include the process of redistributing SCHIP funds for each state at the end of each budget cycle. The process of redistributing allocated funds would then no longer be subject to annual review.

4. The Medicaid and SCHIP statutes should be amended to permit blending of public and private health insurance coverage and continuity of care as children move between programs. State proposals to subsidize employer-based health insurance for low-wage workers should be considered.
5. CMS should allow a broadening of the use of HIFA waivers to allow the uninsured to buy into Medicaid or SCHIP.

Long-Term Care and Disability

Current Program

Long-term care for individuals who are elderly and disabled represents one of the most important issues facing the nation today. In 2002, national spending on long-term care totaled \$180 billion, or about 12 percent of total health care (including medical and long-term care) expenditures. Nearly two-thirds of long-term care expenditures are for institutional care. For individuals with extensive long-term care needs, long-term care services are very expensive. In 2002, the average annual cost of nursing home care was \$52,000 for a semi-private room and \$61,000 for a private room. Medicaid is the nation's largest source of financing for long-term care for individuals who are elderly and disabled, followed by out-of-pocket payments by individuals receiving care and their families. In 2002, the Medicaid program spent \$84.7 billion on long-term care. Medicare and private health insurance provide only limited coverage for nursing home and home health care. While only a small minority of the population has private long-term care insurance, the number is growing.

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Over the last decade, states have increased their support for long-term care services in individuals' homes or in other community-based settings such as adult day care, adult foster care homes, and assisted living facilities as an alternative to care in nursing homes and other institutions. For many vulnerable elderly and nonelderly individuals with physical, developmental, or cognitive disabilities, these alternative settings and services are seen as preferable to institutional care. Medicaid home- and community-based services (HCBS) waivers, authorized under section 1915(c) of the Social Security Act, are the primary means by which states provide noninstitutional long-term care. These waivers allow states to limit the availability of services geographically, target specific populations or conditions, control the number of individuals served, and cap overall expenditures—actions not usually allowed under the Medicaid statute. Such programs also encourage innovation.¹

With the expansion of community-based care over the past decade, HCBS waiver programs have emerged as the primary vehicle through which the Medicaid program finances long-term care in community settings. Specifically, total HCBS spending has increased from \$6 billion in 1992 to \$24.6 billion in 2002. In 1992, HCBS spending was 37 percent of the total while in 2002, it had risen to 67 percent.

¹ *National Health Expenditures, Aggregate and Per-Capita Amounts for Selected Calendar Years*, Centers for Medicare and Medicaid Services, Office of the Actuary, 2004.

More recently, however, state budget difficulties have forced some states to implement cuts to long-term care service availability. According to a recent survey conducted by the Kaiser Commission on Medicaid and the Uninsured, in fiscal year 2004, eight states implemented cost controls related to nursing homes and 11 states planned for nursing home cost controls in FY 2005. Examples of these

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initiatives include policies designed to reduce the number of nursing home beds, to reduce the number of hospital leave days, to tighten eligibility criteria, to reduce payments for bed holds, and to downsize the capacity of intermediate-care facilities for the mentally retarded (ICF/MR). Other cost-containment activities involved changes to nursing home reimbursement methodologies, such as adopting a case mix adjustment or reducing excess payment allowances.

In FY 2004, eight states, and in FY 2005, 11 states had cost controls directed at HCBS programs. Some of these states imposed a freeze on waiver slots. These recent reductions in HCBS programs are in

contrast to state actions over the last five years to eliminate waiting lists for waiver services and expand access to community-based long-term care services. These reductions provide evidence that the current system of financing long-term care must be altered as the demand for such services continues to increase.

Nearly 50 million Americans, or 17 percent of the total U.S. population, have some kind of disability, according to the 2000 Census. Their disabilities include vision and hearing impairments, learning disabilities, mental illness, cognitive disabilities, and mobility challenges. The largest group Americans with disabilities is made up of those with mental illness and cognitive disabilities, followed by those with mobility and hearing difficulties. These populations represent a particular challenge for public policymakers because they draw heavily on public resources such as health care, transportation, education, and housing.

With enactment of the Americans with Disabilities Act (ADA) 15 years ago, a fundamental shift in policy affecting individuals with disabilities occurred. This shift in policy focus broadened societal perceptions about individuals with disabilities. The previously widespread notion that once an individual was deemed disabled he or she could not fully participate in society has also changed dramatically. Public policies and perceptions are evolving to a broader vision that individuals with disabilities should contribute to society according to their abilities.

States have long served as incubators in developing new ideas and initiatives with respect to programs focusing on individuals with disabilities. These new ideas and policies often begin with a Medicaid waiver, or through a special grant opportunity. The federal government has been instrumental in assisting states in developing their policies by providing program funding.

States' fiscal condition over the last 15 years has played a very large role in the development of policies affecting individuals with disabilities. Enactment of ADA increased awareness of the needs of persons with disabilities for accommodations and services that would enable them to participate fully in employment and their communities. As a result, states were forced to make creative and sometimes painful budget decisions to comply with the legislation. Going forward, it is crucial to provide states with flexibility and options rather than mandating directions without any monetary assistance.

While there are many state-funded programs for individuals with disabilities, state Medicaid programs are the largest sources of funding. While persons with disabilities account for 16 percent

of all Medicaid beneficiaries, their care consumes 43 percent of all expenditures, and average per-capita expenditures are five to six times higher than those made for child and adult populations without disabilities. The average Medicaid payment per enrollee for acute and long-term care is \$12,300, while the average Medicaid per-enrollee cost per adult is \$1,900. The current state fiscal crisis is forcing states to make reductions in programs, or at the very least enact budget-neutral programs.

Recognizing the challenges that states face in developing and delivering a series of comprehensive systems for long-term care and supports for individuals with disabilities, APHSA formed the Center for Workers with Disabilities. The center provides technical assistance to states on their Medicaid buy-in programs and in developing comprehensive employment systems.

Challenges

There are four principal challenges facing policymakers grappling with providing services to aged and disabled populations. The primary challenge is maintaining adequate and consistent federal funding levels for programs. The second key challenge is continuing to allow states to experiment and innovate through the use of waiver programs; states have proven over the last three decades that using waiver programs often leads to the most creative and fiscally sound solutions. Third, a realistic partnership is needed among the federal government, states, and individuals who are elderly or disabled so that the necessary services and supports can be developed, allowing these individuals to integrate into their communities. The fourth challenge is that states must work closely with advocates and key stakeholders, including individuals who are elderly or disabled, to develop policies and programs that are most efficient and effective in responding to the priority needs of these heterogeneous populations.

The process of realigning policies to facilitate reforms in the long-term care system and to foster the full integration of individuals with disabilities in society is complex and far-reaching. Many government agencies and programs will need to enter into extensive assessments and interactive policy initiatives to remove the existing barriers interwoven through the fabric of federal and state policies. This section is focused primarily on Medicaid-related issues, with the acknowledgment that these are only the first steps in an ongoing and complex process.

There are four key topic areas that are critical to providing services to elderly and disabled populations and to allowing them to be integrated into society to the greatest extent possible:

1. Comprehensive reform of the long-term care system to make certain that services are delivered in the most appropriate setting;
2. Full access to the most appropriate community-based housing;
3. Access to and appropriate accommodation for fair participation in the competitive workplace;
4. Equal access to local and long-distance public transportation.

When considering broad-based long-term care reform, the overarching consideration is financing. Historically, states have borne a significant portion of the costs of financing long-term care through their Medicaid programs. Any comprehensive reform should reassess financing and determine the

When considering broad-based long-term care reform, the overarching consideration is financing. Historically, states have borne a significant portion of the costs of financing long-term care through their Medicaid programs. Any comprehensive reform should reassess financing and determine the most efficient and effective approach to providing long-term care services to vulnerable populations.

most efficient and effective approach to providing long-term care services to vulnerable populations. Currently, Medicaid programs cumulatively provide 43 percent of all national spending on long-term care, while the Medicare program pays for only 17 percent of total spending. This percentage translates into \$84.7 billion of the \$179.6 billion spent on long-term care in 2002.

Recommendations

LONG-TERM CARE SERVICES

PROPOSAL

Maintain a focus on self-determination for long-term care populations, through such programs as the Money Follows the Person, the Family Opportunity Act, and Real Change Grants for Community Living, to allow individuals to determine the most appropriate setting.

EXPLANATION

The proposed Money Follows the Person Rebalancing Initiative would pay for HCBS for people leaving institutions in states that develop and implement strategies to rebalance their long-term care systems. The Family Opportunity Act would allow states to offer middle-income families who have children with disabilities the option of buying into Medicaid. The 2003 Systems Change Grants for Community Living provided up to \$7 million for states to develop and implement strategies that reform financing and service systems so funding can follow people from institutional to community settings. APHSA supports the goals of Money Follows the Person and the Systems Change Grants for Community Living and urges continued flexibility and increased funding for the programs. Research has shown that self-determination can often lead to improved outcomes for the elderly and persons with disabilities.

PROPOSAL

Foster improved coordination of Medicare- and Medicaid-funded services.

EXPLANATION

The coordination of Medicare and Medicaid can lead to better, integrated care for dual-eligible beneficiaries and to cost savings to both the federal and state governments.

1. The federal government should support state waiver proposals to integrate care for persons eligible for both Medicaid and Medicare. In computing the budget neutrality of such waivers, the federal government should recognize the potential cost savings not only for Medicaid, but also for Medicare, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI).
2. Current law requires a two-year waiting period for individuals with disabilities to become eligible for Medicare. The two-year period begins once the determination is made by the Social Security Administration (SSA) that the individual is eligible. APHSA recommends phasing out the two-year waiting period for persons with disabilities and those with life-threatening illnesses to be eligible for Medicare.

PROPOSAL

Enhance home- and community-based services through state demonstration projects as well as through changes in federal law, allowing states greater flexibility to create innovative programs.

EXPLANATION

This development would help to ensure that an appropriate infrastructure of both services and affordable housing exists during the transition from an institution-based to a community-based long-term care system. The New Freedom Initiative and Money Follows the Person proposals include the concept of rebalancing, which encourages the use of limited state budget resources for the provision of home- and community-based long-term care. APHSA encourages the use of further demonstration programs to enhance home- and community-based services. In addition, APHSA supports funding the program at a 100-percent federal match rate.

PROPOSAL

Modify Medicaid eligibility requirements for long-term care by closing asset and income sheltering loopholes.

EXPLANATION

Useful changes in this regard would include imposing an asset transfer penalty on home- and community-based care and strengthening existing penalties for individuals who transfer assets to qualify for Medicaid in nursing homes. APHSA supports proposals that eliminate the ability for individuals to transfer assets for the sole purpose of obtaining Medicaid eligibility status.

The long-term care partnership model is one that garners attention from across the political spectrum....This model may offer the best answer to individuals concerned about having to spend down their assets to be eligible for Medicaid.

PROPOSAL

Expand and improve long-term care insurance options through stimulating the marketplace by developing a public/private partnership model for long-term care financing.

EXPLANATION

This goal can be achieved by expanding the long-term care partnership model; creating a government-funded reinsurance mechanism; introducing tax-favored long-term care savings accounts; enhancing Medicaid Buy-In (MBI) options; and encouraging employer and union participation.

The long-term care partnership model is one that garners attention from across the political spectrum. The Senate Special Committee on Aging has held hearings on this approach that highlighted the four existing state demonstration programs and showed the potential for both cost savings and for providing fair and equitable long-term care coverage to individuals. This model may offer the best answer to individuals concerned about having to spend down their assets to be eligible for Medicaid. The long-term care partnership model would allow individuals who buy approved long-term care policies to access Medicaid funds, without requiring an asset test, for care once their policies are exhausted.

PROPOSAL

Enroll dual eligibles in a new program that would be a hybrid product of Medicare+Choice and Medicaid managed care that would include long-term care services in the benefits package.

EXPLANATION

This program could address some of the major problems in the current structure of coverage, specifically the existence of two payers, fragmented care, and misaligned financial incentives. This model would be similar to the successful Social Health Maintenance Organization program that began in the mid-1980s as a demonstration project at four sites. The social health maintenance organization combined the Medicare+Choice HMO benefits package with home care benefits, allowing many frail elderly to remain in their homes who otherwise would have been institutionalized. This type of program could also provide benefits to disabled populations with changes in eligibility requirements. This provides one concrete approach to APHSA's recommendation that Medicare terminate its waiting periods for eligibility for individuals with disabilities. Taking a long-run view, ending the waiting periods could result in significant cost savings to the states since individuals with disabilities would be more likely to receive the care they need when they need it, rather than on an emergency basis after the condition worsens.

PROPOSAL

Enhance technology in providing long-term care services through such approaches as electronic medical records, disease management programs, and better data sharing among providers.

EXPLANATION

Electronic technology could be used in long-term care settings to record patient data and provision of services. There are numerous systems that have been developed in which each module can be configured to meet the needs of various long-term care facilities, including nursing homes, assisted living centers, skilled nursing facilities, continuing care retirement centers, rehabilitation facilities, and adult daycare services.

One example of new technology currently being used in long-term care facilities across the country employs portable touch screens. The defined modules allow rehabilitation therapists and certified nursing assistants (CNAs) to record daily activities, observations, and services in real-time and at the point of care. These and similar innovations would help to foster greater efficiency and quality in providing long-term care services.

PROPOSAL

Gain a more thorough understanding of the behavioral health conditions that emerge during stays in long-term care facilities. One study found that more than 40 percent of all nursing home residents are taking anti-depressants. However, they also need other mental health services besides medications that could improve the overall quality of care received.

EXPLANATION

The current long-term care system often overlooks the mental health problems of residents in long-term care settings. The consequences of that neglect are serious from both a quality of life and health perspective. Some examples of ways to address neglect of behavioral health issues in long-term care include prohibiting chemical and physical restraints, changing staff perceptions of the significance of behavioral health conditions, and support groups. No comprehensive reform of the long-term care system would be complete without addressing this concern.

PROPOSAL

Achieve a better understanding in the community regarding the intersection between long-term care and acute care.

EXPLANATION

Efficiencies are needed in the transition process from acute to long-term care, which could help to improve outcomes for individuals needing long-term care services following an acute care event. From a continuity-of-care perspective, this could help ensure that individuals needing long-term care following an acute care episode receive the proper array of services based upon their medical history and the recommendations of their treating physicians.

PROPOSAL

Enhance home- and community-based services through reverse mortgage programs and other programs utilizing home equity held by seniors and persons with disabilities.

EXPLANATION

Reverse mortgages would allow individuals who currently own homes and need long-term care services to finance the cost of their care using the equity in their homes. For many of these individuals, the equity in their homes is their largest asset. Only at the sale of the house or upon the individual's death would the note become due and payable. Reverse mortgages could, in some cases, help provide for home modification, allowing individuals with disabilities to remain in their own homes when they otherwise could not. This concept also helps foster self-direction, since individuals obtaining reverse mortgages would be able to significantly affect their course of care. As an alternative to reverse mortgages, individuals should also have the option to use more traditional home equity loans to finance portions of their long-term care. In either case, subsidies of these programs may make them more feasible for larger segments of the population requiring long-term care.

PROPOSAL

States should be encouraged to develop Personal Attendant Services (PAS) delivery systems that promote and enhance consumer-directed care in the home, workplace, and elsewhere to ensure their full participation in the community.

EXPLANATION

States need flexibility to design personal assistance services systems appropriate to their state needs, funding, and infrastructure. Assessment tools need to reflect a person's capacity to function in a more integrated environment such as the workplace and identify the supports needed for that experience to be successful. To enhance consumer-directed care, states have been experimenting with models such as Cash and Counseling. They are also participating in Community-Integrated Personal Assistance Services and Supports grants that support states' efforts to improve personal assistance services that are consumer-directed. These efforts should be continued and expanded.

PROPOSAL

Provide incentives to expand the personal care attendant long-term care labor force, including using family and friends as service providers.

EXPLANATION

In addition to trained professionals, the long-term care industry will also require thousands of new workers to meet the increased demands of providing quality long-term care services to a growing population. Several states have already undertaken specific initiatives relating to increasing wages, altering staff requirements, and financing additional training. In addition, other specific approaches to help avoid a potential labor shortage include finding new sources of workers; providing effective post-secondary education and on-the-job training for current workers; and improving working conditions by providing more career opportunities, increasing compensation, and lightening the workloads of individual workers. Providing additional incentives for states to pay for friends and families to provide for care would end up lowering the overall program costs and would allow individuals with disabilities to stay in their own homes.

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ACCESS TO COMMUNITY-BASED HOUSING

PROPOSAL

Support expanding programs that will increase the availability of affordable rental and home-ownership opportunities for individuals with disabilities.

EXPLANATION

A key factor to successfully integrating individuals with disabilities into the community is finding appropriate housing. While there has been an increase in the number of rental housing units for individuals with disabilities over the past several years, there is still a shortage of affordable accessible property. Nationwide, there are more than 500,000 individuals with disabilities on waiting lists for appropriate housing. In addition, only 4 percent of individuals with disabilities own their own homes compared to 70 percent of Americans without disabilities. Key to the sense of community and inclusion is increasing homeownership among individuals with disabilities. Cuts in funding for the Housing for Persons with Disabilities program, as some have proposed, would have a detrimental effect on these programs.

PROPOSAL

Allow waivers to be converted to state plan amendments and eliminate the nursing home equivalency test.

EXPLANATION

Some states would prefer to incorporate their current HCBS programs into their Medicaid state plan. The reporting requirements of waivers are time consuming and expensive for states. Allowing states to convert waivers to state plan amendments after successfully completing several demonstration renewal periods would allow states the flexibility to construct programs that meet their unique needs. After cost effectiveness, access, and quality have been successfully demonstrated for a sustained period of time, there is no need for the continued intense level of reporting and federal scrutiny required under a waiver. For example, states with Section 1915(b) freedom-of-choice waivers to administer nonemergency medical transportation brokerages must reapply every two years.

Eliminating institutional requirements, such as the nursing home equivalency test, will allow states to develop a comprehensive array of supportive services that are focused on integrating persons with disabilities into the community rather than simply getting them out of nursing homes.

Regardless of whether employment policies for persons with disabilities are well-written and clearly articulated in rules and regulations, unless there also is an effective, comprehensive delivery system, individuals with disabilities will continue to face significant barriers to work and successful careering.

PARTICIPATION IN THE WORKPLACE

Pre-1997 work incentives, such as the Section 1619 (a) and (b) Impairment Related Work Expenses (IRWE) and Extended Periods of Eligibility (EPE), along with newer work incentive provisions such as the Balanced Budget Act of 1997 (BBA) Buy-In Option and the provisions of the Ticket to Work and Work Incentives Act (TWWIA), are all aimed at eliminating barriers to health care access and improving employment supports. They also are intended to enhance the financial independence and well-being of working-age Social Security beneficiaries with disabilities. However, in addition to the fear of losing health care coverage, SSDI and SSI participants, as well as other individuals with significant disabilities, cite other barriers to employment services such as:

- Lack of adequate employment training and placement services;
- Complexity of existing work incentives;
- Lack of benefits counseling that provides accurate and easy-to-understand information about their options; and
- Lack of a comprehensive integrated system of short- and long-term services and supports that addresses the individual's overall employment needs.

Regardless of whether employment policies for persons with disabilities are well-written and clearly articulated in rules and regulations, unless there also is an effective, comprehensive delivery system, individuals with disabilities will continue to face significant barriers to work and successful careering.

PROPOSAL

Continue to support the Ticket to Work and Work Incentives Act, including Medicaid Infrastructure Grants, so states can continue to build MBI programs for individuals with disabilities.

EXPLANATION

The TWWIA was designed to increase access to, and the quality of, rehabilitation and employment services available to SSDI beneficiaries. The ultimate goal of TWWIA is to increase the number of beneficiaries who can become economically self-sufficient. Under the program, beneficiaries receive a “ticket” they use to shop among rehabilitation providers or return-to-work services in either the public or private sector. The Social Security Administration is responsible, under the program, for paying for training for workers.

Enactment of TWWIA also afforded states the opportunity to create MBI programs. Recognizing the effort that it takes to create systems change, Congress allowed 11 years for the program. Just as the early implementer states are beginning to see real change taking place within their systems, there is discussion about cutting the program. It is imperative that states have the full 11 years that Congress determined was appropriate to create this type of systems change.

To date, 32 states have created programs that allow workers with disabilities to pay premiums for Medicaid and go back to work without fear of losing their health coverage. The MBI is an integral facet of any comprehensive employment system and thus must be maintained as a priority.

PROPOSAL

Savings accrued from implementation of an MBI program should be shared with the state.

EXPLANATION

Savings accrued from the implementation of an MBI program go solely to the federal government. The Medicaid Infrastructure Grant (MIG) program provides funding for states to develop infrastructure needed to implement the MBI programs, but the ongoing costs are borne in large part by the state. The savings created by workers with disabilities who leave the Social Security system go exclusively to the federal government. Discussions should occur between the states and federal partners, including CMS and SSA, to determine how these savings might be shared between the federal and state governments.

PROPOSAL

Allow states to define “employment” for purposes of MBI programs.

EXPLANATION

States are prohibited from direct inclusion of definitions of employment that include dollar or hourly thresholds (with the exception of the “medically-improved” group). Without the ability to define “employment,” states that implement MBI entitlement programs are hampered in efforts to effectively target program enrollment and consequently control costs. State legislatures are less likely

to authorize funding for implementation of MBI programs without such program controls. States should be allowed to design targeted MBI programs with some assurances that intended populations are being targeted and increasingly scarce resources can be dedicated for the intended use.

PROPOSAL

Increase the priority of the Ticket Act on Transitioning Youth Ages 14 to 24.

EXPLANATION

Currently, the TWWIA program limits participation to those between the ages of 18 and 64. Studies have consistently found that if young people can become employed or enrolled in school rather than enrolled in SSI, they will not rely on public services for support throughout their lifetime. Therefore, every effort should be made to shift the emphasis of the programs to keeping youths out programs as they make the transition from school to work. The first priority will be to change the age limit established in the Ticket Act from age 18 to age 14 so that youths as young as 14 can begin job training and continuing education.

While the federal government has made progress in realigning federal policies...the definition of disability used by SSI and SSDI disability under Social Security is based on the inability to work.

PROPOSAL

Support modernization of the definition of disability.

EXPLANATION

The current definition of disability used by SSA is antiquated. The definition of disability hinges on the individual's "ability to work." Since the inception of the Social Security program, medical treatments and assistive technology have advanced to enable persons with disabilities to compensate functionally. At the same time, with the advent of the ADA and overall shifts in societal perception of persons with disabilities, it is now more commonly believed that persons with disabilities should be allowed to participate fully in every aspect of society, including work. While the federal government has made progress in realigning federal policies to include employment supports for persons with disabilities, and to remove policy barriers to employment, the definition of disability used by SSI and SSDI disability under Social Security is based on the inability to work. Since the federal definition of disability revolves around work and the ability to work, use of this definition presents a "catch 22." It is often difficult for states to retain the federal disability definition without jeopardizing the individual's disability status. Accordingly, APHSA urges the federal government to work toward developing a definition of disability that is congruent with the norms and technology of today's world.

PROPOSAL

Eliminate work disincentives for individuals with disabilities. Eliminate the SSDI "cash cliff" and replace it with a system that is designed like the SSI program with a gradual phase-out.

While providing important enhancements to employment supports on the Medicaid side, serious barriers to employment still exist in SSDI policies. These barriers are commonly referred to as the SSDI "cash cliff." Individuals with disabilities who work and are SSDI recipients must limit their

earnings to the federal substantial gainful activity (SGA) level of \$810 per month (in 2004), or risk forfeiting their SSDI payment. Unlike the SSI program, once SSDI recipients earn more than the SGA, their payments are cancelled. This “cash cliff” encourages individuals with disabilities to earn less to ensure their continued enrollment in SSDI.

In considering this issue, the Ticket to Work and Work Incentives Advisory Panel authorized SSA to establish demonstration projects, including testing alternatives to the current system, which would enable policymakers to develop legislative alternatives to the cash cliff.

PROPOSAL

Increase funding for training and technical assistance for one-stops and navigators so that they can provide consumers with the appropriate level of services.

EXPLANATION

Workers with disabilities report one of their frustrations with the one-stops and navigators is the lack of adequately trained personnel. One-stops and navigators can only be useful to workers with disabilities if they are properly trained and understand the programs well enough to provide advice to the consumer. In addition, they need to be able to serve as liaisons for workers with disabilities at the agency level. Adequate funding must be provided to assure that this goal can be accomplished.

PROPOSAL

Urge the federal government to set the example by hiring workers with disabilities.

EXPLANATION

Over the past 10 years, there has been a 20 percent decline in the number of workers with disabilities in the federal workforce. Workers with disabilities currently comprise less than 1 percent of the federal workforce. The federal government should establish an active outreach campaign to bring workers with disabilities back into the federal workforce.

PROPOSAL

Provide states with the flexibility to expand efforts to achieve outcomes using vocational rehabilitation and education programs for individuals with disabilities. These programs should focus on providing skills and educational training that would allow for advancement.

EXPLANATION

Vocational education and rehabilitation programs need to change constantly to provide maximum opportunities for individuals with disabilities. The programs need to work within private-sector communities to assess which new skills workers will require. States need the flexibility to work with the private sector to design effective outcomes-based programs that promote opportunities. There have been proposals that eliminate the vocational education program. APHSA believes that eliminating this program would have a detrimental affect on the effort to promote the transition for school to work for youths with disabilities.

ACCESS TO TRANSPORTATION

PROPOSAL

Provide states with funding, flexibility, and technical assistance to construct and provide transportation services for the elderly and people with disabilities. Expand mass transportation and other approaches so that individuals who are elderly and disabled can get to medical appointments, employment-related activities, and educational programs.

EXPLANATION

Access to transportation for elderly and disabled populations remains at best a system of unequal access, limited connectivity between systems, and outdated modes. States should be given flexibility and funding to design transportation systems to best meet the needs of their distinct populations. States should be given additional funding to provide transportation to a broader array of services and activities, including those activities that enable individuals with disabilities to continue to live independently.

Recognizing the importance of transportation to individuals with disabilities, the federal government designed the United We Ride (UWR) Initiative. The initiative's intent is to break down transportation-related barriers among federal programs and set the stage for local partnerships. There are currently 62 federal programs that fund transportation services.

Under the program, State Coordination Grants may be used to help states conduct a comprehensive state assessment using the UWR Framework for Action or develop a comprehensive state action plan for coordinating human service transportation. For those states that already have a comprehensive state action plan, grants can be used for implementing one or more of the elements identified within the Framework for Action (for those states that have an established action plan). This program is an important first step in creating a solution to transportation for individuals with disabilities and should be expanded and continued. Current funding for the UWR State Coordination Grants is limited to \$35,000 per state. It is important that states have maximum flexibility to develop their programs with that limited amount of resources.

Access to transportation for elderly and disabled populations remains at best a system of unequal access, limited connectivity between systems, and outdated modes. States should be given flexibility and funding to design transportation systems to best meet the needs of their distinct populations.

PROPOSAL

Provide states with maximum flexibility and the highest rate federal match to provide for additional nonemergency transportation.

EXPLANATION

State Medicaid programs are required to provide transportation to and from medical providers. States also use funding and service delivery options to construct an array of nonemergency transportation services to meet states' diverse needs in terms of geography, infrastructure, population, and funding. There are a variety of funding options available to states, including using waivers to achieve flexibility in program design.

Section 1915(b) freedom-of-choice, nonemergency medical transportation (NEMT) waivers must be renewed every two years. After some period of waiver administration, and if the state successfully demonstrates cost-effectiveness, access, and quality for a sustained period of time, states should be allowed to administer the program as a state plan option. At some point, the need for the intense level of reporting and federal scrutiny required under a waiver may no longer be necessary, and states could use the staff resources for other program redesign or administrative tasks.

CMS should allow states to allocate costs of public transit passes among human service agencies on a basis other than the currently required case-by-case basis. By allowing blended funding from human service agencies based on projected utilization, states could maximize use of public transit pass programs, increasing overall mobility for Medicaid riders and providing an additional funding base for public transit systems. Some recent literature suggests that increasing overall mobility increases the opportunity for social networks. Increased social networking is, in turn, linked to better health outcomes.

SOCIAL SECURITY AND THE STATE SUPPLEMENTATION PROGRAM

PROPOSAL

Preserve the Social Security insurance program benefits that protect our most vulnerable citizens.

EXPLANATION

Over one-third of those who receive Social Security checks each month, or more than 17 million people, are not retirees. The recipients include people with disabilities or their dependents receiving disability insurance benefits; people with disabilities since childhood receiving benefits based on their parents' work histories; and widows and widowers with disabilities.

Any changes to the current formulas for Social Security would automatically change the formula for individuals with disabilities. Therefore, APHSA urges that impact statements for various populations of the Social Security program be performed and reviewed prior to enacting any changes to the program.

PROPOSAL

Make state supplementation payments truly optional by eliminating the now-obsolete maintenance-of-effort (MOE) mandate.

EXPLANATION

Although the state supplementation program is considered optional, due to a requirement added in 1976, states must maintain spending at the level they began their supplemental program in order to qualify for matching funds under Medicaid. Therefore, states that chose to provide a supplemental benefit more than 30 years ago with the understanding that it was an option are now forced to maintain the same, if not higher levels, of spending to draw down Medicaid matching funds. In addition, the structure for these payments is also frozen in many states, forcing them to provide assistance in an amount or category that may no longer best serve the state's SSI recipients.

PROPOSAL

Provide significantly more flexibility in determining how best to serve recipients while still meeting MOE requirements. This would include allowing states to count vendor payments in residential care toward meeting their MOE requirement.

EXPLANATION

Federal law requires that supplemental payments be in cash, actual currency or any instrument that can be converted into cash upon demand. Furthermore, regulations specify that vendor payments cannot count as supplemental payments. The statute and regulations are out of date and mandate an approach to human service delivery based on cash payment rather than a combination of cash and necessary services. This requirement may be an impediment to states using their funds in a way that reflects the states' growing knowledge and experience of how to best support the elderly, blind, and individuals with disabilities. The current MOE requirement impedes the effective and efficient provision of residential care to individuals with disabilities, a practice that is common among many states and is considered appropriate to many SSI populations.

PROPOSAL

Eliminate federal fees for federal administration of state supplementation programs. If total elimination is not possible, fees should be adjusted to accurately reflect the additional costs incurred by SSA in administering each state's supplementation program.

EXPLANATION

Since inception of the SSI program in January 1974, states have contracted with SSA for administration of their state supplementation programs. Although this service was originally provided cost free, in October 1993, SSA began charging states ever-increasing administrative fees based on the number of supplementation payments issued on behalf of the state. As long as a state contracts for federal administration, the state will continue to pay administrative fees. At some time, the cost of federal administration will become so high that federal administration ceases to be a viable way to deliver state supplementation payments to the needy, elderly, blind, and individuals with disabilities. For one state, a \$28 million program costs \$10 million to federally administer. Another state is paying SSA \$10 to administer a \$15 check.

PROPOSAL

For states with federally administered state supplementation programs, hold SSA fiscally liable for erroneous payments [federal financial liability (FFL)] of state supplementation dollars.

EXPLANATION

When the SSI program began in 1974, SSA was liable for erroneous payments. In a manner similar to the quality control process in the Food Stamp Program, SSA was fiscally liable for costs of erroneous payments that exceeded an agreed-upon payment error rate. This liability was unilaterally abrogated in the early 1980s when SSA published regulations that superseded the FFL provisions in all states' contractual agreements with SSA for federal administration.

At the time, SSA justified the regulation by stating that the accuracy of its state supplementation payments was so high that SSA no longer needed to be held liable for errors. Since that time, Government Accountability Office reports and other sources have suggested otherwise. Accountability should be restored to the system of federally administered state supplementation by reinstating FFL.

PROPOSAL

Eliminate the federal financial disincentive for states to provide state SSI supplementation and related SSI/Medicaid work incentives (Section 1619) by enacting federal legislation to eliminate or reduce the federal fees levied against states by SSA for federal administration of state SSI supplements.

EXPLANATION

Current law requires that states pay SSA for federal administration of state SSI supplementation. This amount, which is now over \$8.50 for each monthly payment check to an SSI beneficiary, creates a disincentive for states to provide the additional funds for persons with disabilities to enable them to live independently in the community.

Child Welfare Services

Current Program

Child abuse or neglect is defined as any act, failure to act, or pattern of behavior on the part of a parent or primary caretaker that results in the physical, sexual, or emotional harm, or presents an imminent risk of harm, to a child under age 18. The majority of cases that come into the child welfare system involve some form of neglect. According to data from the National Child Abuse and Neglect Data System (NCANDS), during 2002, 60.5 percent of victims known to the child protection system experienced neglect (including medical neglect), 18.6 percent were physically abused, 9.9 percent were sexually abused, and 6.5 percent were emotionally or psychologically maltreated.

In 2002, state child protective services agencies received an estimated 2.6 million referrals alleging child maltreatment. An estimated 896,000 of the children referred were found to be victims. As of September 2002, 532,000 children were in foster care and 126,000 children were awaiting adoption.

The child welfare system provides different levels of assistance to families and children in crisis, based on their needs. Removing a child from home is an option only when necessary to protect a child's safety. Prevention, family support, or whenever possible, early intervention to avoid removal from home, are the optimal means of providing assistance for families and children in need of help. The child welfare system provides intensive in-home services to families whose situation does not require removal of the child; out-of-home services when a child must temporarily be removed from home to ensure safety; and continued services as needed to prevent re-entry into the system after the child has been reunified, adopted, or placed with a guardian.

The courts are a vital part of the child welfare safety net. Children cannot be removed from home, reunited with their family, placed in guardianship, emancipated, or adopted without the approval of a judge. According to the Adoption and Safe Families Act (ASFA), within 60 days of a child's removal, the state must present evidence to the court that "reasonable efforts" were made to keep a family intact. Furthermore, a permanency hearing must be held within 12 months of the child's entry into foster care, and additional hearings held every 12 months thereafter. Judges have a serious responsibility since they ultimately determine, within statutory timeframes, if parents' rights to their children should be terminated. Judges, attorneys, guardians ad litem, and all other court personnel

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who work with families and children in the child welfare system must receive the support needed to work effectively with the child welfare agency.

While the federal government provides financial matching funds and a variety of grants to states for these services, the majority of the services for these vulnerable children and families are funded by state governments.

In-home services are intensive and can either be court-ordered or voluntary, depending on the nature of the case. Out-of-home services can lead to reunification, adoption, or guardianship or, as a last resort, a child aging out of the foster care system. According to the latest available Adoption and Foster Care Analysis and Reporting System (AFCARS) data, during fiscal year 2002, 54 percent of children exiting foster care were reunified with parents or primary caretakers, 17 percent were adopted, 10 percent lived with other relatives, 4 percent were released to guardians, and 7 percent were emancipated. Families and children can benefit immensely from the array of services provided by child welfare and other supporting systems.

States provide a broad array of core services to children and families who come to the attention of the child welfare system. These services include:

- **Prevention/Family Support**—Services to keep children and families from entering the system in the first place. Public child welfare administrators believe that children belong with their families in a safe and stable home whenever possible.
- **Early Intervention/Family Preservation**—Services to address the needs of families at risk or in crisis. These programs seek to strengthen families, stabilize families, and prevent entry into the system.
- **Child Protective Services**—Investigate cases of suspected abuse and neglect and provision of treatment services.
- **Foster Care**—Placement of children in out-of-home care.
- **Permanence**—Determine a permanent home for a child: reunification with the biological family, placement with an adoptive family or relatives, or guardianship.
- **Post-Permanency Services/After Care**—Services to support a permanent placement, such as reunification services, post-adoption or guardianship services, or services to children and families in kinship care arrangements.
- **Independent Living**—Services to prepare older youths or those who are aging out of the foster care system for self-sufficiency.

While the federal government provides financial matching funds and a variety of grants to states for these services, the majority of the services for these vulnerable children and families are funded by state governments. While the federal government provides entitlement funding for children in the foster care system and those who are adopted from the system, state reimbursement for services to these children is limited by an outdated federal standard pegged to the former Aid to Families with Dependent Children (AFDC) program. States may only receive federal reimbursement for services if the child is from a family that would have met a 1996 AFDC eligibility standard. Since this eligibility standard is not adjusted for inflation, federal reimbursement to states has declined. States pay 100 percent of the costs for children whose care is not eligible for federal reimbursement.

The major federal funding stream is Title IV-E of the Social Security Act, established in 1980. Title IV-E Foster Care and Adoption Assistance provides matching funds to states to cover the costs of

room and board for foster care; subsidize adoptions of children with special needs; train public agency staff and foster and adoptive parents; administer the program; and provide the statutory protections assured for all children (e.g., a case plan or permanency hearing). In comparatively smaller amounts, Title IV-B, Subpart 1, provides discretionary funding for child welfare services, and Subpart 2 (known as Promoting Safe and Stable Families, or PSSF) provides capped entitlement funding for family preservation services, family support services, reunification services, and adoption promotion and support services. To a lesser extent, the Child Abuse Prevention and Treatment Act (CAPTA) state grant program, enacted in 1974, provides \$27 million for state agencies to improve prevention, investigation, and treatment of child abuse and neglect. The Chafee Foster Care Independence Program provides funding for support services, job training, housing, and other skills needed for older youths moving from foster care to independence.

In 1997, ASFA was enacted into law and made significant and numerous policy changes to Titles IV-B and IV-E. One important provision was a requirement that states file termination of parental rights petitions for children who have been in foster care for the past 15 of 22 months with certain exceptions (unless the child is with a relative, if it is not in the best interests of the child to do so, or if services have not been provided consistent with the case plan). It also required states to hold permanency hearings for children at 12 months rather than 18 months. Another provision required the U.S. Department of Health and Human Services (HHS) to submit an annual report to Congress to assess states' performance in operating child welfare programs on a number of child welfare outcomes related to safety, permanence, and well-being.

In 2000, HHS issued regulations that set up a new outcomes-focused federal review system for monitoring state conformance with Title IV-B and IV-E, known as the Child and Family Services Reviews (CFSRs). These regulations addressed provisions of ASFA and the Multi-Ethnic Placement Act. The CFSRs assess state child welfare systems on seven outcomes related to children's safety, permanency, and well-being as well as systemic factors. For states, the CFSRs and Program Improvement Plans (PIP) are consistent with their commitment to improving outcomes and increasing accountability in the public child welfare system. As of April 2004, all states, the District of Columbia, and Puerto Rico have completed the first round of CFSRs and are all currently undertaking PIPs based on the findings in their reviews.

The regulations also included a separate review of the federal Title IV-E foster care program with a focus on whether a child meets the eligibility requirements for federal foster care maintenance payments. As of September 2004, all states, the District of Columbia, and Puerto Rico have undergone the initial primary Title IV-E eligibility reviews ASFA requires.

Since publication of the 2001 edition of *Crossroads*, several child welfare laws have been reauthorized and created.

- **The Promoting Safe and Stable Families Amendments of 2001** extended the program through FY 2006, created a new grant for mentoring programs for children of incarcerated parents, and created the Education and Training Voucher program for youths aging out of foster care as a sixth purpose under the Chafee Foster Care Independence Program.
- **The Keeping Children and Families Safe Act of 2003** extended and amended CAPTA, the Adoption Opportunities Act, the Abandoned Infants Assistance Act, and the Family Violence Prevention and Services Act through FY 2008. The CAPTA amendments included several additional requirements under the program, including citizen review panels, new policies and procedures regarding drug-affected infants, and new data and training requirements.

- **The Adoption Promotion Act of 2003** reauthorized the adoption incentive program under Title IV-E through FY 2008. The legislation included APHSA's recommendations for continuing to reward states for all special-needs adoptions, updating the baselines used to award the bonuses, and incorporating a three-tiered bonus system. The law now provides bonuses for the new category of older child adoptions (defined as children age 9 and up), preserves the previous bonuses for total and special-needs adoptions, and includes a new penalty provision that requires states to submit AFCARS data within six months.

Challenges

The work of state child welfare agencies is one of the most important and demanding that government performs. Child welfare professionals respond to millions of reports of potential abuse or neglect each year. They protect children from neglect or abuse; provide specialized services to children and families; place children with caring foster or adoptive families, guardians, and relatives; reunite families; and work to preserve them. Recruitment and retention of child welfare staff is an on-going

challenge, due to the extraordinary demands of the job, increased caseloads, and modest compensation. In addition to a well-trained and qualified workforce, funding for critical support services for these children and families is essential.

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The federal financing structure established in 1980 no longer works. Since the early 1990s, states have raised concerns that the current structure of federal child welfare funding does not adequately support the outcomes for the children and families that public child welfare agencies, Congress, the federal government, child advocates, and the public seek to achieve.

The bulk of federal funding is disproportionately directed toward funding out-of-home care—the very part of the system that agencies are seeking to minimize to achieve greater permanence for children. At the same time, even with the creation of Title IV-B Subpart 2 in 1993, services that protect child safety and promote reunification remain under funded by the federal government. When the Title IV-E financing structure was created almost 20 years ago, the assumption was that Title IV-B service funding would grow significantly—an assumption unfulfilled.

In addition to the challenges outlined above with respect to the federal financing structure and the misdirected incentives, the federal eligibility rules for Title IV-E are another state concern. For many years, states have questioned why the federal government has demonstrated—in entitlement funding for foster care and subsidized adoption—a financial interest only for children from poor families. Furthermore, states are required to achieve the same positive outcomes for non-IV-E children and provide the federally mandated “protections,” and are at risk for losses of federal funding, regardless of whether the federal government has participated financially in that child's case (i.e., whether the child is IV-E or non-IV-E). It is only reasonable that federal funds be provided for the care of all children in foster care. Under the welfare reform law, states are required to “look back” to old AFDC rules in effect on July 16, 1996, to determine Title IV-E eligibility. Not only is this administratively burdensome, but as the law does not allow the 1996 income standards to grow with inflation, eligibility for federal reimbursement will continue to decrease over time, resulting in a loss of federal funding to states.

States also need administrative flexibility. The new federal regulations pose implementation and practice challenges for states. New requirements on foster family licensing and judicial orders have been mandated in unrealistic timeframes and may result in unwarranted financial penalties that will further challenge state capacity to provide needed services for children and families. Furthermore, the licensing regulations send a mixed message that states do not support. While federal law explicitly gives preference to relatives as caretakers, the regulations raise the bar on their qualifications—beyond just those related to safety.

The Adoption and Safe Families Act places numerous new requirements on states to move more children to permanence in shortened timeframes, but provides no additional resources to support states' efforts to meet the new mandates. Furthermore, ASFA holds states accountable for achieving outcomes for children with respect to safety, permanence, and well-being, with an annual report to Congress on state-by-state performance and a federal review system with penalties tied to outcomes. The federal law and the prevailing focus on improving outcomes makes the need for comprehensive federal financing and programmatic and administrative changes even more imperative. Since ASFA's enactment, states have demonstrated significant progress, not only because of the new law but also because of state initiatives that were in place prior to the law. These accomplishments have occurred even though the current financing structure is not supportive.

The Adoption and Safe Families Act places numerous new requirements on states to move more children to permanence in shortened timeframes, but provides no additional resources to support states' efforts to meet the new mandates.

To meet current challenges, additional requirements posed by ASFA, increased expectations of state performance, and to sustain and expand the significant progress that has been made, states will require greater flexibility in using current funding or increased resources in the form of new federal investments, and an increased capacity to get the job done.

Many elements need to be in place to build and strengthen capacity to achieve outcomes.

- A sufficient quantity and quality of a comprehensive array of services, including prevention, family preservation and support, treatment, reunification, aftercare, post-adoption, substance abuse, mental health and other services targeted to the specialized needs of individual children and families.
- A well-trained, well-supervised, competent, sufficient workforce with manageable caseloads, employing best practice approaches to working with families.
- An adequate pool of well-prepared foster and adoptive parents.
- Partnerships with private agencies that focus on performance and partnerships with the community to support the goals of the system.
- A partnership with the juvenile court system as well as adequate resources for the courts and legal staff to move cases in a timely way.

In recent years, public child welfare has increasingly focused on outcomes and achieving positive results for children and families. The 1997 changes to federal law under ASFA have heightened this attention to outcomes and accountability. The child welfare field has agreed upon safety, permanence, and well-being as desired outcomes for children in the child welfare system. The field also has emphasized increasing the number of adoptions, reunifications, and guardianships; decreasing the length of time in foster care and the length of time for achieving permanent placements; and reducing the number of children in foster care and incidence and recurrence of abuse and neglect. To improve

outcomes for children and to attain positive results, the child welfare system must have the necessary capacity to achieve those goals, i.e., enough of the appropriate resources to conduct the appropriate interventions and best practices that will yield results. Notable progress has been made toward achieving permanency outcomes, particularly in the adoption arena.

The number of adoptions from the public child welfare system nationwide increased from 28,000 in 1996 to 53,000 in 2002. States are continually working to develop and sustain new and ongoing creative programs that seek to assure safety and permanence. In addition, a heightened focus on measuring state program outcomes, developing quality standards, and undertaking accreditation is providing child welfare agencies with new tools to assess performance and refine strategies to achieve safety and permanence for children.

Even with these substantial strides, the system lacks the full capacity for achieving outcomes. Child welfare practice has become more and more complex, with tremendous demands on the system, including challenging populations, caseloads, and resources; interstate issues; perceived conflicts between child safety and family preservation; overrepresentation of children of color; and increased expectations and requirements. In recent years, children and families who come to the attention of child welfare increasingly exhibit multiple problems that require a coordinated response from multiple public agencies and service systems outside of child welfare. Of serious concern is the magnitude of families with substance abuse, mental illness, and domestic violence problems. These increased demands are straining agency capacity. At the same time, there is increased scrutiny by elected officials, the media, advocates, and litigators regarding the performance of public child welfare agencies, as well as new mandates and expectations resulting from ASFA.

It is important to recognize that the system itself encompasses more than the state public child welfare agency. Many of the children and families who come to the attention of the child welfare system are touched by the complicated and distressing issues of substance abuse, mental health, domestic violence, housing, special education, and poverty. The courts, other state human service agencies, private agencies, and most importantly, communities, are also partners in providing for the safety, permanence, and well-being of children. Child welfare needs cannot be met without collaboration with other systems and access to their services.

Recommendations

PROPOSAL

Maintain the Title IV-E open-ended entitlement; extend the federal government's commitment for foster care and adoption to all children in out-of-home care, not just those from AFDC-eligible families, allowing flexibility for reinvesting foster care funding into services.

Restructure federal child welfare financing to provide states with additional federal investments in services and the ability to redirect existing resources to achieve quality outcomes, and to recognize that states are statutorily required to provide services to all children regardless of current federal financial eligibility standards.

Maintain the open-ended entitlement under Title IV-E, the protections for children, and accountability measures embodied in federal law.

Eliminate income eligibility (AFDC-eligible as of July 16, 1996) as a criterion to determine which children placed in foster care or subsidized adoption are eligible for federally reimbursed foster care and adoption assistance under Title IV-E (i.e., “delinking”).

Consequently, all such children would be eligible for Title IV-E, and in turn, Medicaid.

Amend Title IV-E to give states the option to use federal revenue for maintenance payments for the types of child welfare services allowed under Title IV-B, whenever the numbers of children or lengths of stay in foster care are reduced.

Federal funding for foster care services is disproportionately directed at out-of-home care.

EXPLANATION

Federal funding for foster care services is disproportionately directed at out-of-home care. Reduced out-of-home care is a practical result of a number of good outcomes for children—reduced lengths of stay; increased permanence (adoptions, reunifications, and guardianship); a reduction in the number of children entering care; and less restrictive settings. If states had up-front funding to reinvest foster care expenditures in the kinds of services that reduce the need for foster care, better outcomes could be achieved while allowing more efficient use of current resources.

An open-ended entitlement is necessary to ensure that needed resources are available to support states in carrying out the critical function of protecting children. Additionally, federal financial support must be available for every child in need of protection, since it is the circumstances of abuse and neglect, and not the income of their parents, that brought them to the attention of child protection services. Extending access to Title IV-E funds for all children would also demonstrate a more equitable federal-state partnership in working toward achieving the goals of safety, permanence, and well-being for all children in the child welfare system.

PROPOSAL

If income eligibility for Title IV-E federal financial support cannot be immediately eliminated, then Title IV-E eligibility standards should be adjusted for inflation prospectively and beginning retrospectively to the date of enactment of the Personal Responsibility and Work Opportunity Reconciliation Act. Establish a state option to “re-link” Title IV-E eligibility to TANF or Medicaid eligibility.

EXPLANATION

The federal accountability measures under which states are reviewed and the subsequent PIP goals apply to every child in the child welfare system. However, federal financial participation for every child in the child welfare system does not currently exist. APHSA has consistently supported the idea of a full federal and state partnership for every child in the child welfare system.

The current AFDC eligibility standard for children in foster care and adoption assistance is eroding over time due to the non-indexed link to July 16, 1996. States have seen a decrease in the amount of federal funds due to this erosion and should be afforded the opportunity to regain those lost funds. A temporary solution would be to establish a state option to retrospectively and prospectively adjust the eligibility standard for inflation. The adjustment could be a “re-link” to TANF or Medicaid eligibility.

Congressional proposals that would cap the amount of federal funding available for foster care and adoption assistance maintenance funds have been introduced in previous congressional sessions with the promise of an adjustment to account for potential increases in foster care and adoption assistance costs. If such proposals are introduced in future congressional sessions, any adjustment of a capped allotment must be based on projections of state caseloads and future cost increases in services.

PROPOSAL

Clarify Title IV-E administrative costs in cases where general overhead would continue to be claimed at the 50 percent match rate, while administrative costs for public and private child welfare staff as well as for foster parent recruitment and licensing could be claimed at the Federal Medical Assistance Percentage (FMAP) rate.

EXPLANATION

Legislation introduced in the 108th Congress proposed a cap on federal IV-E administrative and training funds, thus compromising a child welfare system's ability to support the very workforce needed to achieve improved outcomes for children and families. States strongly oppose any cap on funds that support the child welfare workforce. States on the lower end of the staffing scale, as well as those

States strongly oppose any cap on funds that support the child welfare workforce. States on the lower end of the staffing scale, as well as those that are able to secure staffing increases in the future, would be disadvantaged due to the pitting of child welfare staff resources against resources for the critical child welfare services they provide.

that are able to secure staffing increases in the future, would be disadvantaged due to the pitting of child welfare staff resources against resources for the critical child welfare services they provide. Funds in the Title IV-E administration category can currently be claimed for both general overhead expenditures and costs for child welfare staff. It is necessary to clarify the purposes for which Title IV-E administrative funds can be used. Congress might consider bifurcating administrative funds and clarifying the difference in expenditures. Federal funds for general overhead administrative costs would continue to be matched at the 50 percent rate. Funds available under the administrative category for public and private agency child welfare staff and foster parent recruitment and licensing would be available for services provided to any child in the child welfare system and would be matched at the rate of the FMAP currently available under IV-E maintenance.

PROPOSAL

Provide new incentive funds to reward states that achieve improvements in their CFSR.

EXPLANATION

The CFSRs have been in effect since 2001, and states have worked cooperatively with the federal government to monitor progress on safety, permanency, well-being, and systemic indicators. All states have undergone the first round of CFSRs and have subsequently implemented PIPs. Just as states are in jeopardy of penalties for not achieving goals, they should also be rewarded for the goals that they do achieve. A higher federal match, at an 80–20 rate, would provide a strong incentive for states to continue activities that can be demonstrated to have achieved improvements in CFSR measures.

PROPOSAL

Increase Title IV-B funding by \$1 billion over five years and expand the types of allowable expenditures.

EXPLANATION

The \$27 million in CAPTA funds appropriated by Congress have not been sufficient to provide an adequate amount of prevention dollars for all 50 states and the District of Columbia. The small amount of funding and an increase in the mandates required under CAPTA have caused states to reconsider the benefits of accessing CAPTA. To decrease the incidence of child maltreatment, states must implement broader initiatives for prevention that require additional resources. Title IV-B funds can be used to support prevention activities in child welfare. However, Title IV-B funding is also limited; it is capped and is not entirely mandatory. An increase in federal support for child abuse prevention can be accomplished by expanding the allowable expenditures in Title IV-B. Additionally, separate congressional proposals have also been introduced to address the need for substance abuse, mental health, domestic violence, and other services necessary to help children and families in the child welfare system. Another avenue to provide these services would be to expand Title IV-B to fund these services.

The \$27 million in CAPTA funds appropriated by Congress have not been sufficient to provide an adequate amount of prevention dollars for all 50 states and the District of Columbia.

Proposals in several budget requests have looked to increase the IV-B program by \$200 million per year over five years. This increase would bring IV-B, Subpart 2 funding to a level of \$505 million, the full amount authorized by the Promoting Safe and Stable Families Amendments of 2001. APHSA supports \$505 million in mandatory, not discretionary, funding. Additionally, IV-B funds should be available to help states cover costs for services currently not supported by the federal funding including child maltreatment investigation and post-adoption services.

PROPOSAL

Ensure flexibility and support for permanency options for children placed in guardianship arrangements.

Title IV-E should be amended to authorize federal participation in a state option to fund private guardianship or other legal permanency arrangements for children who otherwise would have remained in long-term foster care.

EXPLANATION

Under ASFA, permanency can include family reunification or placement with an adoptive family, a fit and willing relative, a legal guardian, or another planned permanent living arrangement. Adoption is generally viewed as the preferred plan for children who cannot be reunified with their parents. This option, however, may not be desirable or available for all children. For example, some older children in foster care want to maintain a connection to their family of origin and sometimes resist adoption because it represents a permanent break from their parents. In addition, relatives are an important

placement resource for children. Both best practice and federal law indicate that a safe placement with relatives is the preferred placement for children who must be removed from their parents. Approximately 20 to 23 percent of foster children are placed with relatives, although in some states (e.g., California, Illinois, and New York), this number increases to 40 percent to 50 percent. Although many relatives are interested in adopting their kin, others are not inclined to undertake the adversarial process of terminating parental rights of their child or relative. When placement with a relative is not possible, a foster family that can provide a permanent legal home for a child in foster care is the next best alternative when reunification or adoption are not options. Several states have Title IV-E waivers, and others are using state-only funds to support permanent guardianship arrangements as an alternative permanency option. Results from several waiver demonstration projects show that permanency can be increased without reducing the number of adoptions.

PROPOSAL

Federal child welfare regulations should be amended to ensure no abridgement of permanency and family continuity for children placed with relatives.

1. HHS should withdraw the policy changes that require relatives to be licensed to the same standard as non-relatives, and that prohibit provisional licensing. If an evaluation completed prior to or at the time of placement indicates no risk to the child's safety or other reason why the child should not be placed in the home, the state should have the option of either claiming Title IV-E for children in provisional or approved homes beginning on the date of placement or retroactively to the date of placement once all eligibility criteria have been met. Until policy changes have been made and sufficient time has been given to modify current practice, states should be held harmless for any financial disallowances associated with these provisions.
2. Title IV-E regulations concerning the definition of foster family home should be amended to provide states with the flexibility to establish certification or approval standards and payment rates for kinship homes separate from those for foster family homes. States should retain the flexibility to decide which children with relatives receive TANF and which children receive Title IV-E.
3. States oppose limiting the application of, or circumventing through statutory changes, the *Rosales v. Thompson* decision, which upholds that a foster child's Title IV-E eligibility can be based on the home of a relative specified in the AFDC statute.

EXPLANATION

In December 2004, HHS published proposed federal rules that would prohibit Title IV-E reimbursement for children placed in relative homes that have not been licensed in the same way non-relative homes are licensed. APHSA opposes limiting federal reimbursement for relative placements, particularly in light of the fact that the federal ASFA states that relative placements should be given priority. Placing children with relatives maintains a connection to family and a sense of identity and minimizes separation and attachment issues. This policy change, if finalized, will have a significant negative impact on states' efforts to promote and support kinship care. In addition, these new requirements may have the effect of discouraging relative placements, causing both a delay in placement and an increased number of placements.

Also, it is important to note that provisional licensure does not mean that safety has not been assured. In granting provisional licenses, states run background and safety checks, make home visits, and conduct family assessments. States often use provisional licenses as an effective incentive to bring providers into compliance with licensing issues that do not risk the health or safety of the children in

placement, or to address administrative issues. States do not grant provisional licenses in situations that would jeopardize a child's health or safety. A probationary license is often routinely issued to new group home facilities for a certain time period. In such situations, the facility has met all licensing requirements but must go through a trial period with children in placement before a full license is issued. The same safety assurances are in place for probationary providers as for fully licensed providers.

In March 2003, the *Rosales v. Thompson* decision in the U.S. Court of Appeals for the Ninth Circuit held that the statute governing the former AFDC foster care program contains no explicit requirements that AFDC eligibility only be established based on the home from which a child was removed due to child maltreatment. According to the court, when determining IV-E eligibility for a child that comes into care, states could consider the eligibility home as that of a specified relative in whose home the child may have resided within six months of removal. The Rosales decision supports federal law that cites relatives as preferred caregivers when a child is removed from its home. The decision would make it possible for children to live with relatives who otherwise may not have been able to afford to take care of them under the narrow interpretation HHS had been applying for establishing Title IV-E eligibility. HHS has limited application of this decision to states within the jurisdiction of the Ninth Circuit. Every state has entered into a state plan to access the Title IV-E entitlement program, and therefore any federal court decisions impacting Title IV-E should be applied to all states.

PROPOSAL

Expand IV-E waivers and increase their flexibility.

Substantial modifications to the Title IV-E waiver process are required to allow more flexibility, a broader scope, and to foster system change, including:

1. Eliminate the limit on the number of waivers HHS can approve;
2. Eliminate approval criteria that require random assignment and control groups that limit statewide approaches;
3. Eliminate the limited number of states that may conduct waivers on the same topic;
4. Eliminate the limited number of waivers that may be conducted by a single state;
5. Allow states the option to continue their waivers beyond five years;
6. Allow approval of alternative baselines, such as the use of historical baselines based on foster care use, to calculate cost-neutrality; and
7. Provide a mechanism, once a waiver demonstration project has been shown effective, for approval of the project as an allowable expenditure under Title IV-E for all states.

EXPLANATION

Although states can apply for Title IV-E waivers, they believe the current waiver process limits innovation and is not responsive to the urgency of changing the child welfare system. HHS views waivers as demonstrations to test and evaluate new ideas, not broad-based projects to allow states more flexibility to achieve system change and to better serve children and families. States are also concerned with current policies prohibiting approval for multiple states to test similar innovations, such as subsidized guardianship; restrictive research, control groups, and random assignment requirements; cost-neutrality methodology; and limitations on statewide approaches. HHS waiver policy today is now more prescriptive and rigid than it was for the original 10 waivers. Many states have indicated they will not seek a waiver or have withdrawn applications because, with the current limitations, pursuing a waiver is not worth the effort.

During the ASFA debate in 1997, states called for an expansion of IV-E waivers, which at that time were available to only 10 states. The law allows for 10 waivers to be approved each year for five years (FYs 1998–2002), theoretically enabling each state to have a waiver. In actuality, however, some states may not be able to receive a waiver because when a state receives more than one; HHS counts the additional waiver(s) as one of the 10. In addition, if HHS approves fewer than 10 waivers in a year, the remaining slots are lost. The waiver program has enabled some states to reinvest federal foster care funding in services and other activities to improve their systems and promote permanence. Waivers provide an avenue to demonstrate the effectiveness of activities that lead to improvements in child welfare.

Although states can apply for Title IV-E waivers, they believe the current waiver process limits innovation and is not responsive to the urgency of changing the child welfare system.

A process should be implemented to assess which activities should become an allowable expenditure under federal funding sources for all states. However, as currently implemented, it is a promise unfulfilled and will not meet states' needs for the flexibility necessary to achieve broad systems change.

PROPOSAL

The Interstate Compact on the Placement of Children (ICPC) should be revised; congressional proposals to impose federal timetables or penalties should be opposed.

EXPLANATION

For over 40 years, states have developed and administered compacts for the interstate placements of children in foster care and for adoption and medical assistance. In recent years, concerns about the timeliness of the ICPC process coupled with an outdated administrative process and procedures have given rise to a great dissatisfaction with ICPC. In an effort to address state concerns on the need to reform the ICPC, APHSA convened a task force to update compact. The task force completed its work in 2004 and will seek state legislative adoption of the revised compact in 2005. In the interim, congressional proposals to impose federal timelines for home studies and penalties should be opposed. The interstate compact mechanism has been a recognized and appropriate tool for promoting interstate cooperation in this area. State governments should not be forced to operate under a confusing, costly, multi-layered system of judicial, state, and federal policies.

PROPOSAL

Reforms to the system of federal penalties and bonuses are necessary.

1. States should be allowed to reinvest disallowances related to Title IV-E eligibility reviews to correct any errors in eligibility processing and improve program performance. Also, states should be allowed to reinvest any future CFSR penalties into the child welfare system.
2. Baseline formulas, such as those in the federal adoption incentives, must be updated periodically to ensure states are adequately rewarded for maintaining high performance as well as improvements.
3. States should be permitted to access incentive funds unexpended by the close of the federal fiscal year for related services, e.g., for post-adoption services in the case of adoption incentives.

EXPLANATION

If a disallowance is issued, a state must pay back all or a portion of the federal funds received to provide foster care to abused and neglected children. Disallowances undermine state efforts to correct the deficiencies found in the review. There is also concern that part of any disallowance can be based on technical violations which cannot be fixed retroactively (i.e., the language in the court order was not correct). States disagree with the policy of reducing federal funds when aggressive efforts are clearly being made to meet the growing needs of abused and neglected children.

Baseline formulas for incentives must be updated regularly to remain contemporary as states make improvements to programs or maintain high performance standards to meet the incentive goals. Any incentive funds that have already been dedicated to supporting services for children in foster care and adoption assistance, and which remain unexpended at the end of the federal fiscal year, should become available to support services that improve conditions for children in the child welfare system.

PROPOSAL

Youths aging out of foster care need strong connections to education, housing, health care, and the workforce to achieve self-sufficiency. The Chafee Foster Care Independence program, including Education and Training Vouchers, should be maintained.

1. Expand the funding and flexibility of the Chafee Foster Care Independent Living Program.
2. Chafee funds should be accessible for a wide range of applications for children in foster care ages 14 and older so that they may successfully make the transition into adulthood.
3. The use of funds and program rules should be flexible enough to allow coordination with other federally funded programs, such as the Workforce Investment Act and the Food Stamp Employment and Training Program.
4. Enhanced match should be provided for the option in Medicaid that allows states to extend coverage for youths in transition from foster care to independent living.

EXPLANATION

Children leaving custody because they are in transition from the child welfare system to adulthood are particularly vulnerable. These children at age 18 often have few or no resources, may not have a family that is available or willing to offer any kind of support to them, and often have been affected by the difficult histories that brought them into the child welfare system. In addition to meeting their basic needs for food, shelter, and care, we must ensure that young people receive training and support for acquiring the knowledge, skills, and attitudes needed for independence and self-sufficiency.

PROPOSAL

Refine the CFSR process and incorporate related program goals into the process.

1. The current methodology to assess state systems under CFSRs must be revised; federal-state workgroups should be established to ensure the new measures and methodology accurately measures state performance.
2. Any new federal data collection reporting requirements must be supported with enhanced federal funding and must be consistent with the revised CFSR measures.
3. Congress should repeal existing child welfare penalties, including the Multi-Ethnic Placement Act (MEPA) and geographic barriers, and use the CFSR system to assess states' performance and compliance.

EXPLANATION

States are committed to quality services for children and families and accountability for achieving outcomes. States support the outcomes-focused approach to the federal CFSR, and the use of both qualitative and quantitative information to judge performance. However, reviews must serve as an accurate and fair measure of state performance. National standards on which performance is determined must be based on accurate data so that the fairness of these reviews is not compromised.

This review process is very data intensive, as is the annual outcomes report that also measures state performance. Congress and the federal government are likely to seek more state data in the near future to expand their capacity to measure outcomes, particularly in the areas of well-being and children aging out of foster care.

By contrast, in the CFSR system, which is results-focused and based on overall state compliance, Congress has, at the same time, imposed provision-specific penalties for noncompliance. These include substantial penalties for single-case violations of MEPA or the geographic barriers provision that are not equal to penalties for other requirements. The disjointed nature of these penalties is the wrong approach to encouraging good state practice, and the cumulative effect of these penalties is significant. States should be held accountable for outcomes, not saddled with penalty upon penalty for single-case violations.

PROPOSAL

Workforce preparation, recruitment, and retention are key to achieving improved outcomes; federal support for administrative costs and training should be revised and remain open ended.

1. The Title IV-E training statute and regulations should be amended to support state efforts to build and sustain a competent, skilled, and professional child welfare workforce by providing a solid and restructured federal funding stream that would support comprehensive training. The training must include all aspects of child welfare—child protective services and service provision, private agency providers, court personnel (including judges and court-appointed special advocates) and health providers—and must not be allocated based on whether a child is Title IV-E-eligible.
2. APHSA opposes any caps on the amount of administrative or training funds available to support child welfare workforce. Placing limits on funding for caseworkers that directly assist children and families would be detrimental to the field and to the outcomes that must be achieved to improve the lives of children and families.

EXPLANATION

Congress can help assure child safety and positive outcomes for children and families by helping to create a stable, well-trained, and ample workforce. It is critical to prepare new child welfare workers adequately for this very difficult job in which their day-to-day decisions affect the lives and well-being of children. There is extremely high turnover among workers as well as an inadequate number of workers, leading to high caseloads and a lack of continuity that affects practice. Findings from the initial CFSRs indicate the importance of caseworker visits with children and parents in achieving improved outcomes.

Federal policy provides a 75 percent match for training funding only in proportion to the number of children who are Title IV-E eligible. Workers must be trained to the same standards whether or not

they are serving IV-E children. Further, this match is available only for training for activities directly related to the statutory purposes of Title IV-E. Since Title IV-E cannot be used for services or investigations, the federal training funds may not be used to train workers to provide services or make safety assessments. Workers must be skilled in these other areas as well as trained to protect children and to meet their needs for safety, permanence, and well-being. This federal match is also unavailable for training private agency workers with whom the state has contracted to provide services. These workers are acting as the states' agents and are serving the same children, and the outcomes for those children are equally as important. Current regulations and cost-allocation requirements are barriers to state efforts to ensure a competent, skilled workforce critical to the goal of achieving improved outcomes.

As mentioned above, federal funding is not available to train judges or court personnel. The courts play a critical role in moving children to permanence and must be knowledgeable about the new permanency requirements. Further, states are dependent on the courts meeting their statutory obligations; otherwise, states are subject to penalties under the new federal review system.

Even though great strides have been made in developing and implementing best practices, the field must expand its body of knowledge to hone in on when and what interventions work best with which populations, within mandated timeframes, to yield desired results.

PROPOSAL

A national research agenda should be developed and adequately funded.

1. Investments in more targeted child welfare research are critical as the field looks to move forward to achieve positive outcomes. Longitudinal data is critical to realizing the possibilities of what can be done in child welfare practice.
2. States should be supported, through the flexibility in the funding available and in the technical assistance available through HHS, in using their Statewide Automated Child Welfare Information Systems (SACWIS) to glean useful longitudinal data to improve practice and programming.
3. States should be allowed to provide local data to support the measures in the CFSRs in addition to AFCARS data used by HHS.

EXPLANATION

Even though great strides have been made in developing and implementing best practices, the field must expand its body of knowledge to hone in on when and what interventions work best with which populations, within mandated timeframes, to yield desired results. Research and its practical applications play a critical role in ensuring outcomes in most professional disciplines, and they are needed in child welfare as well. AFCARS is currently required by HHS, but the system does not track changes in data over time and hinders states' ability to strategically use and refine information to make systemic adjustments and improvements. Federal resources should support data systems that capture longitudinal data that can be used to set and monitor performance goals, test the impact of policies and services, and link financial decision-making to outcome measures. Federal resources must also be targeted toward capturing best practices that can drive the field of child welfare forward by sharing strategies and avenues to achieve improved outcomes across child welfare systems.

TANF and Family Economic Success

Current Program

During the early 1990s, welfare caseloads were soaring and families were trapped in a pattern of dependency that few believed could be reversed. Despite poor family outcomes, for decades rigid federal program rules prevented state administrators from implementing innovative approaches to help families in need. In an attempt to break free from federal program restrictions, by the mid-1990s 48 states were operating their Aid to Families with Dependent Children (AFDC) programs under federal demonstration waivers. Work was the hallmark of early state welfare reform experiments, and by 1996 it became clear that states were in a better position than the federal government to achieve success in this area.

Under AFDC, states could give families little more than a check to help them provide for their children. Families faced a financial cliff if they moved from welfare to work due to federal eligibility rules that restricted the amount of assets and income a family could accumulate and still receive benefits. In effect, the federal rules discouraged work.

In 1996, the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), also known as the welfare reform law, marked the end of the federal entitlement to cash and child care assistance and ushered in a new era of work and personal and parental responsibility. The law repealed the former AFDC entitlement and replaced it with the Temporary Assistance for Needy Families (TANF) block grant to states to provide time-limited assistance, employ strict work requirements, and address a range of family formation goals. Under the law, states were guaranteed a fixed grant amount of funding from the federal government for six years, and in return were required to maintain state spending or face penalties. States were afforded flexibility to design TANF programs that met their individual goals.

States have achieved unprecedented success implementing welfare reform, providing compelling evidence that the devolution of authority to states and the focus on work was the correct course of action. The Administration for Children and Families (ACF) documented these achievements in its *TANF Sixth Annual Report to Congress*, issued in November 2004. The percentage of working welfare clients in paid employment was 78 percent in fiscal year 2002. The average monthly earnings for recipients increased 45 percent.

States have achieved unprecedented success implementing welfare reform, providing compelling evidence that the devolution of authority to states and the focus on work was the correct course of action.

While the caseload decline has resulted in a significant population left on TANF who have multiple barriers to employment, the majority of states have increased work participation. Moreover, the most recent ACF report indicates that nearly 78 percent of clients that are working 30 hours a week are in paid employment or searching for it.

Child support collections have increased dramatically, and state-operated child support enforcement programs were cited by the Office of Management and Budget as the highest-rated human service programs among all reviewed government programs. Over the short eight-year history of the TANF program, states have shown success both under the robust economy of the mid-1990s and during the economic downturn of the early 21st century.

Under the TANF block grant, the flexibility afforded to states enabled them to design programs and services to support families not only with cash but with a host of other services as well. TANF cash assistance caseloads have declined by 54 percent since FY 1996, a reduction of 2.3 million families. Many of those heads of households exited welfare for work and continue to receive support services, such as child care and Medicaid, to support them in the workforce. In many states, low-income families with incomes slightly above the poverty level are eligible to receive a range of services, such as

employment and training, child care, transportation, education, and family and parental training. The majority of states also offer diversion programs that provide families with short-term assistance to avoid reliance on longer-term cash benefits. More than 40 states have also expanded their earnings “disregard” policies; these let families keep more TANF benefits even if they have more earned income, removing one of the many disincentives to work in the former AFDC program.

While the caseload decline has resulted in a significant population left on TANF who have multiple barriers to employment, the majority of states have increased work participation. Moreover, the most recent ACF report indicates that nearly 78 percent of clients that are working 30 hours a week are in paid employment or searching for it. Of that population, nearly 58 percent of TANF clients today are in private-sector employment. It is important to note that federal work participation rates capture only TANF clients who are engaged in a work activity for at least 30 hours per week; it is estimated that the participation rates would increase significantly if part-time employment was counted in these measures.

However, the work participation rates only measure the number of families receiving cash assistance who are engaged in at least 30 hours of work activities. In a time-limited welfare system, the families represented in the work rates are an ever-shrinking number. The work participation rates do not include the thousands of families who receive TANF-funded child care or transportation that allows them to keep their private-sector jobs. The current rates do not include the TANF mother who works 29 hours or fewer in a private-sector job. Mothers who hold private jobs and received short-term TANF assistance, such as car repair or assistance in paying their rent or utilities, are not included in the work rates. Nor are the hundreds of thousands of mothers who no longer receive cash assistance because they are earning a paycheck in the private sector.

Just as TANF spawned new partnerships in the way states assist low-income families with employment, the Workforce Investment Act (WIA) of 1998 represented a critical shift in the delivery of employment and training services to job seekers. WIA attempted to simplify the workforce system by creating universal eligibility for youths, adults, and dislocated workers. It also created partnerships with other human service programs that allowed multiple programs to be delivered in a One-Stop center. A key component of welfare reform was to promote work and help lift families out of poverty. WIA and the One-Stop system have been an important part of state efforts in this area.

A critical support program for working families is the federal Earned Income Tax Credit (EITC). The EITC not only provides a strong incentive to work but also serves as a powerful tool in reducing childhood poverty. A refundable federal income tax credit for low-income working individuals, EITC was enacted in 1975 and expanded, through bipartisan legislation, in the 1990s. The credit reduces the amount of federal tax a family is required to pay and provides additional benefits through a refundable credit reflecting the amount by which the eligible family's EITC exceeds its tax liability. The amount of EITC benefits is determined by the size of the family and the amount of income the individual has earned during the year. This program has been enhanced further in 17 states through state-designed EITC programs that offer eligible taxpayers additional payments to their federal credits.

Along with creating support programs and opportunities for training, the federal government created other work incentives that were intended to encourage employers to hire workers with long-term dependency and other employment barriers. The Work Opportunity Tax Credit (WOTC) and the Welfare-to-Work Tax Credit (WtWTC) provide incentives for businesses to hire job seekers moving from welfare to work and other targeted groups that experience barriers to employment. Businesses may qualify for the WOTC if they hire a person from targeted population groups, including certain disadvantaged youths and TANF recipients. These programs play a critical role in state efforts to support low-income families by encouraging businesses to employ people with work barriers. They enhance other state strategies that are designed to help individuals move from welfare to the workforce. In 2004 the Working Families Tax-Relief Act (P.L. 108-311) extended the WOTC program and the WtWTC for a two-year period.

Several other federal policy changes in the area of transportation and housing also provided supports to help low-income workers maintain or improve their place in the workforce. In 1998 Congress created the Job Access and Reverse Commute Grants (JARC) program, which provides states and localities with resources to expand transportation services to welfare recipients and other low-income workers. The low-income housing choice voucher program is the federal government's primary program for helping very low-income families, the elderly, and persons with disabilities afford stable housing. It provides a critical support to families who are working but cannot afford the high cost of housing. The U.S. Department of Housing and Urban Development (HUD) also offers other housing programs such as the Family Self-Sufficiency program, a unique approach to promoting self-sufficiency that combines stable affordable housing with case management to help families increase their earnings and build assets.

Individual Development Accounts (IDAs) allow low-income families to build assets that can be used for post-secondary education, home purchase, and business development. IDAs were first created and funded at the federal level as demonstration grants under the 1998 Assets for Independence Act and states have also used other funding sources to fund this asset development.

Challenges

The welfare reform law was slated for reauthorization in 2002, but Congress failed to act. APHSA believes the continued success of welfare reform in the states is contingent on a number of key factors: (1) maintaining the funding and flexibility of the TANF block grant; (2) focusing on outcomes related to job placement, retention, and earnings progression; (3) and strengthening families through reunification, fatherhood initiatives, teenage pregnancy prevention, marriage, and family counseling services.

Continued state flexibility is essential for the program to respond to changing needs and to craft innovative approaches to move families from welfare to work. As states moved through the TANF implementation stages, it became clear that local economies were an overriding influence in how their programs were developed. States were required to adjust according to whether the program existed in a rural or urban setting or in Indian Country; whether local transportation was easily available; and whether the local economy relied on such industries as manufacturing, agriculture, or tourism. In the context of such factors, it became evident that a “one-size-fits-all” approach would not be beneficial to the needs of local recipients.

Maintaining present funding levels for the TANF block grant is critical since states have planned for their programs based on specific levels of funding as identified in statute. The entire block grant philosophy is in jeopardy if Congress rescinds its agreement with states. Congress and the administration must acknowledge that while much success has been achieved, many challenges remain. Although

Maintaining present funding levels for the TANF block grant is critical since states have planned for their programs based on specific levels of funding as identified in statute.

cash assistance caseloads have declined, an increasing number of families rely on TANF funds for transitional work supports. For the early success to TANF families in the workplace to evolve into extended periods of job retention and earnings progression, continued investments are needed. In future years, a sustained commitment to ongoing TANF work supports will be required, including transportation, education and training, and child care. For those families who have not made the transition from welfare to work—those with multiple barriers to overcome—intensive services and supports will be costly.

While work is the centerpiece of welfare reform, it is important to note that TANF program responsibilities have expanded far beyond cash assistance and work. Across the county, state, programs are in place to provide support to fragile families struggling to support their children; promote family well-being; provide child care services and early childhood development; improve parenting skills to support and preserve families; extend employment and training opportunities to noncustodial parents; support two-parent families; prevent teen pregnancy; prevent the incidence of out-of-wedlock births; and prevent intergenerational dependence on government assistance. Several states have taken steps to incorporate a marriage and family formation agenda into their TANF programs, and others are eager to better understand what strategies and approaches are most effective in strengthening families and providing more stable environments so that children may thrive.

Recommendations

FUNDING AND FLEXIBILITY

PROPOSAL

Maintain the current federal funding level of the TANF block grant.

1. APHSA opposes any reduction in funding for the TANF block grant. The current federal funding level of the grant should be maintained for the period FY 2006 through FY 2010. If the TANF block grant is funded at \$16.8 billion and increased annually by the rate of inflation over the next five years, then states would maintain their current maintenance-of-effort (MOE) level plus inflation.

2. The supplemental grants to states should be renewed and enhanced to address any inequities in state block grant allotments. Federal funding for these grants should be in addition to the amount currently provided to states. The reauthorization bills introduced in the 108th Congress proposed funding supplemental grants for four additional years. APHSA supports supplemental grant funding for the length of the reauthorization period. Funding should continue to be an entitlement to states, should be mandatory, and should not be subject to annual changes in appropriations level. States should continue to be allowed to carry over funds from one fiscal year to another without limitation.
3. Funding should be maintained for the present bonuses to states for both high performance and the reduction of out-of-wedlock births.

EXPLANATION

States continue to serve families long after their exit from TANF cash assistance. It is important to recognize as well that the families who remain on cash assistance have multiple barriers to employment, such as mental health and substance abuse addiction. It will be costlier to serve these families with the intensive services they need to move off welfare and toward self-sufficiency and work.

Since the program's enactment, APHSA believes states have expended TANF funds thoughtfully and prudently in a well-reasoned, well-planned, highly successful way. After the initial period of transition from AFDC to the TANF block grant, state expenditures increased significantly. Indeed, according to projections by the Congressional Budget Office, state expenditures under TANF will exceed the program baseline through FY 2008. Even though TANF caseloads have fallen by 50 percent, it is clear that the need for TANF-supported services has not declined. Federal data reporting on the TANF caseload reflect only the number of families receiving TANF cash assistance in a given state; they do not include families that receive TANF-funded child care, employment and training, counseling, and other supportive services.

PROPOSAL

Maintain the current four purposes of the act and oppose restrictions on program eligibility, optional exemptions, and use of TANF funds.

EXPLANATION

For the most part, APHSA remains satisfied with the current four purposes of the act, believing that they have provided both a range of goals and the broad flexibility needed to address them.

The statute provides that a state may use the TANF grant “in any manner that is reasonably calculated to accomplish the purpose of this part. . .” The four purposes of the TANF program are:

- to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and,
- to encourage the formation and maintenance of two-parent families.

APHSA believes the TANF block grant structure should be maintained and that the current state flexibility in administering the program must be preserved. Also, the present High Performance Bonus structure and subsequent funding should be maintained.

Restrictions on program eligibility, including state options to serve legal immigrant and present program exemptions for mothers with children under the age of one should be rejected. In addition, we oppose any proposals that would place limitations on the use of TANF funds.

Restrictions on program eligibility, including state options to serve legal immigrant and present program exemptions for mothers with children under the age of one should be rejected. In addition, we oppose any proposals that would place limitations on the use of TANF funds. The statute's purposes allow states to continue to address the needs of low-income families that have moved into the work force and to provide key supports to families and children in need of stability and safety. Under current law, states may use TANF funds for any purpose previously authorized under their IV-A or IV-F state plans that were in effect in FY 1995 and for any benefit or service that meets the "purposes of the act," and APHSA believes that they should be permitted to continue to do so.

PROPOSAL

Reform the financial rules applied to the TANF block grant.

1. States should be allowed to draw down their funds as a block grant and not on a matching or prorated basis. In addition, once a state meets its MOE level, it should be permitted to draw down prior-year funds without expending additional state funds.
2. APHSA supports the involvement of faith-based organizations in the delivery of TANF-related services funded with federal dollars. However, we believe that federal charitable choice regulations should not apply to separate state programs and MOE-funded programs. APHSA opposes any "set-asides" of funding.
3. The definition of qualified state expenditures, as it relates to state MOE requirements, should be amended to include prior state expenditures on foster care and juvenile justice services.
4. Child support payments that are passed along to families while on TANF should be counted toward the state MOE, even if these are not disregarded in determining TANF eligibility.
5. Under the current law, states are required to meet either an 80 percent MOE or 75 percent if they meet the work participation rates. Rather than apply the MOE "credit" in the current fiscal year, APHSA proposes allowing states to apply the MOE "credit" in the subsequent year.

EXPLANATION

Some federal interpretations of the law have presented obstacles to states' implementation, such as application of the Cash Management Improvement Act (CMIA) that restricts state flexibility and makes the TANF block grant look more like a matching fund program than a block grant. Even though states have met their MOE requirement, the federal share of their funds remains in the federal treasury, giving the false impression that these unobligated funds are unnecessary or "surplus" funds.

APHSA recognizes the partnership between states and localities and faith-based organizations in the delivery of critical social services, especially within the child welfare system. However, we believe the present regulation that applies charitable choice provisions to state and local funds expended to meet MOE requirements and funds in separate state programs is flawed. We believe that state and local

funds expended in this manner are outside the purview of TANF requirements, and more specifically the charitable choice provision of PRWORA.

To receive federal block grant funds, states are required to maintain funding for qualified program expenditures at a level equivalent to at least 80 percent of the state share of AFDC expenditures in FY 1994—when welfare caseloads were at their highest levels in recent history. If the state meets the work participation rate requirement, the MOE requirement drops to 75 percent. In the first four years of operation, all states made their MOE requirement.

Due to drafting errors in the original TANF statute and subsequent federal regulations, the law's flexibility has been reduced and administrative complexity has increased. For example, states are permitted to expend federal funds on services and benefits previously approved under the former AFDC program, yet state expenditures on these same services are not considered "qualified expenditures" for the purposes of MOE. No state expenditures on foster care or juvenile justice services are countable toward MOE. Similarly, federal funds may be used to pay for child support payments passed through to families on assistance. The state share of these payments, however, is not counted toward MOE. Under federal regulations, MOE funds must be spent on TANF-eligible families, but TANF funds can be spent on some services to families without respect to income.

PROPOSAL

Revise the TANF Contingency Fund and eliminate the Rainy Day Loan Fund.

The MOE requirements to qualify for TANF contingency funds should be the same as the TANF block grant. Furthermore, the definitions of qualified state expenditures should be aligned with TANF. States should also be given a two-year period to expend these funds. The existing Rainy Day Loan Fund should be eliminated.

EXPLANATION

The success of welfare reform in the states and, until the last few years, the robust national economy contributed to a decline in TANF caseloads and obviated the need for the majority of states to gain access to the fund in any given year. However, since many states are now experiencing an increase in their caseloads and the economy has been faced with downturns, the design of the contingency fund is an area of state concern. Under current law, states must meet a 100 percent MOE to be eligible for the contingency fund, not the 80 percent needed to qualify for TANF funds, and the definition of qualified expenditures in the contingency fund differs from the TANF MOE requirement as well. To qualify for contingency funds, states must also meet one of two "needy state" standards. The statute currently requires that a state's unemployment rate reach at least 6.5 percent and that a state's unemployment rate exceed 110 percent of the level of the corresponding three-month period in either of the two preceding calendar years. States can also qualify by meeting a Food Stamp Program (FSP) trigger, which requires that state FSP caseloads increase by 10 percent in the most recent three-month period over the average for FY 1994 or FY 1995.

Over the past few years, a number of states have created TANF rainy day funds to protect against periods of economic downturn. States have funded this contingency with state revenues, but according to federal regulatory interpretation, these state funds are not counted toward MOE until they are expended. APHSA believes this interpretation is a disincentive to states that want to protect their ability to provide assistance to their TANF clients in periods of recession.

PROPOSAL**Restore Social Services Block Grant (SSBG) funding and transferability of TANF funds.**

SSBG funding should be restored to the \$2.8 billion level in FY 2005 and beyond. Also, states should be permitted to transfer up to 10 percent of their TANF block grant to SSBG.

EXPLANATION

In the welfare reform law of 1996, SSBG was funded at a level of \$2.38 billion for FYs 1997 through 2002. The law provided that SSBG would be restored to its historic funding level of \$2.8 billion in FY 2003 and beyond. In addition, the welfare reform law permitted states to transfer up to 10 percent of their TANF block grant to SSBG for services to families with incomes up to 200 percent of poverty. Over the past six years, however, Congress has reduced federal support for this important

The SSBG funds programs for domestic violence, meals-on-wheels programs, child welfare services, services for children and adults with disabilities, child care, long-term care, and a host of other locally delivered services. Federal reductions in funding have threatened the viability of these programs and services.

block grant that funds services for the elderly, disabled, and low-income children and families. In 1997, to fund highway improvements in the transportation act reauthorization, SSBG funding was reduced to \$1.7 billion, and beginning in FY 2001, TANF transfer authority was reduced to 4.25 percent. (However, since 2001, the transfer authority has been restored to 10 percent during the appropriations process.)

The SSBG funds programs for domestic violence, meals-on-wheels programs, child welfare services, services for children and adults with disabilities, child care, long-term care, and a host of other locally delivered services. Federal reductions in funding have threatened the viability of these programs and services. To address this funding

shortfall in FY 2002, 48 states transferred close to \$1 billion in TANF funds to SSBG, and 22 states transferred the full 10 percent. If the transfer provision is unchanged, then states that used TANF funds to compensate for the federal reductions to SSBG will suffer a reduction in services to these vulnerable populations in future years.

PROPOSAL**Maintain the transfer option to the Child Care and Development Fund (CCDF).**

APHSA supports continuation of the option for states to transfer up to 30 percent of their TANF funds to CCDF and supports the flexibility for states to fund child care services directly out of TANF.

EXPLANATION

As more families make the transition from welfare to work, it is likely that expenditures for child care will continue to grow. Rising costs of subsidies and new quality enhancements will push costs higher in future years as well. The costs for child care are rising rapidly—so much so that in many states child care spending has exceeded that of cash assistance. In FY 1999, nearly \$4.5 billion in TANF funds were spent on child care services. Forty-one states transferred TANF funds to CCDF, and even more states spent TANF funds directly on child care. Under current law, states may transfer up to 30 percent of their TANF block grant funds to CCDF.

PROPOSAL**Clarify the definition of assistance.**

1. The definition of “assistance” in the TANF program should exclude unobligated funds, child care, and transportation expenditures. Under current federal regulations, child care and transportation expenditures are considered to be “non-assistance,” except in the instances where TANF is used to pay child care costs for clients who are not working. Therefore, if clients are not working but receiving these services, then the lifetime time limit on assistance applies. APHSA urges a change in the statute to clarify that child care and transportation should not be categorized as “assistance” in any instance.
2. In addition, under federal regulation, at the close of the federal fiscal year any unobligated TANF funds can only be used for cash assistance in subsequent fiscal years. The statute should clarify that unobligated funds should be used for any purpose under the act.
3. APHSA also calls for a correction in the interpretation of a former AFDC provision in the present law that results in application of the Income and Eligibility Verification System (IEVS) data match to all TANF-funded services rather than only to cash assistance.

EXPLANATION

Federal regulations governing the use of federal TANF funds draw a distinction between “assistance” and “non-assistance” expenditures. “Assistance” is defined in the final TANF regulations as “benefits directed at basic needs” (e.g., food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses) and “child care, transportation, and supports for families that are not employed.” When a family receives “assistance,” the lifetime time limit, work requirements, and child support assignment rules apply. These rules do not apply to all other types of expenditures, which are termed “non-assistance.” Federal regulations also state that unobligated federal TANF block grant funds after the close of the fiscal year may be expended in future fiscal years on “assistance.”

Prior to passage of the welfare reform law in 1996, Section 1137 of the Social Security Act required states to verify the income and eligibility of AFDC, FSP, and Medicaid participants by routinely matching information supplied by participants against several other data sources, including wage reports, Internal Revenue Service (IRS) unearned income records, and Social Security Administration (SSA) data. Under AFDC, the requirement to use IEVS applied only to cash assistance. HHS interpreted the IEVS requirement in TANF to apply broadly to all TANF-funded benefits, including non-assistance. Implementing this expanded IEVS requirement has placed considerable burden on states.

WORK PARTICIPATION

APHSA supports the engagement of every client on the caseload in activities that lead to self-sufficiency. In the next phase of welfare reform, there should be a renewed focus on attaching TANF recipients to employment. States should be rewarded for their success in moving clients into employment. Many states have voiced their interest in moving away from process measures of work rates and hours to an optional system of outcome measures.

PROPOSAL**Replace the present Individual Responsibility Plan (IRP) in the TANF program with a Universal Work Engagement Requirement.**

EXPLANATION

APHSA supports replacing IRP with a universal engagement requirement where all states would develop a plan for heads of households currently receiving TANF benefits. However, in order to recognize the unique situations of each recipient, we believe that the state should have the discretion as to the appropriate assessments needed for a plan and the subsequent monitoring. No federal penalty should be attached to this new mandate and nothing in the plan should be construed to establish a private right of action or cause of action to a state. Finally, child-only cases should not be included in the universal engagement requirement.

PROPOSAL**Continue and expand the work flexibility necessary to address the needs of all TANF recipients.**

1. Maintain the 30-hour work requirement structure, including deeming a single parent with a child under age six as meeting the work requirement at 20 hours. If Congress chooses to increase work hour requirements, additional child care funding must be provided.
2. Adjust the hourly threshold to value all work efforts, including part-time employment.
3. Support a proposal to include “two-parent” families into the “all-family” work rate requirement.
4. Reject efforts to restrict current work activities such as proposals to limit job search.
5. Retain present state options to exempt mothers with children under age one from work requirements.
6. Oppose efforts to limit state flexibility in determining family sanction policy and in particular, mandating immediate, full-family sanctions.
7. Continue or expand present state waiver authority.

EXPLANATION

States have committed TANF resources in support of their state priorities and in compliance with federal goals, objectives, and work participation requirements. Proposals to increase hours of work and reduce countable work activities could require states to abandon their goals and redirect their limited TANF resources. Also, TANF mothers who have multiple barriers to overcome, such as mental health, substance abuse, or learning disabilities, may need additional—not less—time to enter the workforce. States should be afforded additional flexibility in defining work activities so that they can place these clients in meaningful activities that increase the likelihood of long-term success in the workforce. In this respect, APHSA also supports continuing state welfare waivers. Increased work hours are also problematic in some states where TANF eligibility is such that after 24 hours of minimum wage employment, families are ineligible for TANF and therefore are removed from the caseload before they can be counted. For example, if TANF clients lose eligibility when they works 28 hours at the minimum wage, the state would have to adjust eligibility rules to keep them on cash long enough to be counted. In a time-limited TANF program, this would be unfair to clients and contrary to our mission of moving families off of assistance. Also, under current law, a client working up to 29 hours per week is not captured as working for purposes of state work participation rates, while a person working one more hour a week would be counted. Therefore, future TANF policy should value work at all levels, including part-time employment.

Within the present work rates, there is also an inequity whereby two-parent families are held to a higher work rate than single-parent families. This policy also requires additional data reporting requirements, and applying the same standard to all families would rectify the problem. Finally, it is

important to recognize that every state has developed its own family sanction policy, many times in collaboration with key state advocates. Although many states have opted for a full family sanction, most implement it as part of a reconciliation process where benefits are initially decreased. To require all states to abandon their present process for a “one-size-fits-all” approach is contradictory to the purpose of the block grant.

PROPOSAL

Provide states with the option to replace the current TANF work participation rate structure with new measures that capture job placement, job retention, and earnings progression.

Under this proposal, states could opt to have their work efforts measured by the number of TANF clients with earnings; those who have retained employment after a period of time; and those who have increased earnings. States could include clients in diversion, as well as those who have left TANF for employment. This option would replace process measures such as participation rates and prescriptive hours and work activities. Measuring job placement, job retention, and earnings progression reflects standards established under the high-performance bonus and also simplifies state coordination efforts between their TANF and WIA programs, which incorporate similar measures.

EXPLANATION

For over a decade, Congress has shown its interest in incorporating outcome measures into work programs through provisions in the Family Opportunity Act of 1988, PRWORA, and WIA. In these acts, Congress recognized the importance of eventually moving away from process measures toward more meaningful outcomes and requested studies on the topic as well as recommendations. The TANF high-performance bonus also provides states with enhanced funding based on a set of outcome measures for employment and attachment to other support services. The outcome measures outlined under WIA collect actual employment data and provide an incentive for states to focus on employment, earning and retention. At the very least, reauthorization should place as much emphasis on the placement of TANF clients in unsubsidized employment as it places on the work activities of those receiving cash assistance.

At the very least, reauthorization should place as much emphasis on the placement of TANF clients in unsubsidized employment as it places on the work activities of those receiving cash assistance.

PROPOSAL

Make the transition from the TANF Caseload Reduction Credit to an Employment Credit.

EXPLANATION

If Congress revises the caseload reduction credit, we urge a transition period and the establishment of an employment credit. Under the credit, states would be permitted to count individuals who have been diverted from the TANF caseload into employment and those who received TANF non-assistance, such as child care and transportation assistance, and are employed.

PROPOSAL

States should be afforded the full statutory time to come into corrective compliance with the program goals before any financial penalty is placed on their program. In addition, states should be exempt from financial penalty if they have demonstrated an increase in their work participation rate.

EXPLANATION

States face a strict double penalty for failure to meet the MOE requirement. Not only are states penalized for falling short of the requirement, but they must also expend an equivalent amount of state funds to make up for their shortfall. If states have demonstrated an improvement in work participation then states should not be penalized with a loss of 5 percent of their federal TANF funding, a 5 percent increase in their state MOE requirement, and a 5 percent increase in state funding. At the very least, states should be penalized in proportion to the degree of non-compliance, as under the current federal regulations applied to the two-parent work rate.

STRENGTHENING FAMILIES

PROPOSAL

1. If Congress designates federal funding for a marriage and family formation initiative, the funds should be directed to states and localities for family strengthening programs such as marriage support programs, family reunification, parent education and support, fatherhood programs, and prisoner re-entry programs that are designed to support healthy marriages and families.
2. APHSA supports the creation of new programs that promote the responsibility of non-custodial mothers and fathers in the life of their children. Any newly created programs should be coordinated with related state and federal programs such as child support, the TANF block grant, WIA, and state child welfare programs.
3. APHSA encourages the administration to work with the association to remove marriage penalties in determining eligibility for federal programs (such as in EITC, SSI, Medicaid, and other programs).
4. To reduce intergenerational dependency on government assistance, APHSA recommends strengthening the TANF Bonus to Reduce Out-of-Wedlock Births by adding a new performance measure aimed at reducing adolescent birth rates. Success in this area will have long-term benefits that will reduce future dependence on TANF.

EXPLANATION

Welfare reauthorization legislation proposed in the 108th Congress contained provisions to eliminate the Out-of-Wedlock Reduction Bonus and portions of the TANF High Performance Bonus and replace it with a five-year, \$1 billion marriage and family formation program initiative. If Congress chooses to follow the same proposal, it is important that these funds continue to pass through to the state. For a state to have a coordinated strategy that meets the needs of its citizens, the federal government should not bypass state control through direct grants to local organizations. However, if the Out-of-Wedlock bonus is maintained, a greater emphasis should be placed on the reduction of births to unmarried teens in an effort to address intergenerational dependency on government assistance. State TANF implementation has included efforts to promote marriage and to encourage the

formation and maintenance of two-parent families and often involve programs such as health, child welfare, and education. Some states have chosen to adopt statewide approaches to advance certain initiatives while others have made low-income families or young adults the focus of their efforts.

There is an extensive and diverse array of services and approaches that can be undertaken to support present and future families. Some of these services focus on supporting couples facing difficulties in their marriage, while others provide the skills, counseling, and support to prepare younger persons for the decisions about family formation they make as they approach adulthood. We encourage new funding streams to provide flexibility to states to choose the approach that best meets their needs. Also, initiatives focused on fatherhood should be broadly designed to encourage parents without custody of their children to assume greater financial responsibility and parental presence in the lives of their children, and to provide work supports and services so they can better provide for their children. Such measures are consistent with the objectives of welfare and child support reforms since they encourage self-sufficiency and responsibility and provide important resources for children and families.

WIA REAUTHORIZATION

While WIA was intended to simplify the workforce system for workers and employers, its current structure has limited its effectiveness. All states were required to implement their WIA programs by 2000, and in the last four years states have implemented a variety of programs. Some states have fully integrated their workforce programs with other human services, while others have decided to run a separate workforce unit. The lack of broad-based coordination among workforce development, human services, and educational systems limits access to effective workforce development and slows the progression of families moving to self-sufficiency. Recognizing this reality, Congress attempted to reform WIA during the 108th Congress. Legislation was introduced and passed by both the House and Senate, but no compromise language was reached. The major focus of the debate was on the consolidation of funding streams, simplification of performance measurements, and improved access to training.

PROPOSAL

Streamline current WIA policy that requires individuals to follow a sequence of activities prior to training.

1. The system should be simplified so that clients can be quickly and properly provided with necessary services, including training.
2. The system should be reshaped to provide continued learning and training opportunities through community colleges and other institutions that can refocus training to meet industry standards of potential employers.
3. The system should provide adequate flexibility so that low-income individuals are able to use the system for career development and advancements.

EXPLANATION

The current rigid structure of WIA requires individuals to first use core services, then intensive services, and finally, training, if they are unable to find employment. This process limits opportunities for training in some of the most fast-paced environments. The WIA system must be flexible enough to respond to local demands so high-growth environments, such as high technology industries and health care, can be provided with an equipped labor pool. Continued lifelong training and attachment to the workforce should be a program objective.

PROPOSAL

Support the current WIA cost-allocation structure that allows states and local areas to develop agreements based on local need, and to ensure that partner programs are appropriately contributing for services received in the One-Stop system.

1. WIA reauthorization should allow partner programs to continue developing local agreements through negotiated memoranda of understanding. This will allow states that have developed a functioning cost-allocation structure to continue without unnecessary interruptions in program functioning.
2. If Congress chooses to address the current operating expenses of the One-Stop system, it should provide a separate line of funding to pay for infrastructure costs.

EXPLANATION

Under current law, WIA partners may agree to share infrastructure costs under terms of negotiated memoranda of understanding. Proposals during the 108th Congress would require that mandatory partner programs contribute a portion of their federal funds to pay for the infrastructure cost of the One-Stop center. These proposals are prescriptive and could limit the creative approaches currently being implemented by states.

PROPOSAL

Improve flexibility in federal workforce programs to allow easier transfer of funds across WIA funding streams.

1. The WIA should be amended to allow states and localities the authority to transfer adequate funds among different WIA programs.
2. The WIA should be amended to allow greater flexibility for states to meet the diverse needs of localities and labor markets.

EXPLANATION

Currently, WIA funds go to states in three separate funding streams: youths, adults, and dislocated workers. Each of these funding streams has its own rigid spending requirements. Creating more flexibility in funding streams will reduce many of the challenges created under the silos in the current WIA structure. To meet the diverse needs of the current work environment, states should have broad flexibility to administer the program so that workforce services can respond to the unique and critical needs within local areas. The system should be flexible enough to give states and localities the authority to transfer adequate funds among different WIA programs. The current structure limits the ease with which states can respond to the changing needs among adults, youths, and dislocated workers populations.

PROPOSAL

Incorporate a comprehensive youth development strategy in WIA reauthorization.

1. Youth performance measures should be reformed to simplify reporting and accurately track youth services.
2. WIA must adequately fund programs that serve in-school as well as out-of-school youths.

3. The Department of Labor should work with states to develop more targeted approaches to expand services to youths aging out of the foster care system, and identify strategies to create more opportunities for youths involved with the juvenile justice system.

EXPLANATION

WIA currently has different performance measures for youths ages 14 to 18 and 19 to 21. This creates unnecessary reporting requirements and additional silos. A comprehensive youth strategy must include simplified performance standards that track youth progression into educational opportunities and the workforce. Helping juvenile offenders gain better access to the workforce is a critical component of this strategy. Further, resources available under WIA should be better coordinated to provide services to all eligible youths. This will allow all youths ages 14 to 21 to be served by all WIA youth programs. While serving out-of-school youths should be a priority, WIA should continue funding and serving in-school youths, many of whom are at risk of dropping out of school. Each year thousands of youths age out of foster care and in many cases are left on their own with limited community supports and inadequate skills to find employment. Those youths who are able to find employment frequently find low-paying jobs that lack resources for adequate transportation, safe housing, or access to training. Too many of these young people become involved with the juvenile justice system. WIA-funded youth programs must create an environment where all youths can be connected to appropriate educational and training opportunities.

PROPOSAL

Improve WIA performance measures to accurately track effectiveness.

1. The measures should focus on several key areas: job placement, job retention, earnings progression, training or education attainment, and effectiveness in providing services to one-stop users.
2. WIA performance measures should capture all individuals using the system, including individuals who participate in self-service or informational activities.

EXPLANATION

The performance measurements in the current system track only a part of the services that are provided and do not accurately reflect the effectiveness or the type of services that are being provided to individuals who use the system. The WIA performance measures should capture all individuals using the system, including individuals who participate in self-service or informational activities. The current system tracks 17 different performance measures for adults, youths, and dislocated workers. This complex system creates additional burdens for states and clients without truly capturing the effectiveness of the program. The WIA performance measures should focus on several key areas: job placement, job retention, earnings progression, training or education attainment, and effectiveness in providing services to all one-stop users. In 2002, a Government Accountability Office report (GAO-02-275) found that the current system tracks only the primary WIA-funded programs, and fails to examine the performance of the WIA system as a whole. Many of the services that are typically offered at a one-stop center are not captured in the performance measurement because the system focuses heavily on unemployed individuals who move into employment. It does not place the same emphasis on individuals who experience increase in wages as a result of one-stop service. The unintended consequence of this is that one-stop centers are more inclined to serve those clients who are most suited to find quick employment.

PROPOSAL

Renew and revise the federal Work Opportunity Tax Credit.

1. Support a five-year renewal of WOTC to allow employers and states to develop long-term strategic plans to fully utilize credits.
2. Eliminate eligibility barriers that require ex-felons to be from an economically disadvantaged family to be eligible for WOTC.

EXPLANATION

Long-term authorization would increase participation among employers, encourage more community outreach programs to identify and hire welfare recipients, and result in more effective administration by state employment agencies. Also, current eligibility guidelines require ex-felons to undergo an additional verification process to determine if they meet economically disadvantaged criteria. States are required to verify and establish the economic disadvantage of each ex-felon whose employer wishes to file for WOTC. This additional requirement is burdensome for states, discourages potential employers, and creates unnecessary employment barriers for ex-felons. The federal government must continue to provide opportunities for low-income families in transition through creative incentives to businesses, educational institutions, and community groups. These programs have demonstrated their effectiveness and should be enhanced and promoted.

PROPOSAL

Maintain funding for affordable housing and effective transportation programs.

1. Continued funding of the JARC will enhance both rural and urban efforts to help low-income families gain access to effective transportation.
2. Maintain current TANF policies that allow for partnerships with public housing programs. It is essential that such flexibility be maintained along with the appropriate funding to assure the integrity of the low-income housing vouchers and the Family Self-Sufficiency programs.

EXPLANATION

HUD offers many important housing programs, including Family Self-Sufficiency. This program provides a unique approach to promoting self-sufficiency by combining stable, affordable housing with case management to help families increase their earnings and build assets. By partnering with state or local housing agencies, state TANF programs can gain access to HUD funding for an earnings incentive that helps low-income families residing in public housing or the housing voucher program build assets over time. Housing, coupled with innovative transportation programs, can play an important role in increasing work opportunities for low-income families. In rural and urban communities alike, these two areas create significant barriers for low-income families attempting to find and maintain employment. Sufficient funding and continued flexibility within these programs are essential components of work support strategies.

PROPOSAL

Promote the Earned Income Tax Credit.

1. The IRS should work with states to expand public knowledge of EITC.

2. Future attempts to reform EITC should focus on reducing errors and complexities while maintaining program integrity and benefits.
3. States should be able to continue counting state EITC programs toward state TANF MOE requirements.
4. The IRS should develop more partnerships to promote Volunteer Income Tax Assistance centers, reduce complexities in filing returns, and reduce EITC processing time.
5. Reduce the EITC marriage penalty.

EXPLANATION

The EITC has been effective in elevating millions of families out of poverty. At the same time its complex structure has limited the number of eligible families who apply for benefits. For those families who do apply for benefits, too many of them pay high fees to commercial tax preparers.

A recent report from the Brookings Institution noted that filers in 27 localities spent an estimated \$212 million in EITC refunds on high-cost loans and tax preparation. In several locations, more than half the EITC earners claimed their refunds through high-cost loans, and nationally over \$1.74 billion was spent on similar preparation.¹

The complexities of IRS forms and the time it takes to process returns make the rapid refund loans a much more attractive approach. Additional improvements to EITC should include a reduction in the marriage penalty. These improvements can be accomplished by increasing the maximum income ceiling for EITC eligibility as well as expanding the EITC phase-out rate for married taxpayers with children.

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PROPOSAL

Promote assets building and wage protection among low-income families.

1. Use of ongoing financial education strategies, federal incentives, and pilots would help enhance state efforts to support more families.
2. Support federal and state policies that protect low-income families from predatory financial practices.
3. Maintain state authority in the TANF program to develop IDAs that would not count against client eligibility.
4. Preserve state authority to establish child support trust fund accounts.
5. Support federal efforts to establish special saving accounts and other innovative saving plans for low-income families.

EXPLANATION

Low-income workers should be able to protect and grow their incomes like all other segments of the community. Current federal policies create barriers to low-wage workers accumulating assets while making the transition from public benefits. Federal policies must provide states with enough flexibility and incentives to help low-wage workers grow their incomes and build assets. Recent research from the Brookings Institution demonstrated the effectiveness of the EITC in increasing wages and lifting

¹ Berube, A., *Rewarding Work Through the Tax Code: The Power and Potential of the Earned Income Tax Credit in 27 Cities and Rural Areas*. Brookings Institution, January 2003.

families out of poverty. The EITC is unique because its refundable nature allows families to benefit from the full value of the credit they have earned even if they owe less in income tax than the amount of the credit.

Child Care

Current Program

Over the past decade, recognition of child care as a critical public policy issue has dramatically increased. The public's attention is fueled by several factors, including the unprecedented numbers of mothers in the workforce; the high cost of care; a shortage of providers in many communities; and an increased awareness of the importance of early childhood development.

State and federally funded child care has become an essential work support for low-income families, as well as an important tool for promoting child development and learning. The passage of welfare reform legislation in 1996 ended the entitlement to cash assistance, placed a time limit on assistance, and emphasized the transition from welfare to work. This landmark legislation also was the impetus for a dramatic increase in federal and state child care funding, since a focus on clients making the transition to work required that states provide work supports such as child care. More recently, there has been a national focus on the importance of quality child care to early childhood development and education. Child care is no longer considered merely a work support, but rather an opportunity to make a positive impact on the growth and development of children.

As child care funding has increased, the role of state child care agencies has changed and expanded. Child care agencies are clearly critical to the success of both welfare-to-work and school readiness programs.

As child care funding has increased, the role of state child care agencies has changed and expanded. Child care agencies are clearly critical to the success of both welfare-to-work and school readiness programs. These agencies also play an important role in coordinating the myriad publicly funded child care programs, including Head Start and state-funded pre-kindergarten. In many states, the responsibility for regulating and licensing child care providers and ensuring the health and safety of the children in care also falls to the state child care agency. In addition, state child care agencies are a primary driver of quality improvement, supporting a vast array of quality initiatives such as consumer education campaigns, teacher training and education, and tiered reimbursement. Finally, child care agencies have a significant impact on the child care industry and state economies. Economic analyses of child care subsidies demonstrate that they create a substantial number of jobs and contribute to the state's economic well-being. Public child care dollars help subsidize local child care businesses and therefore create jobs and provide the necessary infrastructure to attract other businesses to the state.

Much of the recent growth in federal and state child care spending resulted from passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193), which created a new welfare program, Temporary Assistance for Needy Families (TANF).

PRWORA replaced federal welfare and child care entitlement programs with block grants to states that provide a set amount of funding and allow state flexibility to design programs. The legislation consolidated major federal child care programs into the Child Care and Development Fund (CCDF) and increased federal funding for child care by approximately \$4 billion over six years.

CCDF is the primary source of federal and state funding for child care, providing \$4.8 billion in federal funding and \$2 billion in state funding in fiscal year 2004 and serving an average of 1.8 million children each month. CCDF is composed of four funding components: discretionary funds, mandatory funds, matching funds, and state maintenance-of-effort (MOE) funds. Discretionary funding, also known as the Child Care and Development Block Grant (CCDBG), was \$2.1 billion in FY 2004. A portion of the CCDBG discretionary funds are “set-asides,” required to be used for certain child care activities, usually related to quality. For FY 2004, the quality set-asides were \$19 million for child care resource and referral services and school-age child care activities; \$100 million for infant and toddler quality improvement; and \$172 million for general child care quality improvement activities.

Mandatory funds are provided as an entitlement to states and do not require congressional appropriation. Approximately \$1.2 billion in mandatory funds was distributed to states in FY 2004. Matching funds were a new source of child care funding included in the welfare reform law and were funded at \$1.5 billion last year. Matching funds are also entitlement funds and do not require annual appropriations. To gain access to matching funds, states must meet a child care MOE level equal to the state matching dollars expended in FY 1994 for Aid to Families with Dependent Children (AFDC)—related child care programs. After the MOE is satisfied, states match the federal funds at the Federal Medical Assistance Percentage (FMAP). In FY 2003, states spent \$2 billion to meet MOE and matching requirements.

In addition to CCDF, TANF and the Social Services Block Grant (SSBG) are significant sources of child care funding. States have the option of transferring up to 30 percent of their TANF funding into their CCDF grant or spending TANF dollars directly on child care services for TANF-eligible families. In FY 2003, states transferred \$1.8 billion of TANF funds into CCDF and spent \$1.7 billion of funds directly on child care services. SSBG may also be used to fund child care services, as well as a broad range of other social services. In 2002, states spent \$99 million in SSBG funds on child care.

Another complimentary federal funding source for child care and early learning is Head Start and Early Head Start. These programs provide comprehensive development, education, health, and nutrition services for low-income children and social services for their families and focus on improving school readiness. Head Start funding is awarded directly to local grantees, not to states. Historically, Head Start has been predominately a part-day, part-year program. In recent years, due to recognition of the overlap in families served, greater efforts have been advanced by states, the U.S. Department of Health and Human Services (HHS), and in reauthorization legislation to blend funding and increase collaboration between state child care programs and Head Start. The intent is to extend services to full day and full year so that families in need of such complete child care services will not be required to move their children between Head Start and other child care providers. In FY 2004 Head Start funding was \$6.8 billion and served approximately 900,000 children.

In 1998, Congress created the 21st Century Community Learning Centers (21st CCLC), which provide after-school learning opportunities for children in a school setting. Grants from this program are

awarded to state education departments, which manage statewide competitions and award grants to local organizations. The program funding has steadily grown since its inception, and in FY 2004 funding reached just under \$1 billion. While this program is viewed by some as after-school child care, the range of programs that are funded across the country is varied and may not always address child care needs.

Federal law permits states to use CCDF funds to provide child care for families whose income does not exceed 85 percent of the state median income (SMI). However, states may impose lower income eligibility limits. In their FY 2004–2005 state plans, states reported eligibility limits ranging from 28 percent to 85 percent of SMI. The average eligibility level in 2003 was 59 percent of SMI, down from 62 percent in 2001. In their FY 2004–2005 plans, 26 states reported lower income eligibility levels than in their FY 2002–2003 state plans.

In addition to establishing income eligibility limits, federal law requires that children served by CCDF must be under age 13 and live with parents working or participating in education or training or require protective services. States must give priority to children with special needs or in “very low-income” families. States also must use 70 percent of CCDF funds for families receiving TANF or at risk of requiring TANF assistance.

The majority of CCDF child care assistance is provided through vouchers or certificates that families may use to purchase child care from any legally operating provider. The provider may provide services in a center, a family child care home, or in the child’s home. In addition to offering vouchers, 26 states contract directly with providers to offer child care to families eligible for CCDF assistance.

States use biennial Market Rate Surveys (MRS) to establish subsidy reimbursement rates. In their FY 2004–2005 plans, only 23 states set rates at or above the 75th percentile of MRS. More than half of states have established higher rates for providers that meet certain quality standards, provide care for children with special needs, or provide care during non-traditional hours.

In addition to funding direct services, states may use up to 5 percent of CCDF funds on administrative expenses and are required to use at least 4 percent of funding on improving quality and access to child care. However, many spend less than 5 percent on administration, and the majority of states spend more than 4 percent on quality. In FY 2004–2005 state plans, the average quality expenditure was 7 percent of CCDF funds.

Both the TANF and CCDF block grants expired at the end of FY 2002 and have been extended to date through a series of short-term extensions. In the 108th Congress, TANF and CCDF reauthorization legislation was introduced, but never passed. Similar bills are expected in the 109th Congress. TANF proposals would increase mandatory work hours from 20 to 40 for mothers with children under age 6 and from 30 to 40 hours for all other TANF clients. In addition, the percentage of TANF clients placed in work activities would grow from 50 to 70 over five years. States expressed concerns that the increase in work requirements would place a serious burden on child care programs and argued that additional resources were necessary. House-passed legislation would authorize \$1 billion increase over five years in child care mandatory funding and \$1 billion in discretionary funds. The Senate approved a \$7 billion increase in mandatory matching funds over 5 years, waiving the state match for these funds for the first three years. CCDF reauthorization measures introduced in Congress would also raise the quality set-aside from 4 to 6 percent; impose new data reporting requirements; increase the TANF transfer from 30 to 50 percent; and set new outcome goals directed at early childhood development and education.

Challenges

As CCDF awaits reauthorization, some key challenges, as well as opportunities for improvement, face the program. Child care funding must be enhanced to help meet the demand for child care in states. Adequate child care funding is vital to helping families successfully make the transition from TANF to work, helping other low-income families maintain employment, and enhancing early childhood development and learning. In addition, the flexibility of CCDF funding must be maintained. The block grant structure of CCDF has allowed states to create programs that are tailored to their state's families and providers and to create statewide infrastructures that benefit all child care consumers. State success in administering child care programs depends on flexibility in the types of services and activities (including quality initiatives) funded and flexibility in using CCDF for licensing and other regulatory activities. Reauthorization also presents an opportunity to streamline child care funding by modifying obligation and liquidation schedules and consolidating all set-aside funding.

Since the inception of CCDF, states have worked to improve the quality of child care and to increase collaborations with other federal and state programs that fund child care. Continued federal support

Child care funding must be enhanced to help meet the demand for child care in states.

Adequate child care funding is vital to helping families successfully make the transition from TANF to work, helping other low-income families maintain employment, and enhancing early childhood development and learning. In addition, the flexibility of CCDF funding must be maintained.

for national and local quality research and for a diverse array of state quality goals and activities are essential to assuring that child care is developmentally appropriate and provides an environment for growth and learning. Coordination between CCDF and other child care programs, such as Head Start, helps make sure that families are receiving the services that best fit their needs in the least burdensome manner possible. Continued efforts to promote program collaboration must strive to reduce administrative complexities, while respecting parental choice.

A major potential challenge for state child care programs is Internal Revenue Service (IRS) policy that would require states to act as the employer of informal child care providers when the state provides a child care subsidy to that provider. Some regional IRS offices are interpreting IRS code to hold states responsible for paying and withholding taxes; they reason that since state funding pays for the child

care services, this fact makes the state the provider's employer. National policy requiring states to pay employer taxes for informal providers paid with CCDF or TANF funds would have a substantial negative impact on child care programs; it would increase the costs of individual subsidies and reduce benefits and services, and could possibly limit parental choice and access to care.

Finally, program integrity poses potential challenges and opportunities for states. Federal implementation of the Improper Payments Information Act of 2002 (IPIA, P.L. 107-300) offers an opportunity to focus on improving program integrity. States support program integrity initiatives that respect state diversity, are cost-effective, provide additional funding for improved technology, focus on prevention of fraud, and do not create any additional burdens on child care consumers. Implementation of a national error rate, however, would create a new administrative burden and expense. It would not be able to accurately capture the extent and nature of states' improper payments due to the extent of state differences in program design.

Recommendations

PROPOSAL

Increase CCDF funding and maintain TANF funding level and TANF transfer authority.

During the 108th Congress, the Senate approved an amendment to increase child care mandatory funding by \$7 billion over five years, with no state match required for the first three years. APHSA continues to support such an increase. In addition, new funding dedicated to information technology is needed. With new data reporting requirements, there is a growing need to gather data from state child care systems. Additional requirements should be accompanied by additional federal funding.

The current TANF funding level and authority to transfer up to 30 percent of TANF funding to CCDBG must be maintained. TANF funding is critical for child care. The majority of states use TANF for child care; therefore, any cut to TANF or transfer authority would result in decreased child care funding.

EXPLANATION

Current federal child care funding is inadequate to meet the needs of all families eligible for CCDF assistance. States have the option to provide child care assistance for all families with incomes up to 85 percent of SMI, but the majority of states have set the income limits much lower due to a lack of funding. In recent years, state budget deficits, as well as increasing demand for care, have forced states to reduce eligibility or postpone quality and early learning initiatives. Subsidized child care is critical to keeping former TANF beneficiaries employed and helping current beneficiaries find sustainable employment. Even as state welfare caseloads have fallen, the need for child care continues to grow. In addition, any increases in TANF workload participation requirements will necessitate an increase in child care funding.

In addition to increased funding for direct services, new funding dedicated to information technology must be provided. Chronic child care funding shortages have resulted in limited investment in data systems and other technology in recent years. Improved data capability is an important tool for both improving child care quality and reducing fraud and improper payments. It is also necessary for meeting federal data reporting requirements. Other technology improvements, such as automated payment and attendance tracking systems and websites with licensing and quality information, can help improve quality, increase consumer awareness and satisfaction, and reduce fraud.

PROPOSAL

CCDF obligation and liquidation schedules and set-asides should be streamlined.

Obligation and liquidation schedules for mandatory, discretionary, and matching funds should be examined for ways to streamline the rules. If schedules across the three parts of CCDF are merged, states should at minimum have two years to obligate and two years to liquidate CCDF funds as well as TANF transfer funds.

Existing quality set-aside funding should be consolidated and funding rules attached to the existing requirements should be streamlined. In addition, broad statutory language should be added to clarify

that set-aside funding should be used to fund infant and toddler programs, resource and referral activities, and other child care quality initiatives states deem appropriate.

EXPLANATION

Simplifying current funding policies would greatly reduce state administrative burdens and free resources that could be better used to improve or increase services for families. Existing liquidation and obligation schedules should be redesigned to create a more streamlined system. Currently, states have two years to obligate discretionary funds and an additional year to liquidate those obligations. Mandatory funds must be obligated in one year, but there is no deadline for liquidating funds. Federal matching funds must be obligated in one year and liquidated in two years. The variation in obligation and liquidation schedules between funding streams creates unnecessary administrative work for states. States should be granted a minimum of two years to obligate and two years to liquidate all three sources of funds.

In addition, the current multiple quality set-asides should be consolidated into one set-aside. The streamlined set-aside should require that states address quality for certain populations, such as infants and school-aged children, but should allow states the flexibility to determine the amount of funding dedicated to these populations and the types of activities funded.

PROPOSAL

Preserve CCDF flexibility.

APHSA opposes efforts to limit states' flexibility in using CCDF funds for statewide licensing, health and safety inspections, and other regulatory activities or to direct a percentage of CCDF funds for "direct services."

EXPLANATION

The CCDF is a block grant to states to provide child care services in a manner that best meets the needs of the state's population. Legislation and regulation must maintain the flexibility of the block grant program. The ability of states to use CCDF funding for statewide licensing, health and safety inspections, and other regulatory activities must be preserved. These activities are essential elements of state child care systems that meet the needs of subsidy recipients, as well as other child care consumers. Limiting the use of CCDF funding to licensing and regulating providers that provide care to subsidy families would create an administrative and financial burden and may result in reduced provider options for families. No additional set-asides for direct services should be created.

PROPOSAL

Revise IRS policy to clarify that families, not governmental agencies, are the employers of informal child care providers.

The IRS should clarify that the act of reimbursing a client for amounts the client pays as wages to the client's domestic worker does not cause a governmental agency to become a "control" employer under the IRS code. Parents, not states or municipalities, are the employers of child care providers, unless the state expressly defines it otherwise.

EXPLANATION

Some IRS regional offices have taken the position that informal child care providers may be considered state employees for the purpose of withholding of payroll taxes when the state provides a subsidy for the employment of the provider. Legislation or IRS guidance is needed to clarify that a state is not an employer with respect to payments made by a state for child care services under Title IV of the Social Security Act, regardless of whether the state pays the caregiver directly or pays the child's family. The guidance should specify that the state shall not be considered a caregiver's employer for any purposes, including withholding, reporting, or remitting federal employment taxes, unless the state agrees to act as an agent for purposes of such taxes.

Any policy that allowed informal child care providers to be considered employees of the state would have dire financial consequences for state child care and other programs.

Any policy that allowed informal child care providers to be considered employees of the state would have dire financial consequences for state child care and other programs. State payment of employer taxes for providers would add a significant new cost to child care budgets and require a reduction in the number of families served or in other activities, such as quality improvements. The costs associated with acting as an employer for in-home providers might force the state to limit the number of these providers, therefore threatening consumer choice and access to services. This IRS policy could also set a precedent for the state to be considered the employer for a wide range of other benefits, including unemployment insurance, health insurance, and retirement benefits. In addition, this policy could be used to require the state to act as the employer of other domestic service providers that are hired using federal or state funds, such as personal assistants for the disabled covered by Medicaid.

PROPOSAL**Promote collaboration with other programs to meet child care program goals.**

Head Start should fund grantees to provide full-day, full-year services.

Any efforts to coordinate CCDF-funded child care and other federal programs must maintain and respect informed parental choice in the design of these coordinated projects.

State flexibility to use CCDF and TANF funds for early learning programming must be maintained. Federal policy should recognize state investments in developmentally appropriate child care as contributing toward early learning goals.

States' ability to count pre-kindergarten expenditures toward their TANF and CCDF MOE requirements must be preserved.

EXPLANATION

The CCDF and TANF are important sources of funding for child care, but are not the only sources of federal and state funding for child care. Head Start and Early Head Start also provide child care and other services to over 900,000 low-income children, and the 21st CCLC program funds after-school care for many children. Coordination between CCDF and other child care programs at the federal, state, and local levels can help meet the needs of child care consumers. For example, Head Start and Early Head Start grants that offer full-day, full-year services better meet the needs of families and eliminate the complexities of using multiple funding streams to provide full-time child care.

Any efforts to increase collaboration between CCDF and other child care programs must be designed to maintain informed parental choice.

Child care can be an important tool for promoting early learning and school readiness. Federal policies should recognize that quality child care that is developmentally appropriate is an invaluable contribution toward increasing early learning. Any efforts to improve caregiver-child interactions or other fundamental aspects of quality child care are also efforts to enhance early learning. States should have flexibility to use CCDF funds to work toward early learning goals in the manner that best fits the needs of the state.

In addition to providing child care through CCDF vouchers, 40 states funded public pre-kindergarten programs as of 2002. During the 2001–2002 school year, states served 740,000 children at a cost of \$2.54 billion. These public preschool programs provide a vital source of child care for low-income families, as well as contribute significantly to school readiness. States' ability to count pre-kindergarten expenditures as part of their CCDF and TANF MOE effort should be preserved.

PROPOSAL

The federal government should expand efforts to improve quality.

The federal government should maintain support for research related to child care quality and the impact of child care programs on workforce participation, economic development, and early learning.

States should maintain broad flexibility to design and implement strategies and activities to achieve CCDF program goals. Specific quality mechanisms and activities should not be federally mandated.

Federal policy should promote quality activities and research across the spectrum of child care settings and providers.

EXPLANATION

Child care is both a critical work support and an opportunity to provide appropriate developmental and educational experiences that enhance the development and well-being of children. States have invested in a wide array of initiatives that address varied aspects of quality, including staff recruitment and retention, facilities improvement, and staff education and training. Types of quality activities include tiered reimbursement, training classes and curriculums, grants for professional development, and consumer education. Because ensuring quality child care is an important function of state child care programs, the majority of states currently spend more than the required 4 percent. States use the set-aside funding and additional CCDF and state funding to provide quality initiatives that best meet the needs of the providers and families in their state. States' flexibility to set their own quality goals and implement selected quality activities must be preserved.

In addition to state expenditures on increasing the quality of direct services, it is vital that the federal government continue to support child care research on quality and the impact of child care programs on workforce participation, economic development, and early learning. National and local studies supported by the federal government increase states' ability to make informed decisions about quality expenditures and goals and provide an important body of knowledge for the child care system as a whole.

States and the federal government must make a commitment to improving the quality of child care across the spectrum of providers. Families should have access to quality child care whether they choose to enroll their child in a day care center or a family child care home, hire an in-home provider, or use a family member to provide care.

PROPOSAL

States support practices that can ensure program integrity yet respect the nature of a block grant and the flexibility states are afforded in the funding of diverse initiatives. Implementation of the IPIA should not result in the establishment of a national child care error rate or other costly mandates.

Any federal initiatives to address program integrity must:

- Maintain state authority to design program integrity strategies;
- Ensure that any new systems or processes established to prevent and measure improper payments do not create an undue burden on families and providers;
- Allow states to focus on the detection of large-scale fraud and abuse, rather than small, unintentional improper payments;
- Focus on prevention, rather than detection;
- Provide additional, dedicated funds for the information technology systems required to establish efficient program integrity systems;
- Ensure that the cost of improper payment initiatives do not exceed the benefits of the initiatives; and
- Allow states to retain 100 percent of any funds recovered.

EXPLANATION

The IPIA requires federal agencies to report an annual national estimate of improper payments in certain federal programs and activities and the actions being taken to reduce these payments. While states support activities and policies aimed at improving program integrity, it is necessary that these activities respect the diversity and flexibility that are inherent in block grant programs such as CCDF. The definition of an improper payment and the methods for measuring errors are state specific and cannot be accurately captured in a national error rate.

Any federal initiatives designed to address program integrity must respect state diversity in program design, regulations, and technology. New initiatives should be accompanied by additional federal funding for technology and should allow states to retain recovered funds as an incentive for strong improper payment systems. States should be allowed to focus on prevention activities and on large-scale fraud, rather than small, unintentional improper payments. This will help ensure that program integrity activities are cost effective. Finally, it is critical that any efforts to prevent or measure improper payments do not unduly burden families or providers.

Child Support Enforcement

Current Program

Over nearly three decades, the federal-state partnership in the child support program (Title IV-D of the Social Security Act) has produced the most effective program administration in history, helping welfare and non-welfare families receive critical financial support. The composition of child support caseloads has changed greatly over the past decade. Under federal law, states are required to serve any family that requests child support services, without respect to their income. In 2003, the child support enforcement program caseload reached 15.9 million. Of these, 17.3 percent (2.8 million) were current welfare cases, 46.3 percent (7.4 million) were former welfare cases, and 36.4 percent (5.8 million) were never-welfare cases.

The enforcement tools, granted to the states under federal law, have led to dramatic increases in collections in recent years. According to the U.S. Department of Health and Human Services (HHS), during the period from 1998 to 2003, child support collections increased 40 percent, reaching \$21.2 billion in fiscal year 2003. Greater investments in the administration of the program from \$1.8 billion in 1991 to \$3.6 billion in 1998 and \$5.1 billion in 2002 have also yielded a significant increase in collections. In 2003, for every dollar invested in administering the child support program, four dollars were generated in collections. However, no portion of the collection made on behalf of non-welfare families can be retained by the state or federal government. As state programs have increased in efficiency of collection, more families of all incomes have sought state services.

Distribution of these collections is also very complicated and is based on whether the family ever received state welfare benefits. States have spent considerable resources programming and maintaining computer systems to properly distribute child support. States use a variety of sources to pay for the considerable costs associated with the administration of their child support programs. The federal government provides a 66 percent match for basic administrative costs. States also retain a share of collections made on behalf of current welfare clients; in FY 2002 states retained \$1.2 billion of the nearly \$2.9 billion TANF collections. Finally, states can earn federal incentive funds based on performance.

There are several key pieces of legislation that have helped create this present child support enforcement program. Congress enacted the Child Support Enforcement and Paternity Establishment Program in 1975 to reduce public expenditures on welfare programs. This was to be achieved by

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obtaining support from non-custodial parents; helping families not receiving Aid to Families with Dependent Children (AFDC) stay off welfare; and establishing paternitys and support orders for children born outside of marriage so that support could be obtained for them.

The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) increased the prevalence of paternity establishment by requiring states to set up voluntary in-hospital paternity establishment programs without the need for court involvement. Paternity establishments rose to 1.5 million in FY 2003, in part as a result of these laws.

However, the law with the most far-reaching effects on the child support program was P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), also known as the welfare reform law. It included many provisions to increase the effectiveness of the child support program, such as the establishment of a New Hire Directory, a state disbursement unit, and new enforcement tools.

Employers are required to report information on new employees immediately to a state directory of new hires. States then report this information to a national database, allowing child support agencies to quickly locate noncustodial parents and send an income-withholding order to employers.

The child support program is a complex program that operates at every level of government, and there is a strong level of interstate and international program coordination.

Furthermore, to streamline payments, the law required states to establish a centralized location for the collection and disbursement of support payments. States must now distribute collections to custodial parents within two days of receipt from an employer. It also enhanced the state's ability to seize assets of noncustodial parents delinquent in making payments. Through the Financial Institution Data Match program, states obtain information on assets of noncustodial parents that can be used to pay past-due support.

The 1996 legislation also gave states administrative authority to obtain information from public and private entities. They may order genetic testing and make requests for information without having to obtain an order from a judicial or administrative tribunal, thus expediting the collection process. Furthermore, the paternity establishment process was streamlined by permitting mandatory genetic testing in contested cases.

Legislation enacted in 1984 and reinforced by congressional amendments in 1987, 1988, 1993, 1996, and 1998 required states to establish and enforce medical support. The Child Support Performance and Incentive Act (CSPIA) of 1998 required state IV-D agencies to ensure that health insurance is a part of every support order and to enforce the obligation through the issuance of a National Medical Support Notice. This document is used by all states to notify non-custodial parents' employers of the medical child support obligation of their employees.

The child support program is a complex program that operates at every level of government, and there is a strong level of interstate and international program coordination. Up to 30 percent of child support cases are interstate in nature (e.g., the custodial parent lives in New York and the noncustodial parent lives in New Jersey). Several legislative changes have been made in the past eight years to improve interstate case processing. The Full Faith and Credit for Child Support Orders Act (P.L. 103-383), in 1994, requires a state to enforce child support orders on the terms of another state that issued it. The 1996 welfare reform law required states to adopt uniform laws and forms for interstate cases with regard to withholding income, imposing liens, and issuing administrative subpoenas.

In addition, the Social Security Act (42 U.S.C. 659A) authorizes foreign countries or their political subdivisions to be reciprocating countries for the enforcement of support obligations following agreements by the U.S. Department of State. Most states reciprocate with other countries. California, for example, has reciprocal relationships with every Canadian province, every Mexican state, Australia; Austria, the Czech and Slovak Republics, England; Dublin, Ireland; Finland; France; Germany; Hungary; New Zealand; Norway; Sweden; and certain former U.K. protectorates, including Bermuda, Fiji, and South Africa.

Changes to the child support program were considered during the welfare reform reauthorization debates in the 108th Congress. Key legislation incorporated several child support distribution and pass-through recommendations that APHSA set forth in the first edition of *Crossroads*. Specifically, provisions were included in both House and Senate legislation that provided federal financial support for state efforts to simplify distribution rules. Proposals were considered to provide federal matching funds for the cost of the child support pass-through for families that receive TANF benefits. In addition, state options were considered to provide families that have left TANF with the full amount of the child support collected on their behalf, with the federal government sharing in the cost. Proposals were also put forward to allow states to count increased state spending stemming from new distribution policies toward their maintenance-of-effort (MOE) requirement under TANF. What follows are APHSA's recommendations for child support reform.

Challenges

SHIFTING PROGRAM MISSION FROM COST-RECOVERY TO INCOME SUPPORT

Over the years, passing on child support collections and providing other services to families have been seen as increasingly important. Today, the program straddles two missions: retaining collections from and giving collections to families. In fact, the FY 2005–2009

National Child Support Enforcement Strategic Plan of the HHS Office of Child Support Enforcement (OCSE) specifies that “Child support is no longer primarily a welfare reimbursement, revenue-producing device for the federal and state governments; it is a family-first program, intended to ensure families’ self-sufficiency by making child support a more reliable source of income.” These two missions also differ in philosophy as well as the underlying structure of how the system is funded. Cost-recovery is based on automated responses while family support is grounded in client contact, collections directly to the family, and the provision of support services. Also, the fundamental funding source for the administration of the federal program was designed to be the state and federal share of collections made on behalf of current and former welfare families; the newer family support model means that the family receives the collections.

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Although the child support program is in the process of shifting its mission toward one of supporting families, almost \$2.9 billion in TANF collections were made by states in FY 2002 with over \$1.2 billion maintained by state and localities. Child support collections made on behalf of TANF families are still split between state and the federal government at the reverse of the Federal Medical Assistance Percentage (FMAP). (Under the AFDC program, the federal government matched state welfare spending at the FMAP rate.)

RISING PROGRAM DEMANDS AND CONSTRAINING FUNDING SOURCES

The demands on state child support programs are higher than ever before. Welfare reform legislation contained numerous mandates on states (as outlined above) that are expensive and time-consuming. With these new tools, expectations on states to improve child support collections have risen.

Furthermore, families leaving TANF rolls continue to need IV-D services, particularly with regard to families reaching their lifetime limit on cash assistance. In 1995, 41 percent of the IV-D caseload represented AFDC families, while in 2003, only 17 percent represented TANF or foster care families. Also, although former TANF recipients make up 46 percent of the caseload and 40 percent of collections, states receive no share of current collections made on behalf of those families. New performance measures have also placed increased responsibility on the child support system to establish and enforce medical support obligations.

COMPLEX AND COSTLY SYSTEM OF DISTRIBUTION

The current system for distributing child support arrears collected on behalf of families that have left welfare is complicated and confusing. The assignment and distribution of arrears depends on what year the arrears accrued, whether the family was on welfare, and by what method the arrears were collected. If a family never received TANF, AFDC, or Medicaid, all of the child support collected by the state child support agency, including arrearages, goes to the family. While a family is receiving TANF benefits, the state can keep any child support it collects, regardless of how it is collected, to reimburse itself for the family's benefits.

For families that formerly received public assistance, the rules are more complex. For former recipients of public assistance, welfare reform legislation created a more "family-friendly" distribution policy. In general, once a family leaves TANF, if the state collects child support for the family, the state must give the family any current child support as well as arrearages that have built up after the family left TANF and any arrearages that built up before the family received TANF before it reimburses itself for assistance costs. These rules do not apply, however, if the child support is collected through the federal tax refund offset program. If that is the method by which the funds are collected, the state can reimburse itself before it gives the family any payment for arrearages.

States were required to implement the new family-first distribution systems by October 1, 2000. The new system reflects compromises made during the debate surrounding welfare reform. States were concerned that giving all collections on arrearages to families would drain state budgets. The agreed-upon compromise helped states financially, but resulted in an extremely complicated system for distributing arrears. States have spent many resources programming computers to keep track of the many "buckets" of support, determining whether an arrearage accrued before assistance, during assistance, or after assistance; whether it is permanently assigned, never assigned, temporarily assigned, conditionally assigned, unassigned during assistance, or unassigned before assistance; and whether it was collected by the tax refund intercept program, by levy of a bank account, or by other methods. Many state personnel believe that the complexity of the system contributes to more errors and creates more difficulty in explaining payments to clients.

The complicated distribution system is a burden on state child support programs. Staff has spent considerable resources programming computer systems to properly distribute child support. Maintaining these systems requires continued staff resources. In addition, families find the current distribution system hard to understand. The fact that an arrearage payment goes to the state rather than the family

just because it was collected through the tax intercept program does not make intuitive sense, and states must devote staff to answer questions related to the current distribution rules. Such complexity adds to the sense of arbitrariness of the program and reduces public support for it. Similarly, a state TANF agency can use Internal Revenue Service (IRS) data obtained directly from the IRS for eligibility determinations but can not use IRS data for the very same purpose if it was obtained through the IV-D agency. Also, there has been a lack of unified guidance across federal departments with oversight of the child support program on what personnel and departments within a state are allowed access to IRS tax data. Additional challenges in the distribution system will likely occur with the recent promulgation of final tribal child support regulations. These regulations highlight the need for coordination between state and tribal child support and TANF agencies with respect to information systems, distribution requirements, paternity establishment, and enforcement procedures.

INCENTIVES AND PENALTY STRUCTURE

The penalty structure in child support is inherently flawed, since it creates a situation where once a state is penalized it becomes increasingly more difficult to come back into compliance. The present penalty structure formula with denominators based on past failures creates an inherently unfair calculation. Once a state performs poorly in a particular measure, it is held at a disadvantage in future year calculations even after improvement. In addition, penalties are assessed as a percentage of the federal share of administrative costs. If a state increases systems spending to come into compliance with automation requirements, the base upon which penalties are assessed is increased, discouraging such investment. Implementing statewide child support systems is expensive; increasing spending on systems increases the size of the penalty.

The penalty structure in child support is inherently flawed, since it creates a situation where once a state is penalized it becomes increasingly more difficult to come back into compliance.

In addition, the present incentive program may be weakened as the administration begins implementation of new medical support measures and requirements within a capped incentive fund system. In 1998, federal law placed a cap on the child support incentive fund and added new outcome-based performance measures. The incentive fund is flawed for a number of reasons. First, a new measure on medical child support is presently being added to the incentive fund with no additional resources. The capped fund structure sets up a “zero-sum game” that may result in fluctuations in the amount of incentive funding a state receives from year to year, which complicates states’ budgeting processes. Second, states that have already peaked on the performance measures will likely receive lower incentives over time as other states improve. Finally, states can receive an incentive payment for high performance yet receive a penalty for performance improvement at the same time.

Recommendations

PROPOSAL

The federal government should continue its strong support of the program by continuing to match state administrative spending at the 66 percent match rate.

EXPLANATION

Child support programs are facing increasing demands on their programs while at the same time experiencing a constraint in funding. While the federal matching rate has remained constant in recent years, the changes with respect to the incentive fund, for example, have resulted in less predictable funding for program administration. In addition, declining welfare rolls in many states have reduced the amount of TANF collections states may retain. States need consistent federal funding at a time when the mission of their programs is shifting away from a cost-recovery model toward support for low-income families.

PROPOSAL

Families and children should directly benefit from the payment of child support. Payments should support the economic self-sufficiency of families and connect the responsibility of both parents to their children. States should have an option to pass along child support payments directly to families; if they take this option, the following should apply:

1. States should not be required to repay the federal share. The federal government should share in the costs of directing more child support to families as it did before the elimination of federal support of the \$50 pass-through under PRWORA.
2. States should be allowed to count support passed through toward their TANF MOE requirements, even if the support is not disregarded in calculating TANF benefits.
3. States will need federal financial support to assist them with the systems costs associated with reprogramming computers for a new distribution policy.
4. States should be given flexibility in determining how child support payments given to families affect other state-administered programs and funding for pass-through and distribution policies should not come at the expense of other human service programs.
5. States should be given adequate time to implement pass-through and distribution policies.

EXPLANATION

A central consideration of any discussions of pass-through policy will necessarily be the financial impact of such a change. Although TANF collections have decreased as TANF caseloads have declined, states are still estimated to utilize about \$1.2 billion a year in TANF collections. These TANF collections serve important funding purposes and are used to fund child support operations, meet TANF MOE requirements, and pay for other human service programs.

Twenty-two states also pass through retained TANF collections to families as part of optional pass-through programs. Some states conclude that the advantages of distributing all child support to families, rather than retaining a share, make the financial lift worthwhile. First, distribution may be simplified because all funds would go directly to families. Second, giving all funds to families may promote self-sufficiency. Also under this approach, noncustodial parents may feel more connected to their children and may have greater incentives to make payments on a regular basis. Reorienting the child support program so that all collections go to families may also serve to elevate the program's status. Rather than focusing on recouping state spending, the program would be about providing income support to low-income families.

In other states, though, the child support program may enjoy higher status as a program that brings in revenues to the state than it would if it directed all collections to families. Distributing all support

to families may not make sense for other reasons. A state may determine that it is best to use its limited resources for another state priority. For example, a state may determine that increasing the TANF grant amount would benefit more families than passing through child support, since not all families receive child support.

APHSA believes that the child support program should be focused on providing economic support for children rather than recovering state welfare expenditures. APHSA looks forward to continued discussions of pass-through policy and the fiscal and programmatic implications for states.

PROPOSAL

Continue to provide incentives to states for high performance and remove the cap on the child support incentive fund.

EXPLANATION

Under prior law, the incentive system was an open-ended program. Under the new system, one state's incentive payment depends on how all other states perform. As a result, states have difficulty predicting what their performance will be each year, making state budgeting more uncertain. If lifting the cap on the federal child support incentive fund is not financially feasible then at the very least—if additional goals are added to the incentive fund criteria—then additional federal funding should be added to support that goal.

PROPOSAL

Consolidate authority to disclose and use tax data into a single comprehensive provision of the tax code representing the intent of the law. Furthermore, access to state and local government agencies should be provided while maintaining the present federal prohibition to state and federal information systems and enforcement tools by private-sector agencies.

EXPLANATION

Authority for states to disclose tax data for Title IV-D program purposes is found in three separate, but overlapping, provisions (Section 6103) of the tax code. These provisions contain few definitions leaving much room for interpretation and have contributed to a lack of consensus between IRS and HHS on fundamental legal and operational issues with respect to who is authorized to receive tax data and the uses that may be made of that data. Without strong federal guidance on this issue, state child support agencies have been forced to make their own interpretation of the law. It is understandable that state child support agencies share information with a range of entities outside their immediate state department as current IRS statute specifies that a state may disclose information, upon request, to any agency under contract with the state child support agency.

Linking IV-D with nongovernmental agencies such as credit bureaus and financial institutions would require significant computer programming and expensive security safeguards. Staff and the recovery of assets would be diverted from serving IV-D clients and undermine the financing structure of the program. States would be given the extremely difficult and costly job of regulating these agencies to ensure they conform to the same data security, privacy protection, and due process requirements as an IV-D entity.

Private entity access to IV-D information and remedies would make very personal information on employment and social security numbers available too broadly. Allowing private attorneys access to this information could jeopardize its use for IV-D purposes. States would be unable to control the use of this information, violations of privacy would occur, and support for the use of child support enforcement tools would be undermined.

PROPOSAL

Create programs for low-income noncustodial mothers and fathers that promote effective parenting, improve the ability of parents to provide material support for their children, promote strong families, teach financial affairs management, and provide employment-related services.

1. APHSA supports the creation of new programs that promote the responsibility of noncustodial mothers and fathers in the life of their children.
2. Any newly created programs should be coordinated with related state and federal programs such as child support, the TANF block grant, the Workforce Investment Act, and child welfare.
3. New programs should also address the specific needs of incarcerated parents as they re-enter the community and the lives of their children.
4. Adequate funding is needed for the Access and Visitation program to promote family stability.

EXPLANATION

With such proposals as the Responsible Fatherhood Act of 1999 and the Welfare to Work program (now expired), a theme of “responsible parenting” has gained great currency among national policy-makers. The initiatives are broadly designed to encourage parents without custody of their children to assume greater financial responsibility and parental presence in the lives of their children, and to provide work supports and services so they can better provide for their children. Such measures are consistent with the objectives of welfare and child support reforms since they encourage self-sufficiency and responsibility and provide important resources for children and families.

PROPOSAL

Medical support indicators should be gradually phased in and not tied to the incentive fund.

1. Recommendations to improve medical support enforcement through new performance indicators should be phased in, adjusted for by the insurance realities in a state, and not incorporated into the performance measure system nor tied to funding at this time.
2. There should be an enhanced 90 percent federal financial participation (FFP) targeted to IV-D, Medicaid, and State Children’s Health Insurance Program (SCHIP) implementation of medical support requirements for a limited five-year period; this will ensure timely and consistent implementation of any directive that requires state child support agencies to assume new responsibilities.
3. Proposals that would require states child support programs to assess differences between custodial and noncustodial health coverage should be rejected.
4. States should be given the flexibility to adjust the federal Medical Support Notice to meet the needs of their Medicaid and child support data entry systems.

EXPLANATION

The OCSE, following recommendations put forward by a federally convened Medical Child Support Working Group (MCSWG), presented a series of recommendations to support the goal of increasing the number of children with health care coverage. They highlighted the need for better coordination between social service and health programs, including child support, Medicaid, and SCHIP. In OCSE's Strategic Plan for FY 2005–FY 2009, securing medical coverage for children is raised from a subset of other goals to a stand-alone goal. OCSE states that medical support efforts should aim not only at gaining coverage, but also holding the family responsible for paying for the coverage whenever possible. Although states support the goal of securing medical child support orders, it requires great coordination between two very separate state systems; child support and Medicaid. Therefore, implementation must take into account issues of coordination between data systems, as well as the cost to both.

Similar to TANF programs, child support enforcement programs should be afforded the opportunity to come into compliance before a penalty is levied against the state.

Further, the complex computer systems states have recently set up for their child support programs and operate in the Medicaid program may not easily support new medical support indicators. Enhanced federal funding may be needed to Medicaid and child support enforcement agencies to come into full compliance.

PROPOSAL

Allow state child support enforcement programs the ability to enter into a corrective compliance plan, to apply for a reasonable cause exemption from penalty, to have a full year to come into compliance before any penalty is levied, and to reinvest child support penalties in their programs.

1. Similar to TANF programs, child support enforcement programs should be afforded the opportunity to come into compliance before a penalty is levied against the state. They should also have the ability to apply for a reasonable cause exemption from a penalty and the penalty relief should be applied retroactively.
2. Any penalty assessed in a fiscal year should be held in abeyance if the HHS secretary determines a state to be in compliance with the approved corrective action plan.
3. The penalty would not be imposed if a state continues to make a good-faith effort to achieve compliance and meet the terms of the corrective action plan.
4. The law should be changed to allow a state a full year after notification of noncompliance to take corrective action.
5. States should be allowed to reinvest the amount of the penalty to be paid to the federal government into their child support program based on a mutually agreed upon plan between the state and HHS.

EXPLANATION

The TANF statutes provide the HHS secretary with an option to waive a penalty if reasonable cause is found on the part of the state. The statute also provides the state with an opportunity to enter into a corrective compliance plan before a penalty is imposed. However, the statute excludes the state child support enforcement program from this opportunity under 42 U.S.C. 609(c) and excludes child support from a reasonable cause exemption.

Beginning with FY 2001, states and territories were required to meet the 95 percent data reliability standard for five different performance measures under the child support program. States that fail to meet a measure are penalized up to 1 percent in TANF funding, and will also have to expend an equivalent amount of state funds to replace any reductions. States have not been provided adequate notice or opportunity for reasonable cause, or opportunity to come into compliance, before a penalty is levied. The requirement that the federal government give clear notice to the states is particularly important in this case, since a state risks losing TANF funding because of the activities of an entirely separate program in the 13 states administered by a separate agency. Formal notice and an opportunity for the two agencies to work together to address identified program deficiencies are of the utmost importance.

Food Stamp Program

Current Program

The Food Stamp Program (FSP) is a food assistance program that serves low-income individuals and families. It is supervised by the U.S. Department of Agriculture (USDA) and administered by state human service agencies. In late 2004, the program served more than 25 million persons, and the caseload is projected to reach more than 29 million in fiscal year 2006. In FY 2006, the program is estimated to cost nearly \$36 billion. Benefits are funded by the federal government, although states must contribute more than half of the FSP's administrative costs. In May 2002, P.L. 107-171, commonly known as the farm bill, reauthorized the FSP through FY 2007 and provided \$6.4 billion in new 10-year nutrition funding. The law's nutrition title included many important changes designed to improve FSP administration and enhance access for applicants and recipients. The farm bill's changes reflected many of the reforms advocated by APHSA, particularly simpler procedures and additional administrative options. The new law also made several positive changes in the quality control (QC) system, which states have long criticized as a significant barrier to participation and effective administration. The farm bill also restored eligibility to most legal immigrants, a group that had lost eligibility under the 1996 welfare reform legislation.

APHSA's February 2001 publication, *Crossroads: New Directions in Social Policy*, outlined the states' reform agenda to address the serious FSP concerns that had accumulated over the years. The last previous major legislative overhaul of the FSP had been the Food Stamp Act of 1977, and although modified many times, the basic elements of FSP law changed little. States said the *Crossroads* recommendations would help eliminate the burdensome and confusing policies that had become increasingly frustrating to both administrators and program recipients. Excessive federal micromanagement, a lack of state flexibility, and conflicts with the Temporary Assistance for Needy Families (TANF) program and Medicaid were among the problems that contributed to a sharp decline in FSP participation from 1995 to 2001, to high administrative costs, and to increased QC errors. The farm bill addressed the great majority of concerns raised in *Crossroads*, and APHSA hailed the legislation as a major victory for states.

To better understand the significance of APHSA's achievements in the farm bill, it is helpful to review some of the FSP's history in recent years. While the 1996 welfare reform law is recalled primarily for the sweeping changes it brought to cash welfare assistance, that legislation also made significant changes in the FSP. One of the most far-reaching was an end to FSP eligibility for legal noncitizens. Subsequent legislation restored eligibility to limited portions of the legal noncitizen population, but this was done in such a piecemeal and confusing manner that those who became eligible still largely stayed away from the program.

Another important 1996 change was a complex work requirement added for able-bodied adults without dependents (ABAWDs), requiring them to work at least 33 out of every 36 months to maintain FSP eligibility. This change was later followed by separate legislation setting aside 80 percent of FSP employment and training (E&T) program funds exclusively for ABAWDs, although they constituted only a small portion of FSP recipients subject to work requirements. Other changes in the 1996 law included additional restrictions on FSP eligibility and a requirement for states to fully implement electronic benefit transfer (EBT) by 2002. The law did include some minor options for FSP administrative flexibility, but they were not enough to alter the program's overall complex and process-oriented nature.

These FSP changes were accompanied by a sharp decline in the cash assistance caseload that resulted from the end of the former Aid to Families with Dependent Children (AFDC) program. AFDC was replaced by the TANF program, which included numerous incentives and mandates to move families off assistance and into the workforce. Most cash-assistance families were also FSP participants prior to the 1996 changes, but the new TANF program, coupled with a good economy, led to equally dramatic declines in the FSP caseload. FSP participation had peaked at nearly 27.5 million persons in 1994 and still stood at 25.5 million in 1996. However, the number of participants plunged to 17.1 million in 2000, just four years later.

States noted that the FSP's administrative complexities were driven by the program's detailed, rigid overall requirements plus its QC system, which required precise prediction and tracking of participants' income and circumstances despite the unpredictability of those factors among low-income families. States that exceeded the error tolerance were subject to significant financial penalties. The FSP error rate average hovered above 10 percent for several years, driven largely by the increasing number of recipients who worked; the QC system was particularly unsuited for fairly evaluating earned income, which often fluctuates and is therefore difficult to predict and track.

The 2002 farm bill addressed the great majority of these concerns through several far-reaching categories of reform. Of greatest importance to states were the bill's simplification options, including one that allows a six-month certification period with a requirement to report only the most critical changes in household circumstances. Other streamlining options included the ability to conform major aspects of FSP eligibility policy to those of the states' TANF or Medicaid programs. Finally, the FSP QC system was significantly altered so that sanctions now apply to fewer states and in smaller amounts. The 2002 legislation also added a new bonus incentive system for high performance in several categories, including (for the first time) customer service measures. The farm bill also strengthened FSP benefits, notably by restoring eligibility to nearly all legal noncitizens.

States have found that the farm bill's reforms have in fact allowed important improvements in administering the FSP. One of the most dramatic and positive changes has been the widespread adoption of options designed to simplify administration and reduce "red-tape" barriers for clients. The most notable example is the semi-annual reporting (SAR) option, which provides a six-month certification period in which recipients are required to report only those changes that would have major impact on eligibility. The result has been reduced administrative workload and fewer errors for states, and fewer trips to FSP offices for program participants. Other options widely adopted by states include those allowing transitional benefits for participants leaving TANF, simplified definitions of income and resources, a simplified utility allowance, and a simplified procedure for homeless shelter costs. The farm bill options most frequently adopted by states so far include the SAR option, 35 states; simplified definition of income, 29 states; simplified definition of resources, 26 states; simplified homeless

housing costs, 24 states; and simplified utility allowance, 33 states. (In addition, a substantial majority of states have adopted important simplifications made available by administrative action prior to the farm bill, particularly categorical eligibility and vehicle value rules conformed to TANF programs.)

Challenges

Despite the many strengths and accomplishments of the current program, the FSP remains a large, growing, complex, and highly structured program. It still requires more application information, more verification and follow-up, and more frequent updates than any other comparable assistance program. Administrators and states alike are concerned that the program's lengthy and complex application procedures remain a barrier to access and understanding. The weak national economy and recent natural disasters have helped push FSP caseloads to nearly record levels, with increases approaching 50 percent over the last four years. These increases have come at a time when most states have had to freeze or even reduce staff in response to the unprecedented state budget crisis of recent years.

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While the farm bill achieved substantial simplification, there is need for additional change. For example, the FSP and its participants would benefit greatly from additional standardization in the area of expense deductions, particularly medical expenses. When the Medicare prescription drug card benefit was implemented in June 2004, the lack of an adequate medical expense deduction policy in the FSP caused a great deal of confusion and administrative complexity. The program also needs other reforms designed to reach individuals who are elderly and disabled, who remain a severely underserved population. One of the most useful would be making the Combined Application Projects (CAPs) under which SSI recipients can automatically receive FSP benefits, a nationally available option rather than the current handful of demonstration projects. The current projects are simple, inexpensive, and far more accessible to individuals who are elderly and disabled than the regular FSP program.

The program is also still saddled with ineffective and burdensome policies in a number of other policy areas, such as the work requirements for ABAWDs. States are strongly committed to helping able-bodied FSP recipients become employed or strengthen their existing attachment to the workforce. However, current ABAWD requirements often hinder rather than contribute to that goal. Complicated mandates for ABAWDs eligibility and a counterproductive set-aside of scarce FSP E&T dollars for this group show the need for change in this area of FSP policy. The farm bill did not simplify ABAWD work requirements at all, and only partially reformed the E&T funding structure; \$20 million per year is still set aside only for ABAWDs, and only \$90 million per year in additional funds are available.

With respect to eligibility for legal immigrants, despite the recent restoration of eligibility to most legal immigrants, the FSP's treatment of this group is still more complicated than it was under pre-1996 law.

The program's continuing complexities also contribute to the low percentage of eligibles who participate in the program—just slightly above half the total persons eligible, despite the recent dramatic surge in the FSP caseload. One of the major high performance bonus categories in which states now

compete is the increase in the participation rate, yet even the best outreach efforts still run headlong into the FSP's numerous eligibility requirements and ongoing paperwork burden.

The FSP also still does not deliver adequate support to its most vulnerable participants. Many elderly participants qualify only for the program's \$10 minimum monthly benefit; this is a major factor in the low participation rate of this group. Individuals who are elderly or disabled are also prevented from participating by the FSP's low resource limit of \$3,000, which has remained the same for many years and—unlike other assistance programs for individuals who are elderly—is not indexed for inflation.

In the first edition of *Crossroads*, APHSA said that the FSP must expand its performance measures beyond payment accuracy to include significant outcomes, like the movement of families toward self-sufficiency. The 2002 farm bill made important progress toward this goal, specifically through changes that should reduce the number of states receiving sanctions and the dollar amounts of those sanctions. The farm bill also replaced the previous enhanced funding provision with a high performance bonus system under which \$40 million is paid each year to states with high or improved

Before 1998, the federal government reimbursed states 50 percent of these costs. However, enactment of cost-allocation provisions that year have since cut the average nationwide reimbursement of FSP administrative costs to just 46 percent, and some states receive barely above 40 percent. Since 1998, states have lost a total of \$1.2 billion in FSP administrative reimbursements compared to prior policy.

performance in payment accuracy improvement, timeliness of applications, and participation rate. Despite these forward strides, concerns about the QC system remain. In the last two years, the national error rate average has plunged to record lows nearing 6 percent. Such exemplary performance must be recognized and rewarded; APHSA believes no individual state should have to face sanctions any longer if the national average drops below a reasonable threshold.

In addition, the high performance bonus system is insufficiently funded and remains too entwined with process measures—\$24 million of the \$40 million is still related to payment accuracy measures. In addition, states should always be allowed to choose reinvestment of any sanction, rather than leaving that option to USDA.

Finally, states with reinvestment plans developed before the recent sharp decline in the national error rate average should be allowed to renegotiate those plans with the Food and Nutrition Service (FNS).

Several states in this category have made significant progress in improving their error rates, but their plans require them to pay an “at-risk” sanction amount if their error rates do not remain below the national average.

Further reforms in FSP administrative requirements and performance measurement must be accompanied by corresponding improvements in FSP administrative cost reimbursement policy. The FSP's overall administrative costs remain among the highest of any government program due to its complexity and stringent QC oversight. Before 1998, the federal government reimbursed states 50 percent of these costs. However, enactment of cost-allocation provisions that year have since cut the average nationwide reimbursement of FSP administrative costs to just 46 percent, and some states receive barely above 40 percent. Since 1998, states have lost a total of \$1.2 billion in FSP administrative reimbursements compared to prior policy. These losses have greatly exacerbated the difficulty states have in administering this program as FSP caseloads soar to nearly record levels.

Another particularly important need in FSP administrative cost reform is program automation. While other major human service programs enjoy enhanced match for automation, there has been no enhanced match in the FSP for a decade. In that time, states have lost ground in their ability to

upgrade their FSP information systems and adequately comply with such requirements as the full implementation of EBT. The most common reason that states have been unable to take up more of the farm bill's simplification options is their lack of automation capacity and funding.

Finally, there are two program changes currently under discussion that could place new burdens on states. First, the changes in the Food Stamp Nutrition Education (FSNE) program currently being discussed at the federal level could potentially take away the matching fund contributions that cooperators bring to state FSNE contracts. And, a new program name to replace the outdated food stamp label must be done in a manner and on a schedule that does not place undue costs and burdens on states.

Recommendations

PROPOSAL

Allow demonstrations to further simplify application and calculation procedures.

1. The Food Stamp Act should be amended to allow states to test a variety of innovative methods that can remove more barriers, further streamline the eligibility and benefit determination process, and improve the quality of food purchases. These methods should be implemented for up to 18 months, followed by an evaluation period of no more than 12 months, and then made available immediately to all states as standard administrative options. One major new approach that should be tried in multiple locations is the alternative application strategy now under consideration that would allow food banks or other similar organizations to initiate the application process with up to two months of initial eligibility, followed by a conventional application review by the state agency.
2. Other possible innovations should include the proposal APHSA made in 2001: an overhauled allotment calculation methodology using total monthly gross income with an upper limit of 150 percent to 185 percent of poverty, adjusted by certain percentages that allow for an earned income disregard and essential expenses, to yield a benefit table providing the majority of program recipients with allotments equal to or higher than present levels. States should also be allowed to test other changes, such as aligning the food stamp household composition definition with that of other programs.
3. While some of these innovations might result in higher overall program benefit costs, making these investments in the FSP would be amply repaid in greater program access, less confusion, and simpler administration. Congress should set aside sufficient funds to cover reasonable additional costs of these innovations. States should be allowed to exempt such demonstration projects from the state's QC sample.

EXPLANATION

The FSP currently requires all applicants to undergo a lengthy application procedure, typically within a food stamp office. The process can be complex and take up to 30 days before a decision is issued. As a result, many otherwise-eligible families never gain access to the program because of these hurdles and the stigma still attached to food stamps. In contrast, families visit other assistance systems—such as food banks and soup kitchens—much more readily, and these locations ought to be used to attach eligible families to food stamps. A highly streamlined preliminary screening procedure could accurately

identify most eligible families and get them started with one or two months' benefits. The state agency would then follow up to confirm eligibility and establish a longer-term benefit level.

To determine eligibility and benefits, the FSP currently takes a recipient family's income and makes certain adjustments to calculate what portion of it will be used to determine eligibility and benefit levels. Since 1977, the program has determined this countable income by starting with gross income, then subtracting a set of deductions for certain expenses, and finally adjusting for the assumption that no more than 30 percent of a household's income is theoretically available for food. Although the 2002 farm bill provided some additional standard deductions, the program has never allowed for the amount of a low-income family's budget that is truly available for food; the most obvious example is that no deduction is available for vehicle ownership or operating expenses. Further, the set of allowable deductions has varied over time with the vagaries of politics and periodic moves to cut program costs, and even with the farm bill changes still imposes administrative burdens. This complex process is also a major element of client frustration and misunderstanding, and adds substantially to the program's barriers to access and participation.

PROPOSAL

Provide additional options and simplifications.

Several new administrative options and simplifications would further enhance the FSP and build on the positive changes made by the 2002 farm bill:

1. The Transitional Benefits option should be amended to allow benefits to be continued for six months, rather than five months.
2. The program's medical deduction should be standardized and expanded so that it will not reduce the value of other medical assistance, such as prescription drug benefits.
3. Convert the FSP's current lifetime ban on participation by drug felons to a state option.
4. Extend categorical eligibility to those who receive Medicaid.
5. The flexibility, efficiency, and enhanced program access provided by present categorical eligibility options must be retained; APHSA opposes any efforts to curtail these options.
6. Exclude from countable income any subsidies that support families as they care for foster children, adopt children, or serve as guardians for children.

EXPLANATION

In 2001, APHSA recommended that the Food Stamp Act should be amended to allow benefits to be continued for six months at the level authorized prior to closure of the participant's cash assistance benefits. The 2002 farm bill provided states with an option to do so, but unfortunately limited the duration of the transitional period to five months because of budget constraints. The five-month period is inconsistent with the six-month certification period commonly used elsewhere in the FSP, in Medicaid, and in other benefit programs. As a result, this option has seen little use. Both states and program participants would benefit greatly if this relatively minor adjustment could be made.

The food stamp medical deduction is available to elderly and disabled participants whose out-of-pocket medical expenses exceed \$35 per month. The excess amount is a deduction from gross income. While beneficial, this deduction should be standardized so that recipients do not have to document individual expenses and so that caseworkers can avoid this substantial paperwork burden. In addition, the deduction should be structured so that it does not reduce the net benefit of other

types of medical assistance, such as the prescription drug benefits provided by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173).

The lifetime drug felon ban policy, which was enacted in 1996, mandates all states to have this ban in place unless they specifically choose to opt out of it. Although some states have done so, the extra step required to end the ban means that it will typically remain in effect in many states that would not otherwise proactively choose it. The ban has detrimental effects on the ability of these former prisoners to help themselves and their families toward self-sufficiency. It is also inconsistent with the many prisoner re-entry efforts across the country.

States now have the option to extend categorical eligibility to those receiving TANF benefits and services, and this policy has proved a major step forward in making the program simpler and more accessible. However, as the number of TANF recipients remains static or even declines and as the Medicaid caseload steadily grows, Medicaid has now become by far the most common program low-income families are attached to outside of the FSP itself. This change would provide an obvious opportunity to connect more low-income individuals to the FSP and to further simplify state administration.

There have been recent proposals to curtail categorical eligibility and restrict it to only those families receiving TANF cash benefits. Such a change would end eligibility for several hundred thousand members of working families and could add considerably to state administrative burdens in processing applications from similar families.

Present FSP law still requires that family support and family formation subsidies (adoption, foster care, and guardianship payments) must be counted as income. Many other essential family expenses have been properly excluded from countable income, and this same treatment should now be extended to these payments that are so vital to supporting and building strong families. Both states and the federal government strongly encourage families to care for foster children and to adopt, and these same families should not have their FSP benefits curtailed by this policy.

PROPOSAL

Re-establish equitable federal participation in administrative costs.

The historic 50 percent match rate for normal administrative expenditures must be restored. In addition, states should be provided 75 percent enhanced match for urgent and beneficial program improvements, including automation changes and implementing administrative simplifications and access improvements.

EXPLANATION

The FSP has always been a federal-state partnership under which the federal government provides benefit funds and administrative matching grants while states are responsible for day-to-day program administration. Until 1998, the federal government had always matched normal administrative expenditures at 50 percent, but this was reduced for nearly all states by cost allocation changes in the Agriculture Research Act enacted that year. That law said that states' TANF grants had been inflated

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because FSP costs had been charged to AFDC in the base period, and that therefore states in fact already had been given excess funds for FSP purposes. However, TANF law prohibits any use of the TANF block grant for non-TANF purposes and prohibits states from making up the FSP cuts with any state TANF or maintenance-of-effort funds.

The cost-allocation cuts were extended in the 2002 farm bill, and reduce state matching funds by \$196.9 million per year. To date, these reductions have accumulated to more than \$1.2 billion in lost funding to states. In addition, other administrative match cuts in the past decade have eliminated the enhanced funding once available for automated systems and anti-fraud activities.

Meanwhile, the program remains complex and caseloads have risen sharply. The FSP has an extremely high administrative cost-to-benefits ratio, and states have to shoulder a disproportionate share of this burden. State budgets are now under some of the most severe constraints on record, and states cannot sustain quality administration of the FSP without restoration of the federal government's historic role in providing matching funds.

PROPOSAL

Enhance employment and training programs and encourage work.

1. The farm bill provided some improvements in FSP E&T program policy and funding, but further changes are needed to serve all those subject to work requirements and all those who could benefit from work experience. The remaining E&T set-aside for ABAWDs should be eliminated so that states may use their entire E&T allocations for any FSP recipient in need of its services.
2. The special requirements for ABAWDs should be eliminated, and these recipients should be mainstreamed into existing E&T programs. In addition states must be able, at their option, to implement alignments and simplifications among their work programs, including TANF and those funded under the Workforce Investment Act (WIA).
3. Proposals for consolidating E&T funds with other work program funding streams should assure that states continue to receive as much E&T funding as they would under the present program, and that the FSP E&T population continues to be served.

EXPLANATION

The FSP currently provides an E&T program under which states may provide employment, training, and workfare to able-bodied recipients to the extent allowed by E&T funding. E&T funds have always been meager, and most states have been able to do little beyond offering job-search activities. The E&T program's problems were exacerbated in 1996 and 1997 when changes in the law imposed an administratively cumbersome work requirement on ABAWDs and unrealistically set aside 80 percent of E&T funds for ABAWD work slots.

The 2002 farm bill improved the E&T program by making most E&T funding unrestricted and by removing the caps on reimbursements for transportation and other work costs. However, problems remain; ABAWDs policies are unchanged, and the complexity and confusion they cause are counterproductive. The 2002 legislation kept in place a special \$20 million E&T set-aside for ABAWDs, and this must be removed so that states can productively use their limited total E&T funds in conformance with their overall welfare-to-work strategies. In this way states can assure that their full E&T allocations can be used to maximum advantage.

Recent proposals have called for an option under which E&T funds could be combined with funds from other work programs. While this could result in more efficient work program administration, APHSA urges that such changes not result in any reduction of E&T funds or of the current E&T population being served.

PROPOSAL

Complete the restoration of eligibility for legal noncitizens.

In the 2002 farm bill, federal FSP eligibility for legal noncitizens was restored to most categories in this group who lost eligibility in 1996. However, certain legal noncitizens are still ineligible, and states are still saddled with complex requirements for ascertaining eligibility for other groups of noncitizens. APHSA repeats its call made in 2001 that the federal government must reinstate the simple, straightforward noncitizen policies in effect prior to the enactment of the welfare reform law in August 1996. This change would restore eligibility to those living in the United States continuously fewer than five years and who have not accumulated 40 quarters of work history, or who do not fall into certain exception categories (such as refugees and asylees). In addition, the complications added to sponsor deeming rules in 1996 should also be eliminated.

APHSA repeats its call made in 2001 that the federal government must reinstate the simple, straightforward noncitizen policies in effect prior to the enactment of the welfare reform law in August 1996.

EXPLANATION

Federal legislation over the last few years, especially the farm bill, has restored federal eligibility to most, but not all, noncitizens. While these restorations are laudable, until the process is complete, legal noncitizen policy will remain a barrier to participation and a contributor to administrative complexity and errors. Current policy also contributes to suspicion among noncitizens that applying for benefits may result in their information being shared with immigration authorities.

PROPOSAL

Enhance benefits and program access for senior and disabled individuals.

The following changes and options will greatly improve participation by individuals who are elderly and disabled in the program:

1. Increase the minimum allotment to \$50 for one- and two-person households, with automatic adjustments for inflation;
2. Increase the asset limit from \$3,000 to \$5,000, and adjust it annually for inflation;
3. Make the Combined Application Projects now operating in several states available to all states as a standard administrative option.

EXPLANATION

Individuals who are elderly and disabled remain the most underserved group among food stamp recipients. Many of these individuals qualify for only a low amount of benefits, in many cases just the minimum benefit (\$10 per month). Yet to receive these low amounts, individuals who are elderly and disabled must overcome a variety of barriers. These include extensive paperwork requirements to

obtain a deduction for medical expenses, the implication of dishonesty caused by quality control-driven verifications and investigations, discomfort with dealing with electronic benefit transfer (EBT) systems, and low resource limits under which savings accounts and other essential assets cause ineligibility.

In the past few years, a few states have been allowed to operate CAPs, under which those qualifying for Supplemental Security Income (SSI) are automatically attached to the FSP. These projects have proven to be simple and effective ways to boost enrollment of individuals who are elderly and disabled, and greatly reduce overall administrative burdens. They can require some minimal additional effort from the Social Security Administration, but considering their many advantages, the investment is amply justified. All states should be able to choose CAPs as a normal administrative option.

PROPOSAL

Strengthen electronic benefit transfer program administration and funding.

1. The federal government should provide 75 percent matching funds to states for operating and upgrading their EBT systems.
2. Any federal requirements affecting the location of EBT call centers must allow realistic lead times for states to make such changes.

EXPLANATION

Electronic Benefit Transfer has proven to be an extremely successful and well-liked delivery system for food stamp benefits. It removes the stigma associated with paper coupons, and supports work and preparation for work by putting clients into the economic mainstream—they can use “plastic” like everyone else.

However, states have paid a high price for this success story. In particular, more and more states are now spending more state dollars for EBT benefit delivery than they did for the old paper coupon system. The primary reason is the significant cost shift to states for responsibilities, like the food stamp redemption aspects of retailer management that belonged to USDA under the paper system. Also, there are substantial and inherent differences in the federal requirements for EBT and the paper coupon system that have resulted in unfunded mandates such as an around-the-clock, toll-free help line for clients and retailers. State costs are also rising due to the lack of competition among vendors; the majority of states share the same EBT prime vendor and are seeing basic prices double and triple from those paid just a few years ago.

In addition, federal legislation has been proposed that would require states to bring back their EBT call centers from overseas and locate them domestically. The costs of relocating these centers, especially if done quickly, are extremely high. Any such federal requirement must allow states to implement call center changes at their next contract renewal cycle but no longer than 36 months from the effective date.

The traditional federal match for EBT expenditures is no longer adequate and does not reflect the shift to states of responsibilities that formerly belonged to USDA nor the many recent additional EBT cost increases outlined above. At the same time, USDA is realizing significant cost savings since the department no longer has to pay for printing, distributing, redeeming, and accounting for paper stamps.

PROPOSAL

Continue reform of the FSP performance measurement system.

The 2002 farm bill made important improvements in the FSP QC system. However, further reforms are required to make QC part of a properly balanced system of incentives and outcome measures for working families and other program recipients.

These reforms should include:

1. No individual state should be subject to sanctions if the national error rate average is at or below a reasonable threshold.
2. The cycle for determining states with error rate liabilities should be expanded from the current two years to three years.
3. The bonus incentive system must be adequately funded at a level of at least \$100 million per year, rather than the current \$40 million.
4. The bonus incentive system's categories must expand greatly to include the full range of important program outcomes, including measures of recipient advancement toward self-sufficiency, and no more than 25 percent of bonus funds should be allocated to payment accuracy-related measures. FNS must engage in prior consultation with states to develop and expand the existing outcome measures.
5. States must be allowed to choose reinvestment of sanctions as a standard alternative to payment.
6. States with existing reinvestment plans that include "at-risk" amounts based on earlier estimates of the national average error rate must be allowed to renegotiate these plans with the Food and Nutrition Service to reflect the substantially lower error rates now being reported.
7. States should receive credit against any sanctions owed for their overissuance and fraud collections.
8. States should have the option to eliminate the face-to-face interview in favor of alternative methods of gathering and verifying information.
9. States should be allowed access, at their option, to databases (such as the Federal Directory of New Hires) that provide information useful in verifying wage data and other household information.

The 2002 farm bill made important improvements in the FSP QC system. However, further reforms are required to make QC part of a properly balanced system of incentives and outcome measures for working families and other program recipients.

EXPLANATION

The 2002 farm bill reduced the distorting effects of high and frequent sanctions and provided a modest beginning toward incentive bonuses for high performance. Nevertheless, the basic character of the QC system remains intact; for example, each year it still tags many states in potential sanction status simply because they may have been slightly over the national average, which currently has hit new lows. To further mitigate the impact of this system, states should be given three years to correct errors before being sanctioned. Currently states are not notified of first-year liability until nine months into the second year of the two-year cycle. This does not allow sufficient time to implement effective corrective action activities that could let the state avoid a sanction. A three-year cycle would provide sufficient time for a state to develop a plan, implement it, and demonstrate the effectiveness of the plan.

The bonus system is severely under-funded and still tilts heavily toward rewarding achievement in payment accuracy. Only \$40 million is available for all bonus awards, in contrast with the more than \$73 million awarded in "enhanced funding" payments alone for FY 2002 performance (the last year of the pre-farm bill QC system). Of the \$40 million, \$24 million is still set aside for payment accuracy-related measures, leaving only \$16 million for customer service performance measures. A funding level of at least \$100 million would be much more in line with the payment level that existed prior to the farm bill.

States are held to a very high standard of accuracy in collecting and verifying income and other household information that affects program eligibility and benefit levels. States should be allowed access, whenever they believe it is feasible and cost-effective, to all databases that could assist them in these efforts. For example, APHSA supports recent proposals to allow states access to the Federal Directory of New Hires. This database and other sources like it should prove useful in verifying wages and similar information.

PROPOSAL

Reform and strengthen nutrition education.

States support nutrition education as a proper and increasingly necessary element of strengthening family well-being. One example of this support has been their nearly universal participation in the optional FSNE program. However, changes that USDA has recently considered for FSNE are problematic. A far better alternative would be for USDA to overhaul the administration and funding of

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its nutrition education activities. While nutrition education activities should be targeted toward nutrition assistance program recipients to the extent practicable, to have maximum impact they must take place largely in schools and other community settings or through the media.

1. Nutrition education should be supported through a single, consolidated source of 100 percent USDA funds that are not channeled through or otherwise attached to any individual USDA nutrition program.
2. USDA should also work with other federal agencies in a broad-based effort to counter the impact of advertising and other elements of popular culture that glamorize unhealthy nutrition habits.

EXPLANATION

In recent years, a growing stream of FSNE funding has been used by nearly every state to promote good nutrition knowledge and habits among FSP recipients and other low-income families. These voluntary and nearly universal state FSNE activities have been made possible largely through the cooperation of extension agencies, universities, and others who contract with states to carry out FSNE and who supply the in-kind matching funds necessary to draw down federal FSNE funding. Recently USDA has begun discussing substantial changes to this arrangement, saying that because of audit findings FSNE funds may now have to go strictly to educate only those participating in or eligible for the FSP. If states are required to document such usage, their data collection burdens could substantially increase.

These changes could discourage current cooperators and add substantially to state administrative burdens. With state budgets in crisis, there is little possibility that states could replace the match that current cooperators bring to the table. States are also concerned that some of the changes being discussed could result in FSNE activities taking place largely in FSP waiting rooms; not only are these facilities unsuitable in many locations, but this additional step in an office visit might further discourage some participants from their contacts with government agencies.

If implemented, these changes could well curtail most current FSNE arrangements. States have neither the staff, funds, nor expertise to replace the present methods of carrying out FSNE activities. The proposed new funding arrangement could avoid such an unfortunate occurrence. The state cooperators now carrying out FSNE are competent and experienced, and states hope these arrangements will not be disrupted.

PROPOSAL

Provide alternative support for persons in group-living arrangements.

The USDA should provide an alternative means of nutritional support for shelters and treatment centers. These institutions should be allowed to apply for nutritional subsidies that, if within the FSP budget stream, no longer rely on individual determinations of eligibility for those residing in the institution.

EXPLANATION

States believe the present method of providing FSP benefits to those in group-living arrangements is too problematic to be resolved by further policy revisions. Instead, USDA should devise an alternative means of providing food assistance to these institutions outside the FSP. Under the present complex and cumbersome rules, states must spend an inordinate amount of time determining eligibility and calculating budgets for the relatively few FSP recipients who reside in these facilities. In addition, there are many rules governing how the allotment is issued and what part of the allotment must be given back to a person who leaves a center. Issuing benefits via EBT has added more complexity.

PROPOSAL

Provide workable and nationally consistent disaster procedures.

The USDA should provide all states with the same, nationally consistent procedures for issuing FSP benefits during disasters. USDA should quickly develop a new set of workable disaster procedures in collaboration with states.

EXPLANATION

Because of the numerous and extensive natural disasters in recent years, states have had to operate a number of large-scale disaster plans under which USDA oversees state administration of emergency FSP benefits. States have noted that USDA frequently varies the requirements for these plans from one state to the next and from one disaster to the next. There is no justification for this inefficient ad-hoc approach, particularly in light of the extensive recent experience states and USDA have now accumulated in this area of policy and practice. A consistent set of procedures would save substantial administrative time and expense at all levels of government and would speed the delivery of benefits in future disasters.

Human Service Program Operations

State and local public human service agencies are among the largest organizations in the country, employing tens of thousands of workers, serving tens of millions of individuals and families, and administering hundreds of billions of dollars in benefits and services. State administrators must blend funding streams to seamlessly deliver services, to individualize services, and to minimize administrative costs. These efforts can be difficult when federal oversight is prescriptive and unfunded mandates drive program costs excessively higher. These increased federal data reporting requirements, information system rules, cost-allocation strictures, audits, penalties, and reviews run counter to the program flexibility and outcome-oriented, positive performance incentives that states have long sought. The focus of federal agency corrective action activities should be to identify and promote best practices and to offer other technical assistance to states. In addition, evaluation methods that have proven satisfactory on the whole, such as the single audit, should be retained and extended to other programs, not replaced by costly and unworkable alternatives. APHSA has consistently advocated for an end to conflicting federal requirements either through conformity across programs or through state options and other avenues of flexibility and will continue to do so. And, we urge federal agencies to review cross-program implications *before* issuing new policies that result in conflicting, burdensome, and costly program administration.

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Recommendations

PROPOSAL

Federal program compliance practices should be revised.

Performance measurement in all federal programs should move toward conformance with the following principles:

1. The focus of performance measurement and assessment should be a set of simple requirements and outcome measures that emphasize positive incentives for high performance.

2. Program assessment should not include measures that focus only on narrow process measures; instead, measures must look to actual outcomes that programs are expected to achieve for their recipients. The outcomes must be appropriate to each state and developed in partnership with them.
3. Program assessment requirements must conform to authority granted in statute; for example, mandates on states cannot be inferred from provisions in the Improper Payments Information Act of 2002 (IPIA) (which clearly impose requirements only on federal agencies), and federal agencies must not propose regulations except as specifically allowed by statute.
4. To correct program deficiencies, states must be allowed to collaborate with the federal government and develop a plan to achieve improved outcomes. In programs where financial sanctions are still required, states must have the option to satisfy financial sanctions through reasonable reinvestment plans (including retroactive plans if the state so desires). States must be able to negotiate reasonable adjustments to existing reinvestment plans when conditions change unexpectedly, such as the sudden drop in the national Food Stamp Program (FSP) error rate average that could require some states to pay “at-risk” amounts.
5. Program performance requirements and remedies must not impose any unfunded mandates on states.

To carry out their role of reasonable oversight, federal agencies must shift the focus of their resources away from process measurement and toward outcome measurements, technical assistance, and the identification and dissemination of research-based best practices.

6. To carry out their role of reasonable oversight, federal agencies must shift the focus of their resources away from process measurement and toward outcome measurements, technical assistance, and the identification and dissemination of research-based best practices. Federal agencies (and each of their regions) must treat states equitably when approving corrective compliance plans. Outcome measures must be those known to yield desirable outcomes.
7. All federal regulations and other requirements must be prospective, and never retroactive.
8. All states must be allowed to implement program improvements once demonstration or research projects show them to be sound.

EXPLANATION

One of the major positive reforms Temporary Assistance for Needy Families (TANF) achieved was replacement of its predecessor’s process-based quality control (QC) system with a single audit requirement and a set of outcome and performance incentives. In contrast, other programs (particularly the FSP) still rely to varying degrees on process-based, costly QC systems.

PROPOSAL

Data collection and reporting mandates should conform to reasonable standards.

1. New data desired by federal agencies to meet congressional mandates, assess program trends, and carry out research must be obtained in a manner that does not impose counterproductive or cost-ineffective state administrative burdens.
2. Whenever practicable, the federal government should turn first to sources such as the Census Bureau and other information repositories where data are already available. Sampling and other alternative methods must also be used to gather administrative data instead of mandating universal, case-level data collection.

3. Data collection and reporting requirements for states should contain no unfunded mandates.
4. Federal agencies should harmonize and standardize definitions of data elements across programs.

EXPLANATION

Data collection and reporting mandates for states are among the most burdensome and expensive requirements imposed by the federal government. While sound program management and assessment depend on valid data, requirements that states help gather this information must be kept within reason. Much of this information, or similar data, could have been obtained from other sources at far less cost and with less administrative impact. In addition, states have seriously questioned the utility of much of the data collected, since they often provide only a snapshot of the caseload and do not answer important questions about trends and other dynamic changes among participants.

PROPOSAL

End data-matching mandates and allow states maximum feasible access to useful databases that would assist in effective program administration.

1. End federal Income and Eligibility Verification System (IEVS) match mandates and expand access and technical assistance to use alternative systems or other appropriate income verification systems reasonably acceptable to the federal government.
2. Allow states access to the Financial Institution Data Match (FIDM) to enhance state program integrity efforts.
3. Allow public TANF and FSP agencies access to the Federal Directory of New Hires for defined administrative purposes, such as verification of eligibility and measurement of workforce attachment.
4. States must have access to federal databases when enrolling new clients, such as the new Medicare Part D mandate, so that states are not required to needlessly gather the same data presently available in federal databases. Data should flow in both directions.

EXPLANATION

The federal government should assist states in obtaining and sharing data that will enhance program performance and integrity. It should allow states to use those databases that will best serve their particular needs, and not impose mandates to use any specific database. The federal government should assure that data are as current and useful as possible. For example, the FIDM is a source of data that could be quite useful in state program integrity efforts, yet is unavailable nationally. APHSA supports recent proposals to allow state FSP agencies access to the Federal Directory of New Hires, and urges similar expanded access for other programs and databases when doing so can strengthen program administration.

Some programs contain specific mandates to carry out certain data matches, notably the IEVS match requirement in TANF and Medicaid. These mandates purportedly enhance program integrity, but in fact the information in these databases is often outdated, and the effort and expense of the matching process outweighs any benefits gained. Since states are already under a variety of requirements to maintain high performance and a high degree of program integrity, they should be allowed to make their own decisions on what data matches to perform.

PROPOSAL

Federal agencies should align standards and requirements across program lines. In the Advance Planning Document (APD) process, allow states to submit a single APD that covers all programs involved in the proposal.

Absent compelling reasons to the contrary, all federal agencies should adhere to the same set of standards and requirements across program lines for automated systems, since states now commonly administer multiple programs.

1. Create a uniform standard, across program lines and federal regions, for APD requirements and electronic signature policies.
2. Allow states to submit a single APD covering all programs that are part of the project in question. All federal agencies involved should coordinate their responses and questions through a single lead agency, and issue a single approval within a reasonable timeframe.
3. The lead federal agency should also certify that if a state has followed its purchasing practices and procedures, then no APD is necessary.
4. If a state is using an approved cost-allocation method, then all changes and purchases below a reasonable threshold should be exempt from the APD process.

EXPLANATION

Absent compelling reasons to the contrary, all federal agencies should adhere to the same set of standards and requirements across program lines for automated systems, since states now commonly administer multiple programs. APD requirements and electronic signature policies are examples of areas in which agencies impose different standards from one program to the next, causing needless waste and confusion at the state level.

Tribal Health and Human Services

Current Program

Over the past decade federal laws have increased the ability of tribal governments to take on administration of federal health and human service programs that had historically been delivered by state and local governments. Most notably, the 1996 welfare reform law created a tribal Temporary Assistance for Needy Families (TANF) program that tribes could administer. Today, 186 tribes in 15 states are served by a tribal TANF program; 76 tribes are involved in Title IV-E child welfare agreements in 15 states; and over 260 tribal child care grantees serve more than 500 tribes in 34 states. In addition, 9 tribes in 7 states operate child support enforcement programs with direct reimbursement from the federal government. Though limited in number, some tribes have won federal approval to determine eligibility for Medicaid and the Food Stamp Program (FSP). Congressional legislation has been introduced to provide tribes with the authority and federal funding for Title IV-E foster care and adoption services.

There are significant coordination issues when tribal programs are located across federal, state, and county borders. States and tribes are faced with how to support service integration while recognizing and dealing with different governments and different federal definitions attached to various human service programs.

Challenges

Each state and tribal relationship will be unique in the way the parties decide to communicate, coordinate, implement, and administer programs. There are, however, some common challenges all will encounter such as the need to reduce federal barriers to administration as well as the need for federal support for capacity building and infrastructure development. There are significant coordination issues when tribal programs are located across federal, state, and county borders. States and tribes are faced with how to support service integration while recognizing and dealing with different governments and different federal definitions attached to various human service programs.

For example, the definition of “Indian Country” for purposes of eligibility and program requirements is different across federal agencies. TANF regulations base the definition on how it is defined in criminal law in the area in question, while the Low-Income Home Energy Assistance Program has a more restrictive definition of “Indian Country” even though the two programs often overlap in the same service area. Similarly, there are varying definitions of “near reservation.” The Bureau of Indian Affairs (BIA) uses an “on and near reservation” designation that is different from the definition used by the Indian Health Service (IHS). Both of these definitions are critical in identifying who can be served by a state or tribe and determining what program rules and regulations will apply.

There are also implementation issues related to data reporting and information system development. Data sharing is often impossible when there are no systems or incompatible systems are in place. In addition, data sharing and program integration efforts have raised confidentiality issues.

Through on-going coordination and collaboration among federal, state, and tribal governments, human service programs can be successfully administered to benefit Native American children and families. The following APHSA proposals address some of the federal barriers to successful administration of human services by tribal governments and suggest ways to support tribal-state relationships

Recommendations

SUPPORTING TRIBAL-STATE RELATIONSHIPS

PROPOSAL

In questions of interpretation of federal statute, the federal government should make every attempt to honor agreements made between tribes and states for human service delivery. Technical assistance and support for both the state and tribe should also be a mandatory component when the federal government provides for the direct administration of a program by a tribal government.

EXPLANATION

Such government entities as tribes, counties, states, and the federal government have all played a role in the delivery of social services to American Indian populations and persons residing on reservations. However, information sharing, best practices, promising approaches, and coordination among these entities are critical to future success. To recognize the importance of tribal-state relationships, the federal government should encourage these relationships by providing joint technical assistance, convening joint meetings between tribal and state administrators whenever possible, and honoring agreements between tribes and states.

CHILD SUPPORT ENFORCEMENT

PROPOSAL

Provide federal guidance for tribal child support programs through the continuation and expansion of the tribal-state child support workgroup.

1. APHSA supports the change of law that allows for direct funding of child support programs. However, further guidance and technical assistance are needed to address issues of jurisdiction and coordination as new tribes and their corresponding states work through transition of responsibilities.
2. A federally established work group, under the direction of the federal Office of Child Support Enforcement (OCSE), should be continued and expanded to support states and tribes with transition issues.

EXPLANATION

Technical amendments to the 1996 welfare reform legislation, contained in the Balanced Budget Act of 1997, authorized direct funding to tribes and tribal organizations to operate child support enforcement programs. The law authorized states to enter into cooperative agreements with Indian tribes or organizations if the tribe has an established tribal court system or Court of Indian Offenses. An August 2000 interim final rule provided the mechanism for tribes to submit child support enforcement plans and, upon approval, to receive direct federal funding of tribally operated programs. Prior to promulgation of the final regulation, the U.S. Department of Health and Human Services (HHS) allowed up to 15 tribes to receive grants under a demonstration project. Nine tribes in seven states presently operate a program under the demonstration. Many tribes interested in running a program waited for final regulations for clarity in designing their program and for federal funding for technical assistance. In early 2004 the HHS Administration for Children and Families (ACF) issued the final regulations and made available up to \$500,000 in two-year grants to tribes for capacity building to run a child support program and provided increased federal match rates in the first few years of implementation. The tribes and states that were involved in the first efforts to transition child support enforcement to the tribal governments benefited greatly from a workgroup organized through the OCSE. To benefit additional states, this workgroup should be continued and expanded.

Only 50 of the 550 federally recognized tribes have been able to enter into agreements with states to provide access to at least some IV-E funds.

CHILD WELFARE

PROPOSAL

Tribes need enhanced capacity and direct access to Title IV-E to address the needs of Native American children.

1. Title IV-E should be amended to enable tribes to have the option of direct access to federal Title IV-E funding.
2. Federal data collection and reporting capacity must be enhanced to better track the progress of Native American children in child welfare.
3. HHS and the BIA should assist states by providing more training on tribal issues, such as the Indian Child Welfare Act (ICWA) and tribal-state agreements.

EXPLANATION

When the Title IV-E statute was written in 1980, tribal governments and children placed by tribal courts were not eligible for this open-ended federal entitlement program. Currently, tribes can only gain access to funding through agreements with state agencies. Only 50 of the 550 federally recognized tribes have been able to enter into agreements with states to provide access to at least some IV-E funds. These agreements primarily provide foster care maintenance funds only—not administrative, training, and data system funding. In only 15 of the 50 agreements do states provide tribes with IV-E administration funds, and only two of the agreements provide any IV-E training funds to tribes. None of the agreements provides funding for information systems development for tribes that are available to states under Title IV-E. A more efficient and equitable system would be to fund tribes directly through Title IV-E, giving them increased capacity to meet outcomes for these children. In

APHSa supports FSP administration by tribal governments but recognizes that the present complexities of the program must be addressed in legislation and regulations for successful tribal administration.

In addition, more support is needed from the federal government for implementation of the ICWA. There is presently little guidance from the federal government on best practices in other states, model forms and agreements, or what states and tribes can do together toward full implementation. The BIA and HHS should sponsor trainings on specific strategies states can employ to implement both the letter and intent of the ICWA, while recognizing and incorporating individual state ICWA statutes.

FOOD STAMP PROGRAM

PROPOSAL

APHSa supports FSP administration by tribal governments but recognizes that the present complexities of the program must be addressed in legislation and regulations for successful tribal administration.

1. Congress should consider a simplified program structure for tribal FSP that addresses some of the complexities states' faced in the area of fair hearings, quality control (QC), fraud, claims recovery, information technology (IT) systems, electronic benefit transfer (EBT) methods, and reporting.
2. Due to the high cost of contracting with vendors to operate EBT programs, tribes should be allowed to form consortiums and join into group arrangements. In many cases, a group arrangement with the state program may be the most effective and least costly method to distribute EBT payments in tribal programs.
3. Tribes should be responsible for QC error rate sanctions, reinvestment plans, and other consequences of not meeting QC standards and requirements, and the tribal caseload should be removed from the state QC sample.
4. The ability to share information between the tribe and the state is critical, and any regulations need to be structured to support collaboration between governments.
5. Allow tribes to access the FSP and the food distribution program concurrently.

EXPLANATION

The Food Distribution Program on Indian Reservations provides commodity foods to low-income households living on Indian reservations and to Native American families living in designated areas near reservations. Many Native Americans participate in this commodity program as an alternative to the FSP. Although Native American organizations administer the commodity program, federal statute prohibits tribes from administering the FSP. Several tribes administer the FSP through early federal waivers, but the federal government has not allowed these waivers to be duplicated in other states or through arrangements with the state. In Minnesota, the Mille Lacs Band of Ojibwe determines FSP eligibility for their TANF recipients. To meet a requirement in FSP law that program eligibility must be determined by a public employee, the tribe becomes "county 88," after the state's 87 counties. This satisfies information system and legal purposes, while in negotiations and program administration the sovereignty of the tribe is respected. The tribe has state computer access, and both cash and FSP benefits are on EBT cards. However, other states requesting similar waivers from the federal government on behalf of tribes in their state have been denied.

MEDICAID AND SCHIP

PROPOSAL

Increase the ability for states and tribes to provide Medicaid and State Children’s Health Insurance Program (SCHIP) benefits to Native American children through simplification of federal regulations and policy.

1. The Indian Health Care Improvement Act (IHCIA) should be interpreted so that services provided through, and not just at, facilities can be reimbursed at the 100 percent Federal Medical Assistance Percentage (FMAP) rate.
2. SCHIP must be aligned with Medicaid to allow states to claim 100 percent FMAP under SCHIP for all American Indians.
3. Similar to efforts to recognize the uniqueness of school providers, the Centers for Medicare and Medicaid Services should allow provider qualification differences for tribes and expanded services under a Medicaid encounter. The Medicaid program should recognize the lack of resources and the limited workforce prevalent at most Indian health clinics.
4. Recognizing the impact on state Medicaid agencies to re-process claims, the Office of Management and Budget should release the IHS/tribal claims rate within the first quarter of the calendar year.
5. APHSA supports the ability of tribal governments to administer intake, eligibility, and benefit issuance for Medicaid, but recognizes that the present complexities of the program must be addressed in legislation and regulations for successful tribal administration.

EXPLANATION

Health services are provided to American Indians and Alaska Natives through the IHS system, with 638 tribal organizations operating health care under self-governance contracts or compacts. The IHCIA made 100 percent FMAP reimbursement available to states for services received through an IHS facility whether operated by IHS or by an Indian tribe or tribal organization. Congress specifically stated that the purpose of the law was to fulfill its special responsibilities and legal obligation to the American Indian people to assure the highest possible health status for Indians and to provide all resources necessary to effect that policy. However, recently HHS has reinterpreted the law narrowly to apply only to services provided at an IHS facility. States challenged this interpretation in federal court, and the courts concurred with the states’ position. However, this issue is not yet resolved since HHS has challenged the court decision.

Following the sentiment of the IHCIA, which was passed before SCHIP was created, APHSA believes that the same FMAP reimbursement formula for Medicaid should apply to the SCHIP. The present situation creates inequity among states that serve the same tribe or reservation, depending on whether the state has decided to expand Medicaid or run a combined SCHIP/Medicaid program. Also, unnecessary expenses are being incurred by state Medicaid offices due to federal delays in releasing the tribal claim rate. Releasing these rates late in the calendar year, and then applying them retroactively to the beginning of the year, results in an increased number of IHS/tribal claims to reprocess at the new rates and strains limited administrative resources.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

PROPOSAL

Adequately fund the tribal TANF program to address the planning and startup, information systems, and evaluation and technical assistance needs of tribes already administering or planning to administer TANF programs. In addition, restructure the tribal TANF program to become a direct federal-tribal relationship.

APHSa recommends creating a separate TANF block grant for tribal governments funded with 100 percent federal funds and no state maintenance-of-effort (MOE) requirement.

1. APHSa recommends creating a separate TANF block grant for tribal governments funded with 100 percent federal funds and no state maintenance-of-effort (MOE) requirement. The tribal TANF block grant allocation should be in addition to the \$16.8 billion allocated for the state block grants and based on the actual population tribes will serve. The new block grant would allow state and tribal governments to continue to collaborate without financial and service population concerns. The tribal governments would negotiate directly with the federal government on the design and performance measurement of their programs.
2. If Congress does not choose to provide direct federal funding, it is important that the following occur:
 - a. The federal government should clearly identify, in cases where questions arise, the populations that fall under the responsibility of a state or of a tribal TANF program. It should be clear that it is the responsibility of the HHS secretary to determine service populations when more than one tribe submits a Tribal Family Assistance Grant (TFAG) plan within the same service area.
 - b. Reverse the current HHS interpretation to specify that the level of federal funding should be tied to a specific, stated service population.
3. Federal support is also needed to address the planning and startup, information systems, and evaluation and technical assistance needs of tribes administering or planning to administer TANF programs.
4. With respect to areas of high unemployment or joblessness, states should be allowed to: (a) define work activities as long as the recipient is in compliance with the individual responsibility plan; (b) take families out of the work participation rate denominator if they are exempt due to areas of high joblessness; or (c) allow families who meet their individual responsibility or universal engagement plans in areas of high unemployment to count as meeting their work participation requirement.

EXPLANATION

Under the 1996 welfare reform law, tribal governments may opt to administer their own tribal TANF program. Tribal governments and the federal government negotiate the size and scope of the tribal TANF program without the input of the state TANF agency. If a tribe opts to administer the program, the tribal TANF block grant amount is subtracted from the state's TANF block grant allocation and the state's MOE requirement is decreased proportionately. A TFAG is based on the federal share of the state's expenditures for fiscal year 1994 for Native American families residing in the service area(s) as defined by the Native American tribe. Two or more tribes may expect a TFAG based on the same or overlapping service area(s). Tribes' provision of welfare-related services need not include the

issuance of grants to any or all of the population to be served. Under current law, the federal government does not consider assistance under the TFAG to duplicate a state TANF grant if the service provided to a family through the TFAG does not include a cash grant. In states where tribes make up 50 percent or more of their TANF caseload, the financial impact on states of these policy inconsistencies is substantial.

In addition, tribal governments may negotiate different work requirements from those mandated in the federal statute. Those tribes operating tribal Job Opportunities and Basic Skills (JOBS) Training programs may also use different criteria; however, clients participating in those programs are included in the state's denominator when calculating work participation rates. Therefore, the inconsistencies in these programs may result in states failing the work participation rates through no fault of their own.

Many tribes have not had resources or a history in the delivery of social services. Therefore, their startup costs to hire and train qualified staff, locate a building, and furnish it with the necessary equipment can be significant. Even though tribes were given the flexibility of higher administrative percentage rates, they were not allocated sufficient funding when the TANF program was created for the necessary start-up expenses. In addition, system development for tracking, monitoring, and benefit issuance can also be an expensive start-up cost. Although tribes have taken the responsibility to run their own social service programs, federal funding has hindered successful implementation.

