H.R. 2376, GRANT WAIVERS AND STREAMLINING THE PROCESS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

AND THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

H.R. 2376

TO REQUIRE EXECUTIVE AGENCIES TO ESTABLISH EXPEDITED REVIEW PROCEDURES FOR GRANTING A WAIVER TO A STATE UNDER A GRANT PROGRAM ADMINISTERED BY THE AGENCY IF ANOTHER STATE HAS ALREADY BEEN GRANTED A SIMILAR WAIVER BY THE AGENCY UNDER SUCH PROGRAM

SEPTEMBER 30, 1999

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H.R. 2376, GRANT WAIVERS AND STREAMLINING THE PROCESS

THURSDAY, SEPTEMBER 30, 1999

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS, JOINT WITH THE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY, COMMITTEE ON GOVERNMENT REFORM,

Washington, DC.

The subcommittees met, pursuant to notice, at 2:04 p.m., in room 2247, Rayburn House Office Building, Hon. Stephen Horn (chairman of the Subcommittee on Government Management, Information, and Technology) presiding.

Present from the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs: Representatives Ryan, Terry, Vitter, and Kucinich.

Present from the Subcommittee on Government Management, Information, and Technology: Representatives Horn, Biggert, Ose, Ryan, Turner, and Owens.

Staff present from the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs: Marlo Lewis, Jr., staff director; Barbara F. Kahlow, professional staff member; Gabriel Neil Rubin, clerk; and Elizabeth Mundinger, minority counsel.

Staff present from the Subcommittee on Government Management, Information, and Technology: J. Russell George, staff director and chief counsel; Randy Kaplan, counsel; Bonnie Heald, director of communications; Chip Ahlswede, clerk; P.J. Caceres and Deborah Oppenheim, interns; Trey Henderson, minority counsel; and Jean Gosa, minority staff assistant.

Mr. HORN. A quorum being present, the subcommittees will come to order.

The purpose of today's hearing is to examine the process Federal departments and agencies follow when considering State requests to waive statutory or regulatory requirements associated with Federal grants.

Billions of dollars each year flow to State and local governments through Federal grants. Currently, Federal departments and agencies award these grants through nearly 600 categorical block grant and open entitlement programs. In 1998, Federal grants amounted to more than $267 billion. Thinking back to 1965, that is what Lyndon Johnson spent to run the Great Society and the Vietnam war. Although 23 agencies award Federal grants, the U.S. Department

of Health and Human Services handles nearly 60 percent of all Federal grant money.

Several grant programs, including Medicaid and Temporary Assistance for Needy Families, allow States to circumvent certain statutory or regulatory requirements of the programs through waivers. In large part, States apply for these waivers to give them greater flexibility to find alternative ways to achieve more effective program results.

Federal agencies generally approve these State requests. However, the cost, complexity, and delays experienced during the application process often impede a State's ability to implement a program designed specifically for the needs of its residents.

For example, in 1994, officials in my home State of California wanted to lower the State's welfare benefits to new residents. At that time, California's welfare payments were more generous than those offered by many other States. However, this change in California's welfare reform project required a Federal waiver.

California applied for the waiver on August 26, 1994. It was approved, but not until August 19, 1996, a full year and 9 months later, almost 2 years.

We have with us today a number of knowledgeable witnesses who will assist us in identifying the problems within the grant waiver process, and who will offer proposals to make the process more efficient.

First, we will hear from Representative Mark Green of Wisconsin, who has introduced H.R. 2376, a bill designed to streamline the application process and increase the availability of waivers to State governments. It is a freshman bill. The bill specifically would require Federal departments and agencies to establish expedited review procedures for granting a State waiver if the same agency had previously granted a similar waiver to another State.

In addition, we will hear from representatives of the National Governors' Association and the National Conference of State Legislatures. They will provide a State perspective of the grant waiver process.

Finally, we will hear from representatives of three of the largest grant-awarding departments, the Departments of Health and Human Services, Agriculture, and Labor. These witnesses will provide the Federal perspective of the grant waiver process as it applies to their agencies.

I welcome all of you witnesses today and look forward to the testimony. I now yield to the co-chair of today's hearing, the National Economic Growth, Natural Resources, and Regulatory Affairs Subcommittee vice chairman, Paul Ryan, for an opening statement.

[The prepared statement of Hon. Stephen Horn and the text of H.R. 2376 follow:]

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House Subcommittee on Government Management, Information, and Technology

Grant Waivers: H.R. 2376: Streamlining the Process
Opening Statement
Chairman Stephen Horn (R-CA)
September 30, 1999

A quorum being present, this joint subcommittee hearing will come to order.

The purpose of today's hearing is to examine the process federal departments and agencies follow when considering state requests to waive statutory or regulatory requirements associated with federal grants.

Billions of dollars each year flow to states and local governments through federal grants. Currently, federal departments and agencies award these grants through nearly 600 categorical, block grant and open-ended entitlement programs. In 1998, federal grants amounted to more than $267 billion. Although 23 agencies award federal grants the U.S. Department of Health and Human Services handles nearly 60 percent of all federal grant money.

Several grant programs – including Medicaid and Temporary Assistance for Needy Families — allow states to circumvent certain statutory or regulatory requirements of the programs through waivers. In large part, states apply for these waivers to allow them greater flexibility to find alternative ways to achieve more effective program results.

Federal agencies generally approve these state requests. However the cost, complexity and delays experienced during the application process often impede a state's ability to implement a program designed specifically for the needs of its residents.

For example, in 1994, officials in my home state of California wanted to lower the state's welfare benefits to new residents. At the time, California's welfare payments were more generous than those offered by many other states. However, this change to California's welfare-reform project required a federal waiver.

California applied for the waiver on November 9, 1994. It was approved, but not until August 19, 1996 — a full one year and nine months later.

We have with us today a number of knowledgeable witnesses who will assist us in identifying problems within the grant waiver process, and who will offer proposals to make the process more efficient.

First, we will hear from Rep. Mark Green, R-WI, who has introduced H.R. 2376, a bill designed to streamline the application process. The bill specifically would require federal departments and agencies to establish expedited review procedures for granting a state waiver if the same agency had previously granted a similar waiver to another state.

In addition, we will hear from representatives of the National Governors' Association and the National Conference of State Legislatures. They will provide a state perspective of the grant waiver process. Finally, we will hear from representatives of three of the largest grant-awarding departments – the Departments of Health and Human Services, Agriculture and Labor. These witnesses will provide the federal perspective of the grant waiver process as it applies to their agencies.

I welcome all of our witnesses today and look forward to their testimony. I now yield to the co-chairman of today's hearing, Regulatory Affairs Vice Chairman Paul Ryan, for an opening statement.

I

106TH CONGRESS
1ST SESSION

H. R. 2376

To require executive agencies to establish expedited review procedures for granting a waiver to a State under a grant program administered by the agency if another State has already been granted a similar waiver by the agency under such program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1999

Mr. GREEN of Wisconsin (for himself, Mr. SIMPSON, Mr. FLETCHER, Mr. DEMINT, Mr. HAYES, Mr. OSE, Mr. KUYKENDALL, Mr. RYAN of Wisconsin, Mr. SWEENEY, and Mrs. BIGGERT) introduced the following bill; which was referred to the Committee on Government Reform

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A BILL

To require executive agencies to establish expedited review procedures for granting a waiver to a State under a grant program administered by the agency if another State has already been granted a similar waiver by the agency under such program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. REQUIREMENT TO ESTABLISH EXPEDITED RE-**
2 **VIEW PROCEDURES FOR AN AGENCY TO**
3 **GRANT WAIVERS TO STATES UNDER GRANT**
4 **PROGRAMS ADMINISTERED BY THE AGENCY.**

5 (a) REQUIREMENT TO ESTABLISH EXPEDITED RE-
6 VIEW PROCEDURES.—The head of each executive agency
7 shall establish expedited review procedures under which a
8 State may be granted a waiver by the agency with respect
9 to a requirement applicable to grant program adminis-
10 tered by the agency if another State has applied for a simi-
11 lar waiver under the program and been granted the waiver
12 by the agency.

13 (b) REGULATIONS.—The head of each executive
14 agency shall promulgate regulations to carry out the re-
15 quirement in subsection (a).

16 (c) DEFINITION OF EXECUTIVE AGENCY.—In this
17 section, the term "executive agency" has the meaning
18 given that term in section 105 of title 5, United States
19 Code.

O

Mr. RYAN. Thank you, Mr. Co-Chairman. I appreciate it. I thank everyone for coming.

Today we are here to discuss an issue that may seem largely procedural. However, it has implications for many, many States. States are often the ones which take the initiative for major reform efforts. They often end up being the experimental laboratories of democracy, as Justice Brandeis once referred to them. For the rest of the country, the States are out there putting together programs and reforms that are leading the country.

These reform efforts, performed on a small scale, often lead to a nationwide overhaul of outdated systems. In recent years, we have seen examples of this in the area of welfare and health care systems. Currently, some States are exploring options for bringing the disabled into the work force and providing long-term care coverage, just to name a few, and that is something we are working on in my own home State of Wisconsin, as well.

It is important for the Federal Government not only to encourage these social experiments but also to provide an environment that will foster these types of initiatives. State and local governments often understand the needs of their constituents and the problems they face better than the Federal Government does. They are more familiar with the unique problems that must be addressed in implementing any new system.

The focus of today's hearing will be on ways in which we in the Federal Government can create an environment that will encourage State and local governments to explore alternative solutions to social problems. Today we will examine agency processes for the review of State requests for waivers of statutory and/or regulatory requirements of Federal grant programs, agency track records in processing such State requests, and ways to streamline the agency processes for the States.

This hearing will allow the sponsor of H.R. 2376, a bill intended to streamline the processing of similar State requests, the two major organizations representing State elected officials, and three major Federal grantmaking agencies, to discuss State experiences and suggestions for streamlining the grant waiver process for the States.

I want to welcome my freshman colleague, Mark Green, the author of H.R. 2376, who also, as you may not know, represents Green Bay who just won over the Minnesota Vikings last week, so I just wanted to get that inserted in the record if I could.

I would also like to welcome the National Governor's Association executive director, Raymond Scheppach—please forgive me if I didn't pronounce that correctly—and the National Conference of State Legislatures executive director, William T. Pound, who will ably represent the States' views today.

I also want to mention that the USDA's Under Secretary for Food, Nutrition and Consumer Services, Shirley Robinson Watkins, has an illness, so we have somebody filling in for Shirley.

I would also like to welcome the Assistant Secretary and Chief Financial Officer for HHS, John J. Callahan, and the Labor Assistant Secretary for Employment and Training Administration, Raymond Bramucci, who will represent their agencies and present the Federal agencies' views today.

Currently, the Federal department and agency processes for reviewing State waiver requests are time-consuming and costly, diverting time and dollars from program delivery of services to those in need. President Reagan's federalism policies recognized the partnership between the Federal Government and State and local governments in the implementation of certain Federal programs. His federalism policies were premised on recognition of the competence of State and local governments and their readiness to assume more responsibility. I believe that we should focus on these federalism principles, keeping them in mind during today's hearing.

H.R. 2376, "to require executive agencies to establish expedited review procedures for granting a waiver to a State under a grant program administered by the agency if another State has already been granted a similar waiver by the agency under such program," will be considered today. This bill provides expedited consideration if a second State applies for a waiver similar to that already approved for another State. Mr. Green will discuss the specific problem which resulted in the bill's introduction.

Currently, Federal agencies make awards to State and local governments under almost 600 categorical block grant and open-ended entitlement grant programs. In 1998 these awards totaled $267.3 billion, which is more than all Federal procurement for goods and services.

Although 23 Federal departments and agencies make grant awards, six departments account for 96 percent of all grant award dollars. HHS carries the brunt of the burden with 58 percent; Transportation, 11 percent; HUD, 9 percent; Education, 8 percent; Agriculture, 7 percent; and Labor, 3 percent. The top 20 programs account for 78 percent of all grant award dollars. The top 27 programs, all programs over $1 billion each, account for 87 percent.

Several of these programs allow waivers of key statutory and/or regulatory requirements, including Medicaid, which is the largest grant program, accounting for 39 percent of total dollars; welfare, which is the third largest grant program. And Food Stamps, which is the 21st largest Federal grant program; however, the grant award only covers the administrative expenses for State administration of the program. If both the administrative expenses and benefit portions are included, the grant program would rate between the second and third largest grant program in size.

Besides considering H.R. 2376, the hearing will also consider other ideas for improving agency grant waiver processes, such as setting deadlines for agency review of State waiver requests; providing broad flexibility to waive many statutory requirements for States; allowing State certification of compliance with certain statutory requirements; and, for accountability, requiring quarterly publication of all waiver activity. Finally, this hearing will also consider ways to ensure budget neutrality for the open-ended entitlement programs.

On August 3rd of this year, this subcommittee wrote all of the departments and agencies with Federal grantmaking programs where States are eligible recipients, to identify their statutory and regulatory waiver processes and to review their track record in responding to State waiver requests, including those that are similar to another State's already approved request.

The Department of Defense did not provide any of the requested information. The Department of Transportation, which is the second largest grantmaking agency, only provided some of the requested information. One of the questions that we want to find out from this committee is what, if anything, are these departments hiding, and why aren't they giving us all of the full information that we have been asking for?

Sixteen of the 24 departments and agencies had any statutory waiver provisions. Twelve of the 24 had any regulatory waiver provisions. Over the last 3 years, 12 of the 17 agencies with any statutory or regulatory waiver provisions received waiver applications from the States. Five of the 12 agencies—the Departments of Energy, Justice, Treasury, the Appalachian Regional Commission, and the Corporation for National Service—approved all such requests.

This leaves us with seven agencies—the Departments of Agriculture, Education, HHS, HUD, Labor, Transportation, and the Environmental Protection Agency—that denied some waiver requests. Of the 1,801 waiver applications Government-wide which were reported to the subcommittee, only 5 similar applications, or less than one-third of 1 percent, were denied.

We would like to hear from the witnesses the considerations that arose in reviewing waiver applications, including ensuring budget neutrality in the open-ended entitlement programs such as the HHS, Medicaid, and the Food Stamp Program from Agriculture.

The bottom line is that 85 percent of all State waiver requests during this period were approved. Two agencies, the Departments of Labor and Agriculture, both of which will be testifying today, had the highest proportion of denials, 29 percent and 13 percent, respectively. We would like to hear from them why their track record differs from other agencies. We would also like to hear from Labor and Agriculture why Republican Governors received a higher proportion of denials, 31 percent and 16 percent, respectively, than Democratic Governors, 23 and 8 percent, respectively, a coincidence which sounds very interesting.

Statutory waiver provisions are very diverse. For example, some allow waivers relating to program financing, such as both the grantee matching funds and maintenance of effort requirements for State pollution control agencies implementing the Clean Air Act; the maintenance of effort requirement under certain Education programs; and the grantee matching funds requirements under the Corporation for National Services' Learn and Serve and AmeriCorp programs.

Besides program financing, some statutory provisions allow waiver of programmatic provisions. For example, the Social Security Act authorizes the Secretary of HHS to waive compliance with certain program requirements for an experimental, pilot, or demonstration program under Medicaid and the former Aid to Families with Dependent Children welfare program.

I welcome an open discussion today about the ways to streamline agency processes for waiver requests by the States, since States, as partners of the Federal Government in implementing many of the Federal programs, deserve a simpler process.

The States and local governments are our laboratories of democracy. It is up to us to try and make sure that they are flourishing,

and that our waiver program is one that doesn't hold them back but lets them go into experimenting with programs that work for their people, so that government which governs closest to the people can govern the best.

With that, I yield back the balance of my time.

[The prepared statement of Hon. Paul Ryan follows:]

Vice Chairman Paul Ryan
Opening Statement
Grant Waivers: H.R. 2376 and Streamlining the Process
September 30, 1999

Good afternoon ladies and gentlemen. We are here today to discuss an issue that may seem largely procedural; however, it has important implications for many States. States are often the ones which take the initiative for major reform efforts. They often end up being the experimental "laboratories of democracy" (as Justice Brandeis called them) for the rest of the country. These reform efforts, performed on a small scale, often lead to a nationwide overhaul of outdated systems. In recent years, we have seen examples of this in the welfare and health care systems. Currently, some States are exploring options for bringing the disabled into the workforce and providing long-term care coverage, just to name a few. It is important for the Federal Government not only to encourage these "social experiments" but also to provide an environment that will foster these types of initiatives. State and local governments often understand the needs of their constituents and the problems they face better than the Federal Government. They are more familiar with the unique problems that must be addressed in implementing a new system.

The focus of today's hearing will be on ways we, in the Federal Government, can create an environment that will encourage State and local governments to explore alternative solutions to social problems. Today, we will examine agency processes for review of State requests for waivers of statutory and/or regulatory requirements for Federal grant programs, agency track records in processing such State requests, and ways to streamline agency processes for the States. This hearing will allow the sponsor of H.R. 2376, a bill intended to streamline the processing of similar State requests, the two major organizations representing State elected officials, and three major Federal grantmaking agencies to discuss State experiences and suggestions for streamlining the grant waiver process for States.

I want to welcome my freshman colleague Representative Mark Green, author of H.R. 2376. National Governors' Association (NGA) Executive Director Raymond C. Scheppach and National Conference of State Legislatures (NCSL) Executive Director William T. Pound will ably represent the States' views today. I also want to welcome Agriculture's Undersecretary for Food, Nutrition and Consumer Services Shirley Robinson Watkins, Health and Human Services' (HHS) Assistant Secretary and Chief Financial Officer John J. Callahan, and Labor's Assistant Secretary for the Employment and Training Administration Raymond L. Bramucci, who will represent their agencies and present the Federal agencies' views today.

Currently, Federal department and agency processes for reviewing State waiver requests are time consuming and costly, diverting time and dollars from program delivery of services to those in need. President Reagan's Federalism policies recognized the partnership between the Federal Government and State and local governments in the implementation of certain Federal programs. His Federalism policies were premised on a recognition of the competence of State and local governments and their readiness to assume more responsibility. I believe that we should keep these Federalism principles in mind during today's hearing.

H.R. 2376, "To require executive agencies to establish expedited review procedures for granting a waiver to a State under a grant program administered by the agency if another State has already been granted a similar waiver by the agency under such program," will be considered today. This bill provides expedited consideration if a second State applies for a waiver similar to that already approved for another State. Mr. Green will discuss the specific problem which resulted in the bill's introduction.

Currently, Federal agencies make awards to State and local governments under almost 600 categorical, block grant, and open-ended entitlement grant programs. In 1998, these awards totaled $267.3 billion, which is more than all Federal procurement for goods and services. Although 23 Federal department and agencies make grant awards, six departments account for 96 percent of all grant award dollars -- HHS (58 percent), Transportation (11 percent), Housing and Urban Development (HUD) (9 percent), Education (8 percent), Agriculture (7 percent), and Labor (3 percent). The top 20 programs account for 78 percent of all grant award dollars; the top 27 programs (all programs over $1 billion each) account for 87 percent. Several of these programs allow waivers of key statutory and/or regulatory requirements, including Medicaid (the largest Federal grant program, accounting for 39 percent of total dollars), welfare (the third largest Federal grant program, now called "Temporary Assistance for Needy Families," accounting for 6 percent of total dollars), and Food Stamps (the 21st largest Federal grant program; however, the grant award only covers the administrative expenses for State administration of the program; if both the administrative expenses and benefit portions are included, the grant program would rate between the second and third largest grant program in size).

Besides considering H.R. 2376, the hearing will also consider other ideas for improving agency grant waiver processes, such as: setting deadlines for agency review of State waiver requests; providing broad flexibility to waive many statutory requirements for States (such as in the Education Flexibility Partnership Act of 1999, P.L. 106-25); allowing State certification of compliance with certain statutory requirements (e.g., maintenance of effort, matching funds, set-asides, earmarks, caps, etc.); and, for accountability, requiring quarterly publication of all waiver activity. Finally, the hearing will also consider ways to ensure budget neutrality for the open-ended entitlement programs.

On August 3, 1999, the Subcommittee wrote all of the departments and agencies with Federal grant programs where States are eligible recipients to identify their statutory and regulatory waiver processes and to reveal their track records in responding to State waiver requests, including those that are similar to another State's already approved request. The Department of Defense did not provide any of the requested information. The Department of Transportation, which is the second largest grantmaking agency, only provided some of the requested information. What, if anything, are these departments or their Secretaries hiding and why?

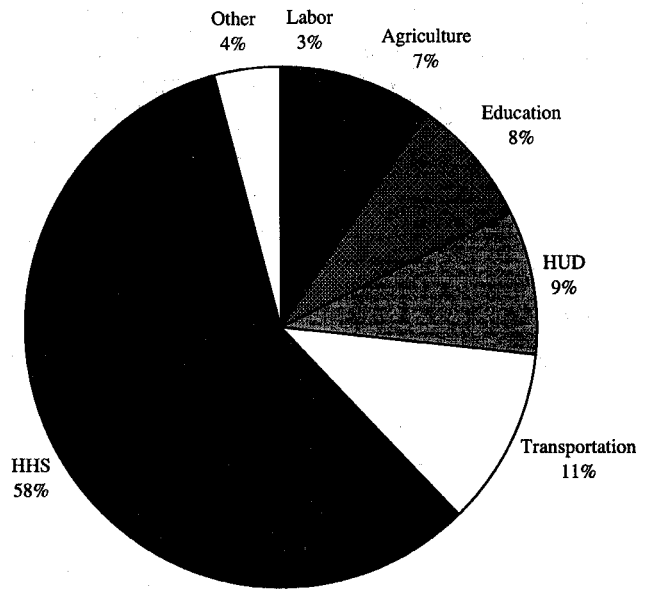
Sixteen of the 24 departments and agencies had any statutory waiver provisions; 12 of the 24 had any regulatory waiver provisions. Over the last three years, 12 of the 17 agencies with any statutory or regulatory waiver provisions received waiver applications from the States. Five of the 12 agencies -- the Departments of Energy, Justice and Treasury, the Appalachian Regional Commission, and the Corporation for National Service -- approved all such requests. Seven agencies -- the Departments of Agriculture, Education, HHS, HUD, Labor, and Transportation and the Environmental Protection Agency -- denied some waiver requests. Of the 1,801 waiver applications governmentwide which were reported to the Subcommittee, only five similar applications (or less than one-third of 1 percent) were denied. We would like to hear from the witnesses the considerations that arose in reviewing waiver applications, including ensuring budget neutrality in the open-ended entitlement programs, such as HHS' Medicaid and Agriculture's Food Stamps programs.

The bottom line is that 85 percent of all State waiver requests during this period were approved. Two agencies -- the Departments of Labor and Agriculture, both of which will be testifying today -- had the highest proportion of denials (29 percent and 13 percent, respectively). We would like to hear from them why their track records differ from the other agencies. We would also like Labor and Agriculture to explain why Republican Governors received a higher proportion of denials (31 percent and 16 percent, respectively) than Democratic Governors (23 percent and 8 percent, respectively).

Statutory waiver provisions are diverse. For example, some allow waivers relating to program financing, such as both the grantee matching funds and maintenance of effort requirements for State pollution control agencies implementing the Clean Air Act, the maintenance of effort requirement under certain Education programs, and the grantee matching funds requirements under the Corporation for National Services' Learn and Serve and AmeriCorp programs. Besides program financing, some statutory provisions allow waiver of programmatic provisions. For example, the Social Security Act authorizes the Secretary of HHS to waive compliance with certain program requirements for an experimental, pilot, or demonstration program under Medicaid and the former Aid to Families with Dependent Children (AFDC) welfare program.

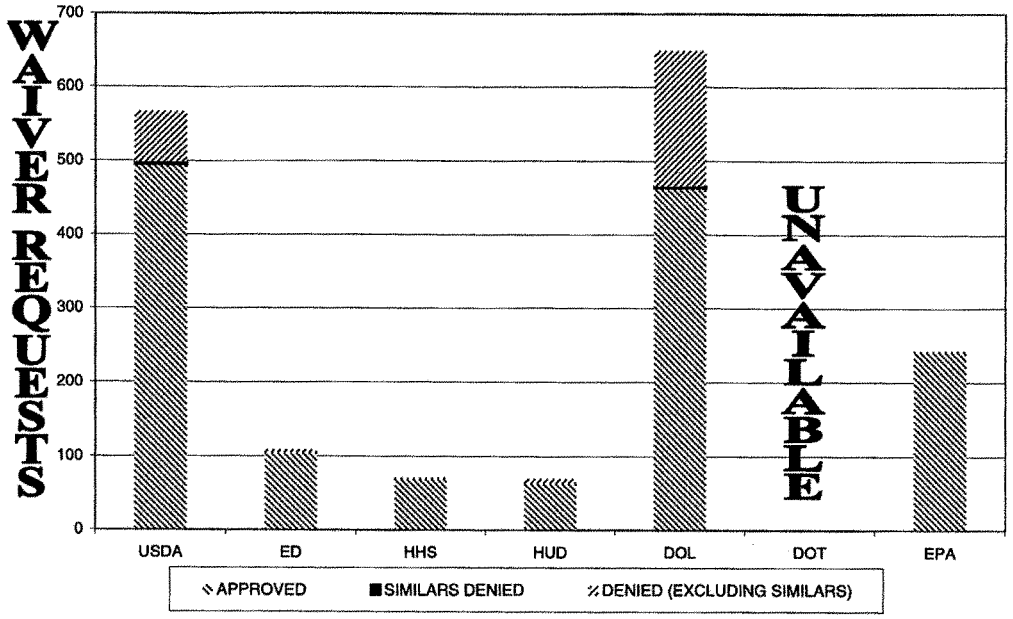
I welcome an open discussion today about ways to streamline agency processes for waiver requests by the States since States, as partners with the Federal Government in implementing many Federal programs, deserve a simpler process.

Grant Obligations by Agency: FY 1998



Prepared for Representative David M. McIntosh

ACTION ON STATE WAIVER REQUESTS BY MAJOR GRANTMAKING AGENCIES: FY 1997 - 8/3/99



Prepared for Representative David M. McIntosh

Mr. HORN. Thank you very much. We now call on the gentleman from Texas, Mr. Jim Turner, the ranking member on the Government Management, Information, and Technology Subcommittee. Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman. This is a very important hearing. Having served in the Texas House and the Texas Senate for 10 years, as well as chief of staff to a former Texas Governor, I know how frustrated State officials can be with the Federal agencies once they have applied for waivers. This bill is designed to try to encourage an expedited procedure in cases where a State has been previously granted a waiver for a program.

As we look at this issue, it is important to keep in mind that while the concept of an expedited waiver is good, it should not mean an automatic waiver. There are differing circumstances for each application that always must be considered. So I look forward to hearing the testimony of our witnesses and the concerns that they may have regarding this bill. I think all of us can concur at the outset of this hearing, that anything we can do to improve the efficiency of our Federal agencies in dealing with our State governments would be a step in the right direction.

So, thank you, Mr. Chairman, and I look forward to our testimony.

[The prepared statement of Hon. Jim Turner follows:]

THE STATEMENT OF THE HONORABLE JIM TURNER
JOINT SUBCOMMITTEE HEARING ON
"GRANT WAIVERS: H.R. 2376 AND STREAMLINING THE PROCESS"
SEPTEMBER 30, 1999

Thank you. The focus of this hearing is on H.R. 2376, a bill which would require executive agencies to establish an expedited review procedure for granting waiver of statutory or regulatory program requirements to a state if another state has already been granted a similar waiver.

We all agree that we want to work with our states to make our federal system as efficient and user-friendly as possible. As a former member of the Texas Legislature, I understand the many benefits of this bill which would provide states with the flexibility to tailor their programs to best meet the needs of their citizens. An expedited review would cut through bureaucratic tape and allow states to govern effectively and without delay. Waivers could also discourage agencies from making arbitrary denials.

However, I also understand the concerns that an expedited process could possibly make the granting of waivers an automatic exercise. Moreover, the bill might not provide enough time to evaluate the results of the original waiver.. "Haste makes waste," and we certainly do not want to prematurely grant a waiver based solely on precedent when one is not merited .

I look forward to hearing both sides on this issue, and hope that we can work out a bill that helps our states as well as creates a good policy. I appreciate the members of the panel for their time and testimony, and also thank Chairman Horn and members of the other subcommittee for their focus on this issue.

Mr. HORN. I thank the gentleman, and now ask the gentleman from Nebraska, Mr. Lee Terry, if he would like to make an opening statement.

Mr. TERRY. I have no opening statement.

Mr. HORN. And the gentlewoman from Illinois, Mrs. Biggert, the vice chairman for the Government Management, Information, and Technology Subcommittee, if you would like to make an opening statement.

Mrs. BIGGERT. Thank you very much, Mr. Chairman. Today's hearing is a particularly important one. We are focusing on efforts to streamline and improve the Federal Government's processes for granting State waiver requests.

Having served several terms in the Illinois State Legislature, I can certainly understand the negative consequences constraints can have on State efforts to serve the unintended populations. It has been said many times before, but each State is unique demographically. What practices might work on one State, might not necessarily work in another.

As such, I believe the Federal Government should make every effort to accommodate waiver requests made by the States in order to help those in need. It is for this reason that I am a co-sponsor of Representative Mark Green's legislation to require executive agencies to establish expedited review procedures for granting State waivers in cases where another State has granted a similar waiver. I think this is what we did in the State of Illinois when school districts came forward with waivers, that then other school districts came in and received the same waivers, so I am glad to see that this bill is being talked about here today.

So I commend you for holding the hearings and look forward to hearing from the witnesses.

Mr. HORN. Thank you very much. I see the gentleman from Ohio has just come in.

Mr. KUCINICH. Hello, everybody.

Mr. HORN. Would you like to make an opening statement?

Mr. KUCINICH. I sure would.

Mr. HORN. Well, you have excellent timing.

Mr. KUCINICH. It is part of being here, I guess.

Mr. Chairman, I am always appreciative for a chance to join you, having had the honor of serving with you on the Government Management, Information, and Technology Subcommittee, and I also pay my regards to the rest of the members on this committee. I want to thank you for holding this hearing on H.R. 2376 and the waiver process.

Agencies have the discretion to waive statutory and regulatory program requirements applicable to the States in a variety of circumstances. With these waivers, States are able to tailor the program to meet the unique needs of their individual populations. Waivers also serve as testing grounds for innovative solutions which could be adopted nationwide. Therefore, I welcome the opportunity to learn how we can streamline the process by which agencies review waiver applications.

However, it is important to remember that waivers can exempt States from the eligibility requirements, terms, conditions and guidelines for important programs such as Medicaid, welfare, Food

Stamps, and employment training. Waivers could jeopardize whether or not intended beneficiaries ultimately receive the help and protections our laws are intended to guarantee. Therefore, the decision to grant a waiver should not be taken lightly.

For instance, I believe that we need to ensure that potential opponents of the waiver have notice and opportunity to comment on the waiver before it is considered. I also believe agencies should evaluate the benefits and drawbacks of any similar waivers that were granted in the past.

Furthermore, the granting of waivers should not become an automatic exercise. Each State is unique and each waiver application needs to be considered on its own merits. If a particular requirement merits a waiver on every occasion, the requirement itself, not the waiver process, should be reevaluated.

In conclusion, we should investigate ways to streamline the process without jeopardizing a thorough review of each application.

I look forward to hearing the testimony, and I again thank the Chair for his leadership.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Opening Statement of Dennis Kucinich
September 30, 1999 Hearing on H.R. 2376
Joint Hearing NEG and GMIT Subcommittees

Mr. Chairman, thank you for holding this hearing on H.R. 2376 and the waiver process.

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For instance, I believe that we need to ensure that potential opponents of the waiver have notice and opportunity to comment on the waiver before it is considered. I also believe agencies should evaluate the benefits and drawbacks of any similar waivers that were granted in the past. Furthermore, the granting of waivers should not become an automatic exercise. Each state is unique and each waiver application needs to be considered on its own merits. If a particular requirement merits a waiver on every occasion, the requirement itself, not the waiver process, should be reevaluated.

In conclusion, we should investigate ways to streamline the process without jeopardizing a thorough review of each application. I look forward to hearing the testimony.

Mr. HORN. Thank you very much, and we now go to panel one, which is the Honorable Mark Green of Wisconsin, and we are delighted to have you here, Mark.

STATEMENT OF HON. MARK GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. GREEN. Thank you, Mr. Chairman, members of the subcommittees. I want to thank you. I am very grateful that you are holding this hearing here today. I am grateful for the opportunity to testify on the Federal waiver process in general, and specifically our proposal, H.R. 2376.

According to information supplied to this committee, from 1997 through August 1999, my home State of Wisconsin applied for some 70 waivers from Federal agencies. Now, as has been alluded to previously, these waivers were not because Wisconsin couldn't or wouldn't meet Federal policy objectives, but like so many other States, Wisconsin has wanted to try new innovative approaches to meeting long-standing policy challenges.

Each of these waiver requests required extensive paperwork and man-hours to meet burdensome application requirements. Even after the necessary forms were filled out, the response and processing time from the agencies added further burdens, burdens of uncertainty and suspended policymaking. In some instances, it took over 18 months to get approval of a waiver request.

Now, of course not all of Wisconsin's waiver requests were approved, but the burdens and costs Wisconsin encountered, regardless of whether they were approved, were as great either way. Let me give you an example of the burdens Wisconsin has faced in the waiver process, and I know that other States can tell similar stories.

In 1997 Governor Tommy Thompson sought to implement a program known as BadgerCare. This innovative proposal, which passed our State legislature on a very wide bipartisan vote, aims to ensure access to health care for low-income children and families. According to Wisconsin's projections, BadgerCare is expected to cover an additional 46,200 uninsured low-income residents, including 23,900 children and 22,300 parents.

Even though the Wisconsin legislature endorsed BadgerCare in 1997, and even though both Republicans and Democrats from our own congressional delegation repeatedly asked for swift consideration of the waiver request, it took HHS until 1999 to finally approve this request. The great shame in this was that during that delay, those thousands of low-income families lost out on access to health care, health care that they so desperately needed.

I would like to reemphasize at this point that there are really two separate issues. One, of course, is whether or not a waiver should be granted. In most cases I am one of those who would come down on the side of allowing a State to experiment, to be creative, to be entrepreneurial in their policymaking.

However, what I am more concerned with here today are the unnecessary costs, time, paperwork, manpower, which the waiver process itself entails, often regardless of the eventual results. Those costs are not reflected in the numbers the agencies have supplied.

Their numbers deal with the eventual outcome, but they don't truly reflect the burden, the costs, that States have to bear.

Now, I have a poster here which I would like to show you, and we will make handout copies of this and supply them to the committee afterwards. This was a poster put together called "The Waiver Game," which is designed in a somewhat humorous way to show the Federal waiver process and the headaches that States have to go through.

And what it does, this particular poster uses welfare reform as the example. First, the State has to pass welfare reform. Then they have to submit a 150-page waiver request. The agency responds with 10 pages of questions. Once the State answers those questions, the agency submits terms and conditions. Negotiations take place, there is a 6-month delay, and so on and so forth.

It really is a game, although probably to neither party terribly humorous at the time. Every time a State takes a step forward on this board game, they seem to take a step back. The delays and the red tape are unreasonable, and I think we all agree should be greatly reduced.

Last week I attended a hearing held by the Budget Committee. I heard in that hearing Governor Jeb Bush of Florida testify on some of his new education proposals. One thing really stuck out for me. According to Governor Jeb Bush, 40 percent of the man-hours at the Florida Department of Education, that is 40 percent, are spent wholly on filling out Federal paperwork. Surely we can find more productive uses for their time and taxpayers' money. Clearly this is a case in point for simplifying the waiver process and setting up expedited procedures.

And that of course brings me to my legislation, H.R. 2376. This bill, in a very modest, common sense way, would help streamline the complicated and time-consuming Federal waiver process. Simply put, it directs Federal agencies to establish an expedited review procedure for State-requested waiver if the agency previously authorized a similar waiver for another State.

The inspiration for this bill came out of an effort that I, along with a number of my freshman colleagues, several of whom are here today, have made to reach out to Governors, both Democrat and Republican. In fact, the most recent response we received was from a Democratic Governor, the Governor of Kentucky. We have asked them, we have tried to find out from them what steps we could all take as a Congress to help them be innovative and creative in their policymaking.

The Governors have told us that the costs and burdens of the waiver process restrict them in their efforts to meet their constituents' needs in innovative ways. This bill I think is a first small step in a larger effort to offer a helping hand, or at least help get government out of the way where its restrictions are unnecessary or overly burdensome.

This legislation would allow any State to take advantage of the creative policymaking in another State, and to obtain a Federal waiver under an expedited, streamlined review. Should my legislation pass, I hope and believe that States would be more active in taking those opportunities, in borrowing from other States. Where they see a success story, hopefully that success story can serve as

a benchmark. After all, it is the State and local leaders who know best, perhaps, what is best for their immediate constituents.

Thank you for the opportunity to be here today, and I would be pleased to take any questions you might have. Thank you, Mr. Chairman.

[The prepared statement of Hon. Mark Green follows:]

MARK GREEN
8TH DISTRICT, WISCONSIN

ASSISTANT MAJORITY WHIP

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON BANKING AND FINANCIAL SERVICES

COMMITTEE ON THE BUDGET

COMMITTEE ON SCIENCE

REPUBLICAN POLICY COMMITTEE

TESTIMONY OF CONGRESSMAN MARK GREEN
"GRANT WAIVERS: H.R. 2376 AND STREAMLINING THE PROCESS"
SEPTEMBER 30, 1999

Mr. Chairmen and Members of the Subcommittees –

I thank you for holding this hearing today. I am pleased to be here today to testify on the federal waiver process, and specifically my bill, H.R. 2376.

According to information supplied to this committee, from 1997 to August of 1999, my state of Wisconsin applied for 70 waivers from federal agencies. These waivers were not because Wisconsin couldn't or wouldn't meet federal policy objectives, but because like so many states, Wisconsin wanted to try new innovative approaches to meeting long-standing policy challenges. Each of these waivers requests required extensive paperwork and man-hours to meet the burdensome application requirements. Even after the necessary forms were filled out, the response and processing time from the agencies added further burdens – burdens of uncertainty and suspended state policymaking. In some instances, it took almost 18 months to get approval of a waiver request. Of course, not all of Wisconsin's requests were approved –but the burdens and costs Wisconsin encountered were often as great as for those granted.

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Let me give you an example of the burdens Wisconsin has faced through the waiver process. I'm sure many other states can tell similar stories. In 1997, Governor Tommy Thompson sought to implement a program known as BadgerCare. This innovative proposal (which passed our state legislature on a wide bipartisan vote) aims to ensure access to health care for low-income children and families. According to projections, BadgerCare is expected to cover an additional 46,200 uninsured, low-income residents -- including 23,900 children and 22,300 parents. Even though the Wisconsin Legislature endorsed BadgerCare in 1997, and even though both Republicans and Democrats from our congressional delegation repeatedly asked for swift consideration of the waiver request, it took HHS until 1999 to finally approve this request. It is a shame that it took so long, because during that delay, those thousands of low-income families lost out on access to health care they so desperately needed.

I'd like to re-emphasize that there are really two separate issues at stake. One, of course, is whether a waiver should be granted...in most cases I would come down on the side of allowing states to be creative and entrepreneurial in their policymaking by freeing them from unnecessary restrictions. However, what I am more concerned with here today are the unnecessary costs – time, paperwork, manpower –which the waiver process itself entails...often regardless of eventual results.

I have a poster here that I think provides a good illustration of the federal waiver process and the headaches that states have had to go through. This poster uses welfare reform as the example. First the state passes welfare reform; they then must submit a 150-page

waiver request. The Agency responds with 10 pages of questions. Once the state answers the questions, the Agency submits terms and conditions, negotiations take place there is a six-month delay.... and so on. It really is a game. Every time a state takes a step forward, they must take a step back. The delays and red-tape are unreasonable, and need to be greatly reduced.

Last week, I attended a hearing in the Budget Committee, and heard Governor Jeb Bush testify on his education proposals for Florida. According to Governor Bush, 40 percent of man-hours at the Florida Department of Education –that's 40 percent – are spent merely filling out federal paperwork. Surely we can find more productive uses for their time and for taxpayers' money. Clearly, this is a case in point for simplifying the waiver process and setting up expedited procedures for states.

This brings me to my legislation, H.R. 2376. This bill, in a very modest, common sense way, would help streamline the complicated, time consuming federal waiver process. Simply put, it would require federal agencies to establish expedited review procedures for state-requested waivers if the agency previously authorized a similar waiver for another state.

The inspiration for this bill came out of an effort that I, along with a number of my freshmen colleagues, have made to reach out to governors – both Republican and Democrat – and find out what steps we could take to help them be innovative in their policy making.

The governors have told us that the costs and burdens of the waiver process restricts them in their efforts to meet their constituents' needs in innovative ways. This bill is a first small step in a larger effort to offer a helping hand – or at least help them get the federal government "out of the way" where its restrictions are unnecessary or overly burdensome. This legislation would allow any state to take advantage of the creative policy making of another state, and obtain a federal waiver under an expedited, streamlined review. Should my legislation pass, I believe states would be more active in taking advantage of opportunities, and would look to the successes of other governors. After all, it is the state and local leaders who know what is best for their constituents – not Washington bureaucrats.

Thank you for the opportunity to be here today. I would be pleased to take any questions.

Mr. HORN. Well, thank you, and let me first yield time on our side to the ranking minority member. Oh, Mr. Turner went out. Well, let's go to the vice chairman of the Regulatory Subcommittee.

Mr. RYAN. Thank you.

Mr. HORN. Let me say there is a 5-minute questioning limit on all these. It will come back to him. We alternate between parties.

Mr. RYAN. Thank you. Thank you, Mr. Co-Chair.

Mark, let me ask you this: What do you see as the biggest problem, based on your Wisconsin experience, as a Wisconsin legislator prior to serving in Congress, with the waiver process for States?

Mr. GREEN. I was in the Wisconsin Legislature for 6 years, actually during the height of welfare reform, the experimentation that really became a national model, and I think it was the uncertainty that the waiver process created.

Again, legislation, the welfare reform movement in Wisconsin was completely nonpartisan, passed on wide bipartisan margins, and then once the waiver process started, it was as if the State was in suspended animation, not quite sure how to meet evolving needs because there was no predictability. I mean, we didn't know if a waiver was going to be granted, if it would be granted in part; if it was granted only in part, would the part granted be sufficient to carry out the intent of the legislature; what to do if it wasn't granted.

That was very burdensome to our policymaking. I think the administration would tell you that their problem was literally the costs of having employees fill out all those forms and trying to stay in touch with whatever agency they were applying to, again to try to find out what was going to happen and when.

Mr. RYAN. So it is not just granting one waiver for one BadgerCare initiative. There are several waivers included in getting BadgerCare implemented, something like that. Is that not correct?

Mr. GREEN. Yes. In the case of BadgerCare, it was actually lumped into one waiver. Maybe a better case would be FamilyCare. We all have very catchy names. FamilyCare is the latest program for which a waiver has been requested, and there are over 40 requests for that.

In the past, and I am sure other States are the same way, you will get a percentage of your waiver request, particular waiver provisions granted, and again that brings you back to this whole idea of whether or not sufficient to fulfill the legislative intent.

Mr. RYAN. What are some of the waivers that Wisconsin has applied for in recent years, in addition to those two?

Mr. GREEN. Well, there have been some in the education area, but the original BrideFare; LearnFare, which required welfare recipients to attend school, the children to attend school; really the whole gamut of welfare reform. And like many States, in the health care area there have been a number of waiver requests.

Mr. RYAN. I assume you have had a chance to look at some of the written testimony of other witnesses. After reviewing the other testimony, are there any other recommendations you would have from some ideas you have heard for streamlining the waiver process?

Mr. GREEN. Well, the National Governors' Association is suggesting that we need to undertake a full-blown study. I think a step that would be very helpful, and I would be interested in working with the committee, is to add a provision to this bill which would require agencies to publish periodically, quarterly, whatever period we choose, the status of waivers. In other words, how many waiver request applications they have received, how many have been denied, how many have been granted, how long that they have been hanging out there. I think that would help all of us really find out what the States are facing. So I think that is an excellent one in particular. I think that is a good idea.

Mr. RYAN. I want to go back to the partial waiver approval again. You spoke about waivers being approved in part. Is that a common problem that we are seeing, that you get maybe three-fourths of your waivers for a program? And what kind of problems is that going to create? Are we going to be unable to go forward with a program if we only get, say, three out of four of the waivers approved? Is that something that you see as a common problem that we are experiencing?

Mr. GREEN. I don't know if it is a common problem. It is a hard one, based on my limited experience, to comment. But what I will say is it does create tremendous uncertainty. I think agencies, State agencies plan on the success of their waiver in terms of designing their program and, again, oftentimes they are waiting with bated breath to get this reaction from whatever Federal agency is involved.

They get the decision back, and then it takes them a long time to study the full impact and to make a calculation. In some cases they have to go back to the legislature. But they have to make a calculation as to whether or not the program can even work. Can they meet the original objectives that everyone has agreed to? And, again, I think that creates tremendous uncertainty, and it can handcuff State leaders in many ways.

Mr. RYAN. Thank you, Mr. Chairman. I yield.

Mr. HORN. Thank you. We now turn to the gentleman from Ohio for 5 minutes of questioning.

Mr. KUCINICH. I just have a comment, and then I would be glad to yield any time to Mr. Owens.

I wanted to first of all congratulate Congressman Green for his presentation, and also for the creativity of the Waiver Game.

Mr. GREEN. No pride of authorship. It didn't come from me, but I kind of like it, too.

Mr. KUCINICH. What I was wondering about it is if you have to roll the dice to play the game, or do you roll the dice when you don't play it?

Mr. GREEN. Chutes and Ladders, looks like.

Mr. KUCINICH. We will have to think about that. But anyhow, you know, I am still interested in hearing more about this, and I appreciate you taking the time to come here.

Mr. GREEN. Thank you.

Mr. KUCINICH. I will be glad to yield any time to Mr. Owens.

Mr. OWENS. Two questions I think were asked on the previous occasion when this was being considered. If there is an attempt to further streamline the waiver process, do you feel it is important

that the opponents of the waiver have an opportunity to express their views?

Mr. GREEN. Yes. I don't think that waiver requests should be made in the dark of night. I actually agree with what a number of people have said. I don't believe that where in my case it is a similar waiver, I don't think that the granting should be automatic, because I think States do have differing local conditions. I think there needs to be an opportunity to review those conditions.

That is why in this bill I think we have given maximum flexibility to the agencies. We have asked them to create an expedited waiver review process. We didn't mandate precisely what it had to be, because we understand that there isn't a one-size-fits-all solution here. I think they do need the opportunity to examine both pros and cons.

Mr. OWENS. Do you think it is in order for an agency to evaluate similar waivers that have already been granted before granting some new waiver in the same area?

Mr. GREEN. Well, I mean, I think that if an agency receives a similar—a waiver request that is similar to a previous one, presumably since that previous one was the first blush, they will have performed a lot of review and scrutiny of the waiver request. I would assume that they would rely upon at least some of their previous work. I think that is appropriate.

Mr. OWENS. Thank you. I yield.

Mr. HORN. I thank the gentleman. I now yield time to the vice chairman of the Government Management, Information, and Technology Subcommittee, Mrs. Biggert of Illinois.

Mrs. BIGGERT. Thank you, Mr. Chairman. In my opening remarks I spoke briefly about the State of Illinois having a waiver procedure which for a while caused us a couple of problems, and I want to see if this is something that has been addressed in this.

No. 1, at some point we felt like we were the school board, sitting at a large school board, overseeing what various local school boards were doing when they came in for their requests. You know, I just have—will these agencies have the background and everything to really look at the different conditions in each of these States, really have the background, because it is not one-size-fits-all.

But when we sat, we had to approve the waivers after they had made the request, or disapprove them, and so we felt like we were making decisions for a local level that we at the State would not be doing. How did you work that out so that the Federal agency doesn't feel like they are really involved too much into the State situation?

Mr. GREEN. Well, we don't deal with that directly. Again, we do provide a lot of discretion and flexibility to the agencies. I think there is always a risk, and I think you are right, I think it is Federal versus State and State versus local, to pass judgment on what the "lower" elected body has done. I think that is inappropriate unless you have a clear conflict and preemption.

We don't deal with that directly. I would certainly be willing to work with you to find ways to address that, but we don't deal with that directly.

Mrs. BIGGERT. Then the other thing was that once we had granted a waiver for one school district, while we thought that, you

know, we would look at the others, it became almost automatic that we then granted the waivers to other school districts, and in effect really kind of abolished the law on the books for that.

And I am thinking of a couple of issues, and the only one I can think of is really one that we didn't grant because it was a couple of school districts came in and asked for waivers on, they call it the sprinkling system, when they were building an addition and they didn't have the money to finish that up for the year, so they wanted a waiver for the rest of the year to do that.

And I think the first time we granted that and then really worried that we had really created an unsafe situation, and other school districts started pouring in, saying, "Well, we don't have the money, either." So we had to go back and really kind of change that. But I think you have to be careful that an agency doesn't think, if they granted that waiver for one, then they have to do it for another.

Mr. GREEN. Yes, and that is why, again, the idea of making it an automatic approval, I would be a little hesitant about that. But a least I think if we have the expedited review process, what I am hoping it will do is encourage States to borrow from each other.

I think you are going to hear the agencies testify that they actually get very few similar waiver requests, and they have actually used that as logic for saying this bill may be unnecessary. I actually look at it the other way. I think that is a bad thing.

We want States to borrow from each other. I mean, if we see California putting into place an innovative health care plan that meets the needs of an impoverished segment of society, I would hope that my State of Wisconsin would say, "What are they doing? Can't we do this?"

I would like that to happen more and more and more. So I am hoping one of the long-term consequences of this will be that there will be many more requests, and I don't think they should be granted automatically, but hopefully the expedited review will be so much less burdensome in costs and time that it will encourage States to borrow from each other.

Mrs. BIGGERT. Thank you.

Thank you, Mr. Chairman.

Mr. HORN. Thank you. Does the gentleman from New York have any questions he would like to ask at this point?

Mr. OWENS. No questions.

Mr. HORN. Well, I think everybody has been satisfied at this point. Let me just ask one question.

I recall in the Department of Agriculture testimony that will occur later this afternoon, they say your bill is unnecessary because "while waiver requests may appear to be similar, each State situation is unique," and therefore requires individual attention. How would you respond to this statement?

Mr. GREEN. I would respond by saying that our legislation preserves enough flexibility for the agencies that they can take into account the fact that you have different conditions. I mean, again, California is quite dissimilar to the State of Wisconsin, my home State, and I don't think that because something has been done in California, it should automatically be granted.

The agencies, if I may expound upon it a bit, have also suggested that this is unnecessary because of Executive orders which have directed a streamlined review process. I would point out that all of the data that I testified and supplied, including the frustration that Wisconsin had with welfare reform, all occurred subsequent to the most sweeping Executive order directing that there be an expedited waiver process.

So while I think agencies are trying, I think we need to give them a bit of a nudge in moving in the direction of streamlining and lowering those burdens, and I think we can do this through this bill in a way that allows them to maintain the needs to or the flexibility to look at individual conditions.

Mr. RYAN. Mr. Chairman.

Mr. HORN. Yes, Mr. Ryan.

Mr. RYAN. If I could add to that, I notice that the agencies claim that they have a new Executive order which streamlines the waiver application process and approval process.

Looking at the Executive order that has been cited as that streamlining proposal, it goes back to the President's Executive order on October 26, 1993, where it said "each agency shall, to the fullest extent practicable and permitted by law, render a decision upon a complete application for waiver within 120 days," and it goes on from there. Well, that was the Executive order in 1993, but since 1993 we have a whole rash of slowed down, delayed waiver processes, waivers that have either been denied or have been slowed, or maybe not applied for at all because of the process.

Well, the new Executive order which a lot of the agencies claim fixes this, basically says the same thing. It says "each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by an agency." So it doesn't seem as if this new Executive order fixes the problem.

Since 1993 we have had these problems getting waivers approved, getting them approved in an expedited manner. This new Executive order is really no different than the prior one, so I think that is, of all things, a very important justification for the need for this type of legislation.

With that, I yield.

Mr. HORN. I thank the gentleman, and I thank the gentleman from Wisconsin. It is a very creative effort that you and your colleagues have undertaken.

Mr. GREEN. Thank you.

Mr. HORN. So thank you for coming, again.

Mr. GREEN. Thanks very much, again, for the opportunity to testimony.

Mr. HORN. You are quite welcome.

We now go to panel two, which is Mr. Raymond Scheppach, executive director, National Governors' Association, and Mr. William T. Pound, executive director, National Conference of State Legislatures. So, if you gentlemen will come in, we will swear you in. This is an investigative subcommittee of the Government Reform Committee, and we swear in all witnesses but Members.

[Witnesses sworn.]

Mr. HORN. Both witnesses, the clerk will note, have affirmed the oath, and let's start with the National Governors' Association.

Mr. RYAN. Mr. Chairman, if I could, at this point I would like to ask unanimous consent to include in the record a statement from Governor Tommy Thompson, the Governor of Wisconsin, on behalf of the Council of State Governments, for which he serves as the president.

Mr. HORN. Without objection, so ordered.

Mr. RYAN. Thank you.

[The prepared statement of Mr. Thompson follows:]

STATEMENT FOR THE RECORD

ON

"STREAMLINING FEDERAL GRANTS TO STATES"

BEFORE

THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS
AND
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

BY

GOVERNOR TOMMY G. THOMPSON
STATE OF WISCONSIN

ON BEHALF OF THE COUNCIL OF STATE GOVERNMENTS

SEPTEMBER 30, 1999

Introduction

Thank you Chairman McIntosh, Chairman Horn and distinguished members of the Committee for allowing me the opportunity to provide you with testimony on Streamlining Federal Grants to States. As the President of The Council of State Governments (CSG), I present my testimony today on behalf of state officials representing all three branches of state government -legislative, executive, and judicial - of all 50 states and U.S. territories. CSG is an organization whose individual members are involved daily in conducting the peoples' business at the state level.

As my colleagues like Rep. Paul Ryan and Rep. Mark Green know, obtaining federal waivers has been very difficult for the state of Wisconsin. H.R. 2376 is the first step in changing federal grants and accounting procedures that are holding states back from providing their citizens with the best services possible. Instead of re-creating the wheel to get waivers for federal grants, this legislation will give states the ability to by-pass the tedious process of seeking a waiver if another state has been granted a similar waiver.

This bill is long overdue. Time after time, states are prevented from helping the very people they serve because federal barriers stand in the way. As a partnership of federal, state, and local leaders, we must be able to ensure that government is working effectively and appropriately at all levels and with the proper and necessary communication to sustain that partnership. Part of maintaining that partnership is updating outdated policies that stunt the ideas that can make government work most effectively for the people.

As state leaders, Governors and other state elected and appointed officials work together with other states to share best practices and innovative ideas for everything from reforming tax systems to best utilizing federal grants. We all want what is best for our states and that means creating flexible and creative solutions to current problems that makes state government work for our citizens. We need the ability to let leaders in state innovation pave the path for other states that want to use these successful new ideas to better their states.

States and local governments are where novel programs are being developed and should be developed. We often hear about the laboratories of democracy that Supreme Court Justice Brandeis speaks about. He said, "[I]t is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." When these experiments that Brandeis speaks of are successful, the federal government should not be a stumbling block that prevents states from utilizing these "scientific" results to better the lives of the people in other states.

States are faced with mandates from the federal government and preemption of state authority. The minefield in which states operate is lined with red-flags, delays, and regulations that prevent progress. Delays mean that citizen needs and demands are not

being met, because Washington, D.C. often thinks a "one size fits all" law will work better. We are not a nation of averages and aggregates; we are a nation of great diversity and distinctions. For these reasons State elected and appointed officials have a hard time justifying why states must spend so much time, energy, money, and effort on matters unrelated to the needs of it's people to satisfy federal requirements. Common sense legislation can help to alleviate the layers of bureaucracy that make governing a difficult task.

As Governor, I am very proud of the accomplishments that Wisconsin has made in the way of developing cutting-edge programs and breaking down federal barriers to new and creative solutions to problems. I want to share my successes with my colleagues from other states and their citizens, so they can best utilize federal funds. In Wisconsin we have shown that we can manage complex problems and put innovative ideas to work, reconnect the American people with their government, and coordinate governance efforts with all levels and branches of government. To illustrate how the federal waiver process has delayed the implementation of my own programs, I am going to tell you about the difficulties we encountered with the BadgerCare program.

Badger Care

In early 1998, I unveiled the new BadgerCare health insurance program with the help of the Wisconsin State legislature. BadgerCare was designed to fill the gap between Medicaid coverage and private insurance by expanding Medicaid coverage to children and adults in uninsured families with incomes below 185 percent of the federal poverty level. (For example, a family of four would meet that requirement if their income were below $30,900.) BadgerCare received bipartisan support in the State Legislature, where the Joint Committee on Finance overwhelmingly approved our program to provide low-cost health insurance to as many as 67,000 individuals around the state.

BadgerCare's intent is to send a strong message to working families that work truly does pay for them, and it signals a historic beginning to self-sufficiency for thousands of families who have recently entered the workforce. At the program's start, Wisconsin was at the forefront of states in the goal of providing health insurance programs that would support low-income working families with children. We were the first to develop such a program and saw this as a groundbreaking opportunity to impact our state as well as share our successful ideas with other states.

For Wisconsin, I saw that BadgerCare was also critical to the success of Wisconsin Works (W-2), our welfare to work program. We needed to make sure that hard-working families in W-2 get the health insurance they need as they climb the economic ladder to success."

Expanding Medicaid spending required a waiver from the U.S. Department of Health and Human Services (HHS), since HHS oversees the spending of Medicaid funds. Medicaid is funded with a portion of both federal and state funds. In December of 1997, Wisconsin was told by officials from HHS that the BadgerCare concept would constitute "an

approveable package." We applied for a waiver in January of 1998 and finally received the waiver in January 1999, after many unexpected roadblocks and creative but time consuming problem solving.

Under the federal waiver, BadgerCare expands Medicaid coverage for families using a blend of Title XIX (Medicaid) and Title XXI (Child Health Insurance Program) funds. BadgerCare is funding children's health care costs through Wisconsin's Title XXI allocation. Parents are funded through Title XIX.

When BadgerCare was conceived, the Wisconsin Department of Health and Human Services worked closely with the U.S. Department of HHS and designed the programs with their specific guidance, but HHS challenged the cost-effectiveness and budget-neutrality projections that had been included with the waiver request.

When we received word of the roadblocks, we worked quickly in Wisconsin to draft a compromise that would address the concerns that HHS had, while thousands of families went without affordable health-care coverage in Wisconsin. We even considered trying to obtain federal legislation to force HHS to approve the waiver, so we could affirm our commitment to Wisconsin's families. We spent time, money, and resources that should have been used to implement and pay for the program just to get approval from the federal government. We believe we were only able to finally obtain approval because of strong bipartisan support and high level involvement by federal officials. If we had had to follow the same bureaucratic route as most states, we would still be talking. This should not be necessary. Instead, we were able to begin BadgerCare on July 1st and already have 27,000 people enrolled.

It took a full year of negotiations and bureaucracy for our waiver to finally be granted. We are thankful that we have finally been able to implement the program, but disappointed that something as simple as putting an innovative idea to work was stalled because of politics and governmental red-tape.

For states, waiting for the federal government to rule on whether a state can tinker with a program to make it better can be agonizing. We need to implement change when we have social problems in our states and we need to be able to implement that change without having the federal government set up barriers. This legislation is the first step to allowing for responsive changes to programs that are funded by federal and state funds together. Allowing states to capitalize on successes in other states is the key to intergovernmental relationships and cooperation. We would like to continue working with you on ways to make this process more efficient and reasonable.

Conclusion

We need to ensure that the American people are the benefactors of a strong, united, and adaptive effort to address and solve the problems that confront our great country. At the dawn of the new century, we must solve the problems that face our country in the

decades ahead. In order to do that, we must adapt our government so it can change quickly to better accommodate our citizens.

Devolution continues to advance a positive effect on the delivery of government programs and services as states compete with one another to devise the best systems. But, devolution cannot succeed unless federal regulations and barriers accommodate giving states the power to make decisions to change programs in reasonable time periods. As a first step, I strongly encourage you to enact this legislation as swiftly as possible to strengthen the federalism partnership in this country. On behalf of our CSG's state legislative, executive, and judicial branch members, thank you again for this opportunity to comment on your deliberations. I look forward to working closely with you on this and subsequent legislation in this area.

Mr. HORN. Let's start in with the National Governors' Association, just in the order on the agenda.

STATEMENTS OF RAYMOND C. SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS' ASSOCIATION; AND WILLIAM T. POUND, EXECUTIVE DIRECTOR, NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. SCHEPPACH. Thank you, Mr. Chairman. I appreciate being here on behalf of the Nation's Governors to both talk about our recent waiver experiences as well as H.R. 2376. I would like to submit my full statement for the record, and I will summarize it in a few minutes.

Mr. HORN. I might add that every witness's statement is immediately put in when we introduce them.

Mr. SCHEPPACH. Thank you, Mr. Chairman.

Overall, the purpose of waivers is essentially twofold. No. 1, it allows States to tailor specific programs to the needs of the citizens, but perhaps more important, it is to stimulate innovative approaches, which is really key.

If we look back at what has happened over the last 6 to 7 years, we would probably say when President Clinton took office there was a very important meeting in the White House in 1992 with the 50 Governors that focused essentially on this waiver issue. Over the next several years, our sense was that the administration was quite good in terms of pushing the envelope with respect to waivers.

In the welfare area, they approved 90 waivers for 44 States; in the Medicaid area, 21 waivers that helped to hold down the rate of increase in spending. I would argue that to some extent those particular waivers, particularly in welfare, led to the welfare reform bill. I think more recently, in the last several years, we've had more trouble in the waiver process.

I'm going to talk a little bit about some of the specifics because I believe you actually have to get into some of the major waivers in order to get a sense of the substance. The first are the so-called 1115 waivers, which are the Medicaid demonstrations. These are the large ones that are very, very important to States.

These are normally approved for 5 years but you have a 1-year renewal period, and if you look around, you'll find that some States have had these for 10 or 15 years, which means once they're approved, every single year you come back for renewal. I would argue that these often take the longest amount of time to approve because they are the most significant waivers. It is not unusual to have them take a year, a year and a half, or even 2 years.

The second waiver is the so-called 1915(b), which are the managed care waivers. These, initially get approval for 2 years but they are a 2-year renewal process. I would argue the progress here is more mixed, although I think the Department has been getting better recently. These take normally several months to approve, they could be up to a year, but I would put those as sort of medium responsiveness to the Department.

The third category is the so-called 1915(c) which are the long-term care waivers for home and community-based care. These are 5 years with a 1-year renewal. I would compliment the agency on

these. They have done a rather good job in this area. Most of those are probably approved within a 30-day period. When these get hung up, I would argue that it's over the whole question of budget neutrality, and I'll come back to that in a minute.

The other area I'd like to mention is Food Stamps. What has happened at the State level is that States have moved to integrate services for low-income individuals, and I think the stimulus for this essentially was welfare reform, the so-called TANF, and it has changed the culture in States, as States have gone from welfare subsidies to employment and training programs.

States would like to integrate Food Stamps into that general approach. You'd like to go to case management, so that when the person comes in to a welfare office, one person can talk about child care, employment and training, TANF, Medicaid, as well as Food Stamps, all at one place.

The Food Stamp progress is not very good. First off, the basic underlying legislation does not allow a lot of flexibility for waivers. Second, I would argue that this agency is probably one of the worst in terms of their willingness to work with us, because I think they look at it as a Federal program, as a stand-alone program, as opposed to something that should be integrated into welfare reform.

If you get into the children's health area, specifically I think the legislation built-in the possibility of 1115 demonstration waivers. A number of States had interest in doing that but we're told it could not be done for a year, so essentially that one has been shut down.

I have included in my testimony a couple of pages from Wisconsin Governor Thompson on his experience with BadgerCare. We've included in the testimony some of the State of Massachusetts' experience in some of the 1115's which took 2½ years to approve. I would, however, argue that the problems with the waivers are both congressional and administrative; that Congress often-times does not provide enough flexibility in the authorizing legislation.

A perfect example: the old AFDC programs needed waivers while the TANF block grants provide the States with a lot of flexibility to tailor the programs. Essentially when Congress enacts flexible legislation, they don't need to have a detailed waiver process. Second, a lot of the requirements built into the legislation with respect to waivers are overly restrictive, so at times the agencies' flexibility is curtailed.

The second problem, however, is the agencies. Some do a relatively good job. Others are much more difficult to work with.

For suggestions, we don't have a detailed policy, but we'd be happy to get a couple Governors together, even with a couple of State legislators, to come back to the committee with some fairly detailed recommendations. But some suggestions are as follows.

One problem is this whole question of budget neutrality; when OMB looks at it, they look at it with respect to a specific program for a specific year. So, if we're coming forward with a Medicaid waiver, there may be long-run savings in the next 4 years that would offset the increase in that particular year, but it's ruled out because you're essentially looking at a 1-year timeframe.

Similarly, a Medicaid waiver might have savings for Medicare, but again, any time we have any impact on Medicare, we're automatically declared out of order. So on this issue of budget neutral-

ity, we feel it should be expanded in a couple of ways—in terms of the timeframe and looking at offsets with respect to other programs.

Second, when I look at the various waivers, you'll find that some of them are for 3 years, some are 5 years, with a 5-year renewal, some a 1-year renewal, some a 3-year renewal. It seems to make a certain amount of sense in moving toward some kind of a consistent renewal basis, perhaps even including where it's a standard renewal and putting it in a State plan, as opposed to doing it through a normal waiver process.

Third, we need to find some way of changing the incentive mechanism for agencies and how it's coordinated with OMB. It has to become a higher priority within the Federal Government. Whether that can be done by saying waivers automatically go into effect unless people take positive action to stop it, and has to be the Director of OMB, or some way of changing that incentive, which will force people to the table.

I agree with some of the previous comments that a lot of the cost is waiting, and it's the uncertainty. Particularly when talking about demonstration waivers; it means the State legislation can't go into effect because it is dependent upon a waiver. Legislatures sometimes only meet every 2 years, so if you miss that cycle, you've got a very substantial long-term problem.

With respect to H.R. 2376, it obviously would be helpful. It is consistent with the Executive order. The new one has been adopted only a couple of months. We don't yet know whether they are working on an implementation process.

However, I would say that the particular bill here is relatively narrow. It deals only with discretionary grants, and I would argue that 80 to 90 percent of our problems are in the entitlement areas of Food Stamps and Medicaid. And we've got to find a way, again, to look toward integrating Federal programs with State programs. There is really a revolution out there with respect to integration of services, and if the Federal Government continues to look at funding stovepipes Food Stamp Program where you can't integrate it, we're going to have continual problems in providing good programs for low-income individuals.

I'd be happy to answer any questions.

[The prepared statement of Mr. Scheppach follows:]

T E S T I M O N Y

Statement of
Raymond C. Scheppach

before the

Committee on Government Reform

Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs
and
Subcommittee on Government Management, Information, and Technology

U.S. House of Representatives

on

The Federal Grant Waiver Process for States

on behalf of

The National Governors' Association

September 30, 1999

NATIONAL GOVERNORS' ASSOCIATION
Hall of the States • 444 North Capitol Street • Washington, DC 20001-1512 • (202) 624-5300

Good afternoon, Mr. Chairmen and members of the subcommittees. The Governors clearly support efforts to expedite and improve the current waiver process, and appreciate the opportunity to work with the committee to develop a constructive, bipartisan effort to improve the current process.

We appreciate the opportunity to present testimony with regard to H.R. 2376, the Expedited Waiver Review bill. Our policy supports other federalism bills that have come through the Government Reform Committee and that have passed the House, such as H.R. 350, the Mandate Information Act, H.R. 409, the Federal Financial Assistance Management Act, and H.R. 1074, the Regulatory Right-to-Know Act. We strongly support H.R. 2245, the Federalism Act, which was reported out of Chairman McIntosh's subcommittee earlier this session.

These bills would provide critical adjustments to the current status of federal-state relations. Our federal systems will always need fine-tuning to keep them responsive to the people. As each Congress enacts new laws, it must also protect the vitality of state and local governments to deliver effective services. The multiple programs for similar activities in education, training, welfare, health care, and the environment cannot be properly coordinated without an effective waiver process. Waivers are always needed not only to meet the unique needs of each state, but are key to stimulating new innovations at the state and local levels.

Waivers Process - An Overview

When the Governors held their first meeting with President Clinton in 1991 at the White House, the major issue of discussion was the waiver process. Governors were united in requesting that President Clinton use broad-based statewide waivers for welfare and Medicaid reforms. Before welfare reform was signed into law, the President had already issued 90 waivers in 44 states for welfare reform. These waivers were critical in specifying the eventual direction of welfare reform. The same held true for Medicaid reform. The President issued 21 statewide Medicaid waivers that helped reduce the spiraling annual increase in cost.

In the recently promulgated Executive Order on Federalism, President Clinton incorporated a provision to increase the flexibility for state and local waivers. That provision calls upon the administration to streamline the current process and render a decision, to the extent practicable and *permitted by law*, within 120 days. If the waiver is not granted, it requires the agency to provide timely written notice why not.

We look forward to the administration's proposals on how it intends to increase flexibility for the current waiver process. We believe this will be a critical step, not only to demonstrate its commitment to comply, enforce, and act on the President's new order, but also to provide guidance to the committee. There are similarities between the administration's approach and that of the bill, and we would all benefit from a constructive effort and commitment to make the process more flexible and responsive.

The Medicaid statute was written in the mid 1960's. In many ways, it still reflects the antiquated health care system of the time, when managed care as we now know it did not exist, and long-term care was synonymous with nursing homes. Recognizing the need to adapt to the evolving health care market, there are many avenues by which states may seek to waive portions of the federal law. Section 1915(b) waivers allow states to pursue Medicaid managed care as a viable option and to selectively contract with certain providers in order to assure cost-savings. Section 1915(c) waivers allow states to offer comprehensive long-term care benefits in an individual's home or community as an alternative to costly institutionalization. Section 1115 demonstration waivers allow states to conduct much larger experiments with the delivery of health care to the Medicaid population, and have often involved expanding coverage to previously ineligible populations.

The Clinton Administration's commitment to working with the states to grant comprehensive, statewide Section 1115 waivers in the mid 1990's accounted for some of the most exciting innovations in state health care since the creation of the Medicaid program.

Every state has at least one waiver and, in some cases, as many as twenty waivers in operation at any one time. Some states have been operating essentially the same program for 20 years, yet still are required to periodically produce large volumes of paperwork in order to re-justify the need for the waiver during the renewal process.

The bureaucracy of the renewal process can be overwhelming. For example, the approval and renewal timeframes do not seem to make sense. Section 1915(b) waivers are approved for two years and must be renewed every two years. Section 1915(c) waivers are approved for three years and may be renewed at five-year intervals. Section 1115 demonstration waivers are approved for five years, but then must be renewed every year afterwards.

Arizona has been running its entire Medicaid program through a Section 1115 waiver since 1982. Ever since 1987, the state has had to go through an annual renegotiation process that consumes inordinate amounts of valuable staff time and resources. Other states, such as Texas and Michigan, in the desire to

create managed long-term care programs, have explored the option of a combined Section 1915(b) and (c) waiver. They have been met with a process which demands more paperwork and staff resource commitment than had they sought separate waivers.

A Redundant Process

Currently, each state must produce and defend waiver requests even if other states have already received approval to implement similar waivers. Obtaining redundant federal approval is an inefficient use of resources at both the state and federal level. States should be allowed to import any waiver in place in another state without securing additional federal approval.

Currently, many states are interested in pursuing coordinated care options for individuals who currently have a fragmented health care delivery system, those frail seniors eligible for both Medicaid and Medicare. Several states have engaged in protracted negotiations with the Health Care Financing Administration (HCFA), but have ultimately, after several years in some cases, withdrawn their application. Colorado spent years working with HMOs in key counties to develop a system that would increase benefits and improve coordination of care for dual eligibles, only to have their waiver negotiations ultimately fail.

Massachusetts had to ultimately withdraw its 1115 Medicaid waiver application because of the methodology used to determine budget neutrality. Massachusetts was interested in developing an eligibility expansion for low-income, at-risk seniors. Because the target population was also Medicare eligible, it necessitated a corresponding Medicare Section 222 waiver. While Massachusetts has come to an acceptable agreement regarding the Medicare payment under the demonstration, the Medicare payment methodology did not recognize the unique needs of the dually eligible population. Currently Massachusetts is close to executing a Memorandum of Understanding with HCFA to implement their demonstration; however, it has been almost 2 1/2 years since they originally submitted their waiver application.

The Children's Health Insurance Program (CHIP) statute specifically allows states to seek Section 1115 waivers of the CHIP law. Although several states have expressed interest in seeking such flexibility in their CHIP program, no such waivers have been granted. There is an appendix to this statement from the State of Wisconsin that outlines the difficultly that state encountered in the waiver process.

While we appreciated and benefited from the administration's early, aggressive action the first several years in approving waivers, the more recent experience of states has been difficult. We would encourage a return to that aggressive leadership.

The other major area that states would like to have additional waiver authority is food stamps. This is critical now that all states have restructured their welfare programs and desire to integrate the food stamp program into their overall service delivery systems. However, current waiver authority is so constrained by exception, conditions, and unrealistic cost neutrality rules that it is no longer useful and numerous state wavier requests have been denied. A recent GAO report concluded that Congress should consider providing states with more flexibility in the administration of this program.

Some Suggestions

Mr. Chairman, NGA does not have comprehensive policy on waiver authority at this time. However, we would like to appoint two Governors to both work to develop policy and to work with this committee on this critical issue. In the meantime, I would like to offer the following suggestions.

The current problem rests both with Congress and with the agencies that operate the waiver approval process.

First, Congress needs to understand that, during the legislative process, the more flexible the underlying statute is, or the fewer the conditions for funding, the greater the chances are that states will not be driven into the waiver process. A fundamental part of the federalism legislation this committee has taken the lead on is to create greater awareness and deference to states.

Nevertheless, waiver authority will remain critical to states to both stimulate innovation and tailor programs to the needs of their citizens. They need to take it more seriously and be more aggressive in allowing states more leeway to experiment. This is most important in the two major entitlement programs of food stamps and Medicaid. Both of these programs require major changes to their waiver authority provisions.

Second, federal agencies need to be more responsive to the needs of states both in terms of the interpretations of the waivers as well as timeliness of the decisions.

With respect to generic waiver authority legislation I would suggest the following:

1) The budget neutrality concept needs to be expanded. In general the current approach is mainly to look at only the program under consideration and only for one year. This concept needs to be expanded to multi-years and consider potential savings in other federal programs. For example, Medicaid waivers may also have Medicare savings.

2) The timeframe for waiver renewals could be extended and made more consistent. Currently, many waivers must be renewed every year or every two years. This should be extended to three or five years or done as part of the state plan approval process.

3) The incentives and coordination for agency and OMB staff must be changed to expedite the decision making process. This could require a reallocation of some resources in agencies and a more structured decision processes between OMB and federal agencies. Finally, it may be that legislation should require that a waiver be automatically approved in 90-120 days unless the head of OMB takes action to disapprove.

With respect to H.R. 2376, it could be helpful to states. However, it has a relatively narrow scope since it only focuses on discretionary programs. Our major problem rests with the entitlements of food stamps and Medicaid. We look forward to working with you to expand the scope of this legislation.

Conclusion

The Governors recognize the unique nature of the federal system and the critical importance of developing a close working relationship with our federal partners in Congress and the administration. We recognize and support a continued federal role in protecting the basic rights of all our citizens and in addressing issues beyond the capacity of individual states. At the same time, the federal government must recognize that there are problems that can be best addressed at the state and local levels.

The Governors are committed to a revitalized and strong partnership with Congress and the administration to bring a new balance to federalism. We believe these issues are crucial to the future viability of our separate governments and to a revival of citizen participation in the affairs of government.

We appreciate the committee's recognition that the current waiver process must be improved. We are pleased to participate and contribute to a bipartisan effort to make that happen. We should take advantage of our experiences. To that end, the National Governors' Association is willing to ask two lead

Governors to carefully review the proposed legislation, review other alternatives and options, and make recommendations to this committee. We are grateful for the committee's interest and commitment.

Thank you, Mr. Chairmen, for the opportunity to present the Governors' views on H.R. 2376 and other federalism legislation before your subcommittees.

Appendix

BadgerCare: A Case in Point

Peggy L. Bartels and Pris Boronlec provided a study over a year ago about Wisconsin's innovative health care efforts, BadgerCare, to assure an integrated system of health care coverage for low-income families with children:

> Wisconsin has a ten-year history of success with welfare reform. BadgerCare is an innovative health care program to bridge the gap between Medicaid and private insurance for the working poor. It builds upon the intent of Title XXI, the new State Childrens Health Insurance Program (CHIP). Wisconsin has moved beyond the planning process to seek federal approvals for implementation. Although state legislation passed with overwhelming bipartisan support, and federal officials originally indicated that key provisions of BadgerCare were "approvable," more than a year of negotiations with the federal government can only be described as frustrating.
>
> BadgerCare is designed to provide access to health care for all children and adults in uninsured families with incomes below 185 percent of the federal poverty level. Once enrolled, families may remain in the program until family income exceeds 200 percent of poverty. Under BadgerCare, Wisconsin's current Medicaid program remains an entitlement, including generous categorical and medically needy eligibility criteria. BadgerCare also extends Medicaid eligibility to certain parents whose children have been temporarily removed from the home by child welfare agencies, to allow treatment to support family reunification.
>
> In seeking federal approval for BadgerCare, the state of Wisconsin submitted a concept paper in September 1997, and ongoing discussions on structuring the state's waiver were held with HCFA staff and officials before the state's waiver request was submitted to HCFA in January 1998. Based on guidance from HCFA, all waivers necessary to implement BadgerCare were requested under Medicaid, and none were requested under Title XXI. As a result, implementation of BadgerCare requires federal approvals for a Title XXI (CHIP) state plan and a Title XIX (Medicaid) waiver.
>
> Although Wisconsin has followed HCFA's process and guidelines to assure that the state submitted an "approvable" waiver, HCFA staff subsequently raised fundamental concerns with BadgerCare. Of particular concern were the cost-effectiveness test of our proposed family-based coverage and the integration of Medicaid and CHIP through a state block grant program under Title XXI. Although the discussion of issues has continued over the past year, key objections and issues raised by HCFA include the following.
>
> (1) Requirement to cover parents and children under a Medicaid entitlement: According to HCFA policy, an adult cannot be covered under a federal entitlement program (Medicaid) if the child is covered under a state optional program (CHIP). (2) Cost-effectiveness of covering families under CHIP: HCFA guidance on the coverage of parents under CHIP began with advice to compare BadgerCare costs with those of commercial coverage. Subsequently, HCFA advised that Title XXI is limited to children, except for the purchase of employer-based family coverage for parents and children if cost-effective. (3) Allocation of cost-sharing to Medicaid and CHIP: HCFA has indicated that only Title XIX federal matching funds may be provided for the portion of family premium costs associated with parents. (4) Budget-neutrality for child welfare extension: HCFA has questioned the cost-neutrality test for mothers whose children are temporarily removed from the home by child welfare agencies under Title XIX.

Wisconsin contends that Titles XIX and XXI provide flexibility to HCFA to approve BadgerCare and that federal administrative policies, not federal law, prevent approval of BadgerCare. The underlying goals and statutory provisions for CHIP, along with existing Title XIX provisions, both anticipate and allow HCFA's approval of innovative state health care plans, including BadgerCare.

Title XXI. Title XXI (CHIP) includes provisions to assure state flexibility to identify and design effective programs; require states to specify strategic objectives to meet their unique needs; and allow states to purhase family-based coverage. New opportunities created in Title XXI, along with the approval of many existing Medicaid waivers for state health care reform initiatives, provide a basis to support and foster state innovation and reform.

As enacted, Title XXI anticipates alternative program designs, recognizing that a myriad of goals, issues, and opportunities confront each state in implementing CHIP. Title XXI also requires states to describe strategic objectives, performance goals, and performance measures in providing access to health insurance for targeted low-income children. Under CHIP, states may purchase family coverage that includes targeted low-income children if the coverage is cost-effective and does not substitute for other insurance coverage.

During the past year HCFA has suggested at least three different alternatives to document cost-effectiveness, the most recent of which, based on our state employee benefits package, has been neither accepted nor rejected. HCFA has commented that the cost-effectiveness provisions in Title XXI do not make sense. As HCFA administers Title XXI, reasonable tests of cost-effectiveness for family coverage need to be developed, and HCFA needs to work cooperatively to assist states that wish to pursue family-based coverage as the most effective way to reach and enroll their low-income children in health insurance. Also, the CHIP legislation specifically provides HCFA the authority to grant waivers of Title XXI.

Title XIX In addressing concerns with the authority to grant Medicaid waivers for BadgerCare, current federal law and waivers granted in other states support approval of BadgerCare. Neither federal law, regulation, nor any published advisory material specifies that an adult caretaker relative of a dependent child can be eligible only if the child is Medicaid eligible. In fact, under current Medicaid policy a parent can choose to exclude a child from Medicaid eligibility and still become (or remain) Medicaid eligible. Examples of this include parents of children receiving child support or survivor or disability payments, when their children are not eligible because of excess income. Further, Medicaid contains no inherent prohibition on covering adults as long as they are part of families with children who meet required income and asset tests.

In prior Medicaid waivers for Wisconsin and other states, HCFA has allowed states to project budget-neutrality based on actuarially equivalent populations. In determining budget-neutrality for the extension of Medicaid coverage to parents whose children have been removed from the home by a child welfare agency, HCFA objected to the calculation of base-year case management costs using this methodology. As of this writing HCFA had not yet responded to additional information submitted to address this issue.

Wisconsin has continued to negotiate with HCFA to secure federal approval for BadgerCare. Based on HCFA guidance, a compromise was proposed to restructure BadgerCare's cost sharing and federal funding as a Medicaid program. As part of the compromise, the state requested a capped Medicaid entitlement. (State statutes preclude implementation of BadgerCare as an entitlement program.) In spite of similar provisions approved in Tennessee, HCFA denied this request as a "new precedent."

With a year since the passage of CHIP, Wisconsin also has requested that HCFA begin to approve waivers under Title XXI, an alternative that has been available since the law was enacted in the summer of 1997. Thirty states have approved Title XXI plans, and twenty states have submitted plans. Many of those states are operating expansions of programs already in place rather than starting new child health programs. The deliberate pace of state plan approvals and the everincreasing need for affordable health insurance for working families make it imperative that HCFA grant waivers of Title XXI now.

Finally, with our current experience regarding the prospects for new federalism, Wisconsin is now seeking congressional action to establish clear authority for HCFA to approve BadgerCare as originally proposed. In the absence of action by HCFA to clearly state and stand by its guidance, even if that guidance sets a "precedent" not formerly granted but clearly allowed under federal law, a remaining option is to seek passage of federal legislation to secure approval of BadgerCare.

Wisconsin has experienced the success and the reality of welfare reform. We have moved families from welfare to work, but the state's working families need to be assured of health care. BadgerCare would assure access to health care for all low-income children and the adults who support them.

Wisconsin believes that approval of BadgerCare, as originally proposed, is critical to the continued success of families who move from welfare to work. With our decade-long success in implementing programs that foster the independence of families, we believe that states should be trusted to test health care reform initiatives just as they were allowed to experiment with welfare reform.

With different issues and opportunities in each state, now is the time to truly test the new federalism. States must be free to establish programs that work and respond to the needs of their citizens. To complement successful welfare reform, states, with the support and assistance of the federal government, need to reach out to families, not just to children.

As Wisconsin's experience details, it will be difficult for a state alone to keep pace with the continuum of services needed under welfare reform, if new federalism remains an elusive goal. Once a state and the federal government begin to share a common vision and build on our collective wisdom and resources, the needs of our citizens will be better met.

Mr. HORN. Does the gentleman from New York have any questions on this? Oh, excuse me, we need Mr. Pound's opening first. Then we'll question both and have a dialog between the two of you.

William T. Pound is the executive director of the National Conference of State Legislatures. Mr. Pound.

Mr. POUND. Thank you, Chairman Horn and members of the subcommittee. First of all I would like to begin by saying thank you to the House and the Government Reform Committee for everything they have done this year in moving toward improving the State-Federal partnership through this whole area of which the waiver activity is, I think, but one aspect. Not only the House but the full Congress and the administration, in the Executive order and the changes and the attempt to move in the right direction, we think, on an expedited waiver process and other aspects of this.

My remarks are in the record. Let me just summarize a couple of things.

First of all, this may seem to be primarily an administrative issue. Obviously the administrative branch of State government is where waivers generally originate, but frequently they originate there because of action the legislature may have taken or may be considering as it tries to conform itself or improve Federal-State-local programs.

So there is a significant legislative interest at the State level in this whole problem, and it is one that we frequently hear about, particularly the frustration of the timeliness of the waiver process, and in many cases the difficulty of obtaining in one State what appears to have been granted in another State or in a very similar situation, but having to go through all the same hoops over and over again.

It seems to me that there are several things we should look at in this; that we clearly want to maximize opportunities for State flexibility in these programs, and particularly to provide benefits and deliver services; that we ought to maximize the use of limited resources, particularly so that they go to the services as much as possible, and perhaps to the administration of them in a lesser proportion.

We need the waiver process streamlined to the maximum extent possible, and we need one that will create productive, collaborative State-Federal partnerships, not adversarial ones, if we can. I think one of the problems is, all too often this process may breed rubbing the cat's fur backward occasionally as we go through it, rather than trying to more forward collaboratively.

We need to keep people accountable for their actions at both the Federal and the State level, and I think we need to encourage duplication to the extent that we can. As we look at what we might do in this process, it seems to us in our discussion with State legislators that we need to make program waivers available across as many discretionary and mandatory State-Federal programs as possible, again in the remarks Mr. Scheppach just made.

It would be ideal if we could maximize program flexibility by statute in the actual legislative process, and I hope you will do that. But, realistically, the waiver process will always be a very important part of this procedure.

If we could simplify, some modifications that might simplify this process would be perhaps to make waiver modification self-certifying when States comply with all application requirements. This assumes that this is a collaborative process across the Federal-State lines.

A second would be to place time limits on the waiver application review process. The 120 days that has been mentioned and is in the Executive order, and I believe is also in NGA recommendations, is certainly something that we support. It is obvious that there may be exceptions to that rule, and it seems to me that an exception process could be developed where circumstances do not permit the realization of a 120-day timetable. In addition, to the extent feasible we should make waiver application forms uniform across the agencies and move toward greater technology, particularly electronic application processes, in this relationship.

Third, waivers granted for one State we would recommend be automatically approved for other States whenever they are similar. Obviously, there is difficulty probably in the definition of "similar," but I think those are things that could be worked out.

To the extent possible, waiver periods should be uniform and renewal processes ought to be the same across agencies. I think from the legislative standpoint, again, one of the great difficulties is an understanding of this process a lot of the time on the part of people who are in it, even when they're working closely with their State executive branch people through the process.

Too often, the waiver process appears to be idiosyncratic. When you talk to legislators, you hear that it all depends on who so often rather than on a procedure; who reviews it, their sympathy, their understanding in State government.

And I guess last I would say that on the Federal side, we think that intensive participation from the regional and State offices of Federal agencies is essential. Several witnesses have brought up the subject of the differences between States. That is one way to deal with that, with a sense that the regional office should have a greater understanding of the individual needs of States, even within a region, and sharing similar conditions.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pound follows:]

NATIONAL CONFERENCE *of* STATE LEGISLATURES

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President, NCSL

John B. Phelps
Clerk of the House
Florida House of Representatives
Staff Chair, NCSL

William T. Pound
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TESTIMONY OF

WILLIAM T. POUND

EXECUTIVE DIRECTOR

NATIONAL CONFERENCE OF STATE LEGISLATURES

BEFORE THE HOUSE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY AND THE HOUSE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

SEPTEMBER 30, 1999

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Chairman Horn, Chairman McIntosh and members of the subcommittees. My name is William Pound. I am the executive director of the National Conference of State Legislatures (NCSL), on whose behalf I appear before you today.

NCSL is a nonpartisan organization representing the legislatures of the 50 states, U.S. commonwealths and territories and the District of Columbia. Our advocacy efforts consistently point to the need for strengthened intergovernmental cooperation, protection of state authority and maximum flexibility to administer state-federal programs. The House Government Reform Committee has responded admirably to our expressed needs this year. The House has already passed legislation that would improve federal grant management (H.R. 409), broaden regulatory cost accountability (H.R. 1074) and make technical modifications to the Unfunded Mandates Reform Act (H.R. 350). Bipartisan legislation regarding preemption of state and local government authority (H.R. 2245) has emerged from subcommittee. NCSL supports all of these bills. Now, the subject of this hearing, program waivers, presents yet another opportunity for Congress to act on a long-term concern of state officials.

NCSL appreciates the efforts behind the introduction of H.R. 2376, which addresses expedited review of grant waiver applications. Earlier this year, members of the majority party's freshmen class reached out to us for ideas on how to strengthen state-federal relations. Some of those ideas were included in the class' Beyond the Beltway project. One of them—the waiver process—is now the focus of this hearing.

I also acknowledge the efforts put forth by the administration regarding program waivers. They also reached out to us in 1993, seeking ideas on how to address major concerns of state legislators. Those discussions, in part, contributed to the issuance of Executive Order 12875 calling for an expedited waiver process. It also contributed to the substantial volume of program waiver grants made in Medicaid and welfare both prior to and after the issuance of E.O. 12875. Less than two months ago, the President recommitted himself to this expedited waiver process when he issued his new executive order on federalism, E.O. 13132.

In other words, there seems to be bipartisan agreement to address our calls for strengthening the waiver process. H.R. 2376, as introduced, is one of the vehicles that could further improve this process. However, the experience of state legislators regarding waivers leads me to suggest that we need a more thorough review of waiver application experiences before proceeding with legislation. This study would present an opportunity to assess what modifications hold the greatest likelihood for improving the waiver process. That exploration could possibly be carried out jointly with NCSL, governors, members of your two subcommittees and the administration. Working together, I am confident bipartisan consensus could be forged.

Although program waivers appear to be an executive branch function, I am constantly reminded by state legislators of their stake in the waiver process. Unfortunately, there is little formal documentation of these experiences. State legislators frequently discuss their state's waiver applications at NCSL's meetings. Often, legislators seek out advice from NCSL and from each

other on how to tailor their waiver applications. Frequently, they ask for other state experiences with certain types of federal waivers and federal agencies. In the 1990s, there has been no shortage of dialogue and NCSL sessions on Medicaid and welfare waivers especially. What has been missing, though, is a systematic study of the waiver process. What we are suggesting is a working group that would direct a study and then use its findings to make recommendations regarding waiver legislation.

Our anecdotal evidence suggests that there are seven underlying principles that should guide adjustments to the waiver process. They are:

1. there should be maximum opportunities to ensure state flexibility to provide program benefits and to deliver program services;
2. governments, whether federal, state or local, should make maximum use of limited resources for actual services and benefits and their delivery;
3. the waiver process should be streamlined to the maximum extent possible;
4. the waiver process should produce productive, collaborative state-federal partnerships;
5. it should keep all parties accountable for their actions;
6. it should discourage duplicative efforts; and
7. it should, most importantly, give program users and beneficiaries the services and funds that policymakers deem critical.

These principles lead us to some more specific preliminary conclusions:

1. Program waivers should be available across as many discretionary and mandatory state-federal programs as possible. Although this might mean operating various waivers under a single program heading, such as with Medicaid, it means that we are investing in state creativity and not in singular solutions to national or regional matters. When Congress authorizes or reauthorizes federal programs, it should recognize, unless absolutely inappropriate or unachievable, the need for program waivers. One way to achieve this is by enacting laws such as this year's Ed-Flex legislation. Another is to do as you have with Medicaid and grant and expand a smorgasbord of waiver possibilities.
2. The waiver process need not be complicated, tedious or drawn out. Some of the modifications state legislators have suggested include:
   a) making waiver applications self-certifying when states comply with all application requirements. Assuming federal and state officials are collaborating from the outset (see below), an application, when submitted, ought to already comport with waiver requirements.
   b) placing time limits on the waiver application review process. Lawmakers are accustomed to dealing with legislative action deadlines. They understand the need to come to closure on issues. They feel that dragging out the review process only frustrates government's capacity to carry out vital programs.

c) to the extent feasible, making waiver application forms uniform across agencies. Additionally, electronic transmission of applications should be encouraged.

3. Waivers granted for one state should be automatically approved for other states whenever they are similar. That is what H.R. 2376 seeks. Perhaps there are circumstances when this should not be the case. However, it seems contradictory and wasteful to have each state essentially go through process-ridden hoops when another state has already obtained approval for the same request.
4. To the extent possible, waiver periods should be uniform and renewal processes ought to be the same across agencies. It seems worth exploring the myriad of conditions for renewals and the different durations available for certain waivers.
5. The waiver process should not be idiosyncratic. Many legislators are convinced that agency decisions about waivers appear almost random, depending in large part on the agency official to whom the request is assigned. We believe strongly that the waiver process should be uniform and that waiver rules should be applied objectively and fairly.
6. On the federal side, intensive participation from regional and state offices is essential. I perhaps hear more about this issue than any other. Lawmakers feel that federal agency representatives in their region or state should be as aware of and sensitive to the unique political and regulatory culture of each state as possible. It is no secret that the states are diverse. Regional officials should offer guidance on waiver requests. I have heard several times that legislators expect federal agency representatives in the field to be advocates for state waiver requests, rather than adversaries or neutral parties.

7. Congressional committees should utilize their oversight function to monitor state experiences with waiver applications. This would potentially broaden the database. It might identify unintended barriers to waiver application approvals. It could serve to clarify exactly what flexibility federal legislation intended to grant state and local governments.
8. Select a new or recently reauthorized state-federal program to serve as the foundation for a study of the waiver process. This study could be conducted by the Office of Management and Budget or the General Accounting Office. It could serve as blueprint for further evaluative activities linked to program waiver processes.

Let me give you just one example a former Colorado state legislator had with a waiver application that summarizes most of my previous points. In the early 1990s, Colorado enacted a pilot welfare reform law that had bipartisan sponsorship, substantial bipartisan legislative approval and the intimate involvement of the governor's office. The legislation's program provisions required several federal waivers from the U.S. Department of Health and Human Services. All of these were ultimately approved. A final component of the legislation, cash out of food stamps, required U.S. Department of Agriculture approval. Colorado had placed all of the tools necessary in place to ensure welfare beneficiaries would get budget and money management training. In the end, it required trips to Washington, D.C. to meet with agency undersecretaries and finally a direct appeal to the President of the United States to get a positive response. I have condensed the particulars of this example, but it represents a lot of needless effort and expense and contradicts the underlying principles I laid out earlier in my testimony.

I do not suggest that states should be exempt from ensuring that their proposals will facilitate the achievement of federally-established objectives. This is not a call to be unaccountable for our actions and for our services. It is a suggestion that we need to strengthen the waiver process by building off of the administration's commitment to an expedited waiver process and the legislative intent found in H.R. 2376. NCSL is fully committed to working with you and the administration to explore and implement changes that will make a difference. We hope that you will give serious consideration to our proposal for a working group to review the waiver process and we look forward to collaborating with you in securing congressional approval of waiver process legislation.

Thank you for this opportunity to appear before you today. I look forward to responding to your questions.

Mr. HORN. Thank you very much. I will now yield to the vice chairman of the National Economic Growth, Natural Resources, and Regulatory Affiars Subcommittee, Mr. Ryan, for 5 minutes of questioning. Then we will go to the minority.

Mr. RYAN. Thank you. Thank you, Mr. Pound and Mr. Scheppach. I apologize if I mispronounced your name.

Mr. SCHEPPACH. That's fine. Scheppach.

Mr. RYAN. Both of you said something that was very interesting, and it seemed to come down to this: that there is discretionary decisionmaking in these agencies. It doesn't matter which agency as much as it matters who you call.

Can you expand on that a little bit? Have States been discouraged by Federal agencies from filing waiver requests, by people at the other end of the telephone in certain agencies? If so, which agencies are doing this kind of thing? Also, have States been asking for quid pro quos, meaning alter the waiver in this way and we will do that? Could you expand on those areas?

Mr. SCHEPPACH. Well, I don't know whether it's agency or program specific. I think the areas where we've had the greatest problems are in Food Stamps and in CHIP, there's been a reluctance there. You know, the word gets around pretty quickly when two or three States submit waivers and they're turned down, and people aren't willing to negotiate. And so the message goes around and the rest of the 47 other States saying, you know, they're not interested in waivers it's not worth our time.

So those program areas tend to be the bigger areas. I think HHS, where the big ones are concerned, is somewhat mixed. They do a very good job on the home and community-based. It's more mixed in the managed care area, and more difficult on the broad demonstrations.

But I'd also concede that those areas where you're talking about fairly major restructuring of programs, where the innovation comes, and they are sometimes restricted by the budget neutrality question. But it does depend on the culture of the agency and the people you're dealing with.

Mr. RYAN. Mr. Pound.

Mr. POUND. I would concur with that. I think that the Food Stamp Program is an area and the Department of Agriculture is an area where there have been problems with that, particularly in some of the experimentation or waiver requests around the broad area of welfare reform. There are I think several instances that we're aware of where the—what we hear is, you pass a bipartisan program in a State legislature that envisions certain experimentation, and that there has been a very difficult time obtaining the waiver, particularly where it relates to some of the Food Stamp aspects, and in one case at least being successful only upon the intervention of the President.

Mr. RYAN. Well, what do you think is the primary reason, if you can? I know this may be difficult to answer, but what would be the primary reason for waiver denial, across the board? What is the driving reason?

Mr. SCHEPPACH. Probably the budget neutrality.

Mr. RYAN. The budget neutrality?

Mr. POUND. Yes.

Mr. RYAN. What about the time line? Have the States estimated on average what the average processing time has been for the Federal agencies to review the State request for a waiver, to get an answer? Do you know the average time for, say, Food Stamps, or waivers from HHS or Labor, Medicaid? Have you calculated that?

Mr. SCHEPPACH. Again, my sense on the demonstrations, the big ones, the average is probably a year or more.

Mr. RYAN. So over the 120-day level——

Mr. SCHEPPACH. Yes.

Mr. RYAN [continuing]. That the Executive order strives to achieve?

Mr. SCHEPPACH. That's right, but again, those are the big ones. I think the long-term care ones probably average less than 30 days, you know, because a lot of those are very, very quick. And managed care is probably 4 to 6 months, in that ball park. Now, Agriculture, I'm not sure, since I'm not sure we've had any approved.

Mr. RYAN. Mr. Pound.

Mr. POUND. I don't know the specifics of that. I would suggest, though, that this is a good reason why the study or the cooperative effort on a program in the future might be built into this legislation, where we would look and see what kind of a model can we develop here and what are the obstacles, working together between Congress, the agencies, the executive and legislative branch and State government. And I would second Mr. Scheppach's remarks about our willingness to actively participate in that.

Mr. RYAN. OK, so let me just go beyond just H.R. 2376. What are some other ideas you think we ought to include in a model, in a waiver-expediting process? What do you think about a statutory deadline for processing a waiver request application from a State, or giving more broad statutory flexibility to more statutory provisions, something like the Ed Flex bill which I am sure you are very familiar with, that process? What do you think of, you know, a provision allowing State certification for financial requirements like maintenance-of-effort, matching funds set-asides, cost caps? Or a requirement requiring quarterly publication, like HUD does, for waiver applications or denials or the status of waiver applications? What do you think of things like that?

Mr. SCHEPPACH. Well, I think a lot of those could be helpful, but again we've got to remember that for the most part those go to discretionary programs, and our major problem continues to be in the entitlement area.

I know it's not under your jurisdiction, but perhaps a package of amendments that comes forward from this committee, that's recommended to the other committees, might well be helpful. Also some guidelines in terms of future legislation, of the areas where waivers make sense and what are some guidelines, so that when new legislation comes forward, people can look to it.

I'd have to argue that well over 80 percent of our problem is in the entitlement area, and again, it's the ability to sort of combine and integrate these programs.

Mr. RYAN. That is very helpful. Thank you.

Mr. HORN. Yes. Thank you. We now yield to the gentleman from New York, Major Owens.

Mr. OWENS. I have no questions, Mr. Chairman.

Mr. HORN. OK. Mrs. Biggert, do you have any? The gentlewoman from Illinois.

Mrs. BIGGERT. Thank you, Mr. Chairman.

Mr. Pound, did you say that you thought that there should be in the law a definite period of time by which waiver requests should be—I guess what I am driving at is that in this, the bill that we have in front of us, it really is that each of the—each agency will establish the rules and regulations. Do you think that there should be uniform rules and regulations across the board for Federal agencies, or that each agency should promulgate its own rules?

Mr. POUND. I think uniformity is desirable. I do think you need a possible safety valve procedure.

Mrs. BIGGERT. Would that be like a model, or would that be an absolute within this law?

Mr. POUND. Well, if you've got a safety valve, it seems to me you have not an absolute but a way for exceptions.

Mrs. BIGGERT. For exceptions. Then what is involved in a waiver. States make a request. Is it a lot of paperwork? Right now, is there applications, or is it a definite way to fill out, or is it just something that each State must decide when they're making that waiver, that they kind of make up their own application?

Mr. POUND. Ray.

Mr. SCHEPPACH. Well, generally there's a procedure and a form, but oftentimes it's an intricate type of thing because you'll submit the form and then you get a list of questions back, and then you've got to answer those questions, and then you get another list of questions, and then you go back and forth for a period of time. And then there'll often be negotiating sessions where a number of people will come in from the State and try to sit down with perhaps people from the regional office as well as people from the agencies here, to see whether they can work it out.

Mrs. BIGGERT. Do you think, then, to maybe try and expedite this would be, one way would be to have an application that would have the questions that would usually come up in a request for a waiver, or is that too hard to do?

Mr. SCHEPPACH. I think it's kind of hard, because the questions come out, I mean, there are legitimate questions with respect to it, and the agencies do provide what information they need. It's just that it gets stretched out because it's an iterative process over a fairly long period of time, and at times I don't know that there's enough incentive to get closure on it, and it's the length of time that tends to be the problem.

Mr. POUND. We could overreach by trying to overstandardize some of this, because there are enough differences in enough things that I think you could——

Mrs. BIGGERT. Well, that was my concern with what you said, Mr. Pound, about having kind of a uniform rules and regulations, that in some respects it appears to be that some of these different areas, some are much more complex than others and much more detailed. That might cause problems with that. I think that's something that we will have to look at.

But looking at the requests for waivers from the different States and looking at Illinois, it doesn't seem like we have made that many requests, actually. I have—in the Department of Agriculture

and in EPA seem to be the most, and most of these have been—well, in the one area have been granted. In another there has been like 7 percent denials, so that doesn't seem to be such a problem, but it doesn't give the amount of time.

Mr. SCHEPPACH. Well, again, you've got to be careful with just looking at the numbers because, as I say, if an agency has turned down seven other States and Illinois wants to do that, they're not going to submit a waiver when the feeling is they're just not going to get it. So it's hard to just look at the actual numbers.

Mrs. BIGGERT. Thank you.

Mr. HORN. The "more questions" routine that you two had a dialog on sort of reminded me of Lucy and Charlie Brown and the football, where an agency just keeps sort of holding it out there that he might kick it this year, and there are just more questions, more questions. And that kind of bureaucracy does not impress me, I must say.

In your testimony, Mr. Scheppach, you discussed the problem of budget neutrality and how multiple year waivers might cause problems with OMB's budget process. Just so we can get a feel as to what reality is in this regard, could you sort of make up an example of how we—one, how it overlaps on the multiple year, and then the Federal year and the State year and all that, and what suggestions you would have to how we could deal with that?

Mr. SCHEPPACH. Well, you know, sometimes what happens is that the State may want to make an investment. Let's assume that they want to make an investment in child care that helps a welfare person get off welfare. Therefore there's an increase in child care but there are savings in TANF in the next 4 years, so there's an offset. I think under the general rules you can't do that kind of thing. In other words, they're looking at a specific program for a specific year.

Or there may be a Medicaid change that may have some savings to Medicare. I mean, we have significant overlap in the so-called dual eligibles for low-income people between Medicare and Medicaid, and those two programs are getting increasingly interwoven. It's possible that whatever policy change at the State level might save the Federal Government money in totality, although it might cost more in Medicaid, and lower the costs in Medicare.

And all I'm suggesting is a little more flexibility on netting all Federal programs, perhaps, and looking at a broader 5-year timeframe as opposed to that 1 year. It's just worthwhile looking at and perhaps experimenting with, because right now a very high percentage of these do get kicked out because of the budget neutrality question, and yet there may be long-run budget savings.

Mr. HORN. Mr. Pound, do you want to add anything to that discussion?

Mr. POUND. No. I would agree with what he said. I think it is a frustration at the—the whole Federal budget process is a frustration at the State level a lot of the time, but——

Mr. HORN. You can add the national to it.

Mr. POUND. I know, but to the extent that you can consider the longer run horizon savings and the tradeoffs in programs, it would only be beneficial to this process.

Mr. HORN. I think you have got a good point there. Let me ask if there are any other points you would like to make, because if there are not, well, we will move to the next panel. Well, the gentlewoman from Illinois.

Mrs. BIGGERT. Thank you. Just from your point of view or from the State's point of view, what are the reasons usually given for a denial of a waiver, or why do you think they are denied?

Mr. SCHEPPACH. Well, as I said, I think the reasons are often the budget neutrality reasons.

Mrs. BIGGERT. Well, I guess the reason I am asking this, do you think that politics get into this at all?

Mr. SCHEPPACH. Not in a big way, in all honesty, from what I've seen.

Mr. POUND. It depends. It relates to the idiosyncratic nature of some of this, I think. I think the answer is sometimes yes, but maybe frequently no.

Mrs. BIGGERT. And with some of these denials, are sometimes a partial waiver given to a State? I mean, is there somewhere that the Federal Government says you can do this but the other part is——

Mr. SCHEPPACH. Yes. I mean, there is negotiation and sometimes there is a partial, and the question is whether the partial works. Sometimes it just doesn't work, so the State says, you know, "I need to integrate the entire thing. If you give me part of it, it doesn't work, so it's not helpful to me."

Mrs. BIGGERT. Thank you.

Thank you, Mr. Chairman.

Mr. HORN. Thank you. Well, unless you have any additional comments you think we ought to ask about and didn't, let us know. If not, on the way back to your offices, feel free to write us a note and we will put it in the record.

Mr. SCHEPPACH. Thank you.

Mr. POUND. Thank you.

Mr. HORN. Thank you for coming, very much.

And so we will now move to the agencies, and that is panel three. Mr. Samuel Chambers, Jr., the Food and Nutrition Service Administrator, is testifying in the absence of Under Secretary for Food, Nutrition and Consumer Services Shirley Robinson Watkins of the Department of Agriculture. Mr. Raymond L. Bramucci, the Assistant Secretary, Employment and Training Administration, Department of Labor. Mr. John J. Callahan, Assistant Secretary, Chief Financial Officer, Department of Health and Human Services.

And gentlemen, if you will, just stand, raise your right hand. If you have any staff back of you that is also going to give you advice, I want them under oath also. Anybody stand up who is going to advise them. OK. One, two, three, four, five, six. That is about the Pentagon ratio.

[Witnesses sworn.]

Mr. HORN. OK, the six supporters and the three principals are fine. I am going to have to turn over now to Mr. Ryan a bit for this, because of other commitments, and Mr. Ryan will be the Chair of the meeting. And I don't know if you want to preside from here or preside from there, whatever you would like.

Mr. RYAN. This is fine.

Mr. HORN. You seem very comfortable there.

So, gentlemen, if we could just proceed then as the agenda is with Mr. Chambers, and just work our way through, we have the statements. We would like you to sort of spread it over between 5 to 8 minutes and get it on the record. It is automatically in the record, but get the high points from it so there is more chance for a dialog by the various members of the committee on both sides.

So with that, I am going to have to leave for another meeting.

Mr. RYAN [presiding]. Why don't we start with Mr. Callahan? I think that is the way we had it on the panel. That is probably the way you expected it, so we will just get started with Mr. Callahan.

STATEMENTS OF JOHN J. CALLAHAN, ASSISTANT SECRETARY AND CHIEF FINANCIAL OFFICER, DEPARTMENT OF HEALTH AND HUMAN SERVICES; SAMUEL CHAMBERS, JR., ADMINISTRATOR, FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE; AND RAYMOND L. BRAMUCCI, ASSISTANT SECRETARY, EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Mr. CALLAHAN. Thank you very much, Congressman Ryan. Congressman Ryan, Chairman Horn, Congresswoman Biggert, Congressman Owens, thank you very much for inviting the Department to testify here today about our review waivers of Federal law and regulations.

We believe the HHS waiver process has been successful in approving nearly 684 waivers in the time of the Clinton administration. These include State-wide research and demonstration Medicaid waivers; 1915(b) Medicaid program waivers; 1915(c) Medicaid waivers; welfare reform waivers; child welfare waivers; refugee assistance waivers; and child support waivers.

Every State in the Union; every State, I repeat, has applied for a waiver and received at least one HCFA and ACF waiver during the current administration. Indeed, I might add as a note, under the Medicaid 1115 State-wide demonstration authority for waivers, which has been in existence since 1960, during the Reagan administration starting in 1980, one State-wide waiver was approved. In 1988 under the Bush administration, during the time he was in office, there were no waivers approved. And there were 20 waivers approved under the current administration.

We believe that the waiver process is one of constructive engagement between Federal and State governments. Our goal at the Federal level is to work with States as partners, emphasize State flexibility, and work with States to develop a smooth implementation process.

Indeed, as part of that effort, as you know, the Department and the National Governors' Association reached agreement in 1994, in a Federal Register notice that is part of my formal testimony. This agreement indicates first that there will be a collaborative effort in the waiver process in order to help States develop research and demonstration waivers in areas consistent with the Department's policy goals; second, the Department will consider proposals that test alternatives that diverge from those policy goals; and finally to

consider a State's ability to implement the research and demonstration project.

The NGA agreement also stated principles related to evaluation, duration of waivers, budget and cost neutrality, and State notice procedures, so that all the constituencies in the State would be aware of the waiver that was being submitted to the Federal Government. This agreement is also contained in my formal testimony.

Prior to the enactment of national welfare reform, HHS used waiver authority broadly to give States flexibility to run their welfare programs. Most welfare reform waivers were approved within 4 months, many within 2 months.

And in 1995 the Administration on Children and Families developed and announced an expedited 30-day review and approval process for waiver proposals that helped States address five major areas of helping welfare recipients become self-sufficient. Copies of this guidance are also included in my testimony.

In HCFA the length of review time differs according to the type of waiver that is requested. Approvals and renewals for program waivers and home- and community-based waivers are time limited. They have to be acted on within 90 days, and our indication is that in these particular waivers—these are 1915(c) waivers, I believe—that they are generally approved within a period of 60 to 75 days.

The longer-term demonstrations which are the complex ones, the State-wide Medicaid demonstration waivers, do take a longer time. Indeed, I have some information, I believe, which has been supplied to me by the HCFA administration, that of 18 States we averaged about 10 months to approve these waivers, and in 7 States they were approved in 6 months or less.

And I might also add, as a point of reference vis-a-vis Mr. Scheppach's testimony, that with regard to budget neutrality, we do not do budget neutrality on a 1-year basis. We do it on the basis of the duration of the demonstration. So in the case of the demonstrations that are forwarded to us from the States, they're generally 5 years in length, so the budget neutrality calculations are for 5 years, not for 1 year. And indeed they're renewed for 3 years: the budget neutrality calculation will continue for the full length of the demonstration. So budget neutrality is not calculated on a year-by-year basis.

Throughout this process, as I have indicated, the administration works cooperatively with a State, and provides technical assistance, urges the State to provide a public notice process to all its citizens, when it submits a waiver request; negotiates budget neutrality, et cetera.

Let me just say that there are a couple of principles that guide our waiver process. Waivers are in fact like contract negotiations. They are not easy, but there is a mutual desire, I believe, on both sides, on the Federal and the State side, to attain a mutual goal of creating program innovation and flexibility.

But we must realize we have to protect program integrity, and oftentimes the entitlement nature of the program. Medicaid is an entitlement as well, as some of the other programs that we're talking about. And we have at the Department a fiduciary and programmatic responsibility to do two things. One is to make sure that the demonstration is fiscally prudent, that is, it fits within the

budget neutrality concept which was agreed by us and NGA; and the other is to ensure that we protect vulnerable populations.

In the Medicaid demonstrations that we have dealt with over the years, we have added 1.1 million new eligibles to the Medicaid population. These are cooperative efforts, again, between the Federal Government and the State. We have also moved 4 million Medicaid beneficiaries to managed care. We believe this is positive, as well.

But we have to be concerned also in the area of managed care, because in some cases people have indicated that individuals, and adults and children with special needs, may not always get the appropriate treatment under managed care. This is something that we have to be very careful about, because if the beneficiaries are Medicaid-eligible, they should receive appropriate care under either a current program or a revised program. So we have to deal with cost neutrality and, at the same time, make sure that the beneficiaries are protected.

So those are the basic concepts that we use in our demonstrations. We feel we do approve them within a reasonable period of time, and we believe that our record indicates, with the 700 waivers we have approved, that we have a process that works and will continue to work over time.

Thank you very much. I would be pleased to answer any questions.

[The prepared statement of Mr. Callahan follows:]

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

Statement by

Dr. John Callahan

Assistant Secretary for Management and Budget

U.S. Department of Health and Human Services

before the

Subcommittee Government Management, Information and Technology
and
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

Committee on Government Reform

September 30, 1999

Chairman McIntosh, Chairman Horn and distinguished members of the Subcommittees, thank you for the opportunity to discuss the process used by the Department of Health and Human Services to consider waivers of Federal law and regulations. We are pleased that your Subcommittees are interested in hearing about how State requests for statutory waivers are reviewed, and thank you for your leadership in advancing effective government.

The waiver of Federal law and regulations has been an important component of this Administration's efforts to ensure both State flexibility and accountability. As you know, the Secretary has the authority in certain circumstances to waive Federal statutory provisions or departmental regulations. This authority allows the Secretary to enable States to experiment and conduct research by demonstrating innovative programs or policies. At the same time, the process enables the Secretary to evaluate the waivers rigorously, while stewarding Federal expenditures through the mechanism of budget neutrality.

The approval of an unprecedented number of waiver requests by this Administration has provided great opportunities for the States to be laboratories for exciting new health and human service ideas. We believe that the lessons learned from these program waivers and research and demonstration waivers have been constructive and we are looking forward to continuing to work with the States to use waiver authority to help them achieve our common program goals. In the Administration for Children and Families (ACF) we have learned that the most effective ways to move welfare recipients into work is to emphasize "work first" approaches in implementing welfare reform. This knowledge helped shape our national perspective on welfare reform. In Medicaid, our extensive experience with waivers on mandatory enrollment in managed care programs led to a change in national policy allowing mandatory enrollment without the need for a waiver. These are just two examples of how State waivers and evaluations have led to changes at the national level.

Although the waiver requests we have granted have had a significant role in shaping our program strategies for addressing the needs of low-income children and families, the process of granting waivers has certain serious responsibilities attached to it. They include ensuring that flexibility and the opportunity to develop new knowledge do not hamper accountability for both program purposes and funding. Cost neutrality is a key concern, as well as acquiring through valid research the means to pinpoint the success or lack of success in approaches. Finally, we must never lose sight of this Department's responsibility to families who depend on our programs for assistance, and on Medicaid for health coverage and who deserve to be protected when they become subject to demonstrations.

Waiver Policy

Use of an effective waiver process is a critical policy tool. The Department has procedures and policies in place to assure waivers are granted efficiently while maintaining the fiscal and programmatic integrity of various programs. It is critical to remember that HHS has a fiduciary and programmatic responsibility to evaluate each waiver separately on its merits. This is important for three reasons. First, Medicaid, child welfare services, and child support enforcement programs are different in each State. It is therefore often difficult to determine the effect that the same or similar policies would have in each State. For example, State's proposals usually have different goals that translate into variations in eligibility definitions,

benefit coverage, service delivery systems and cost. Second, a waiver program that is budget neutral or cost effective in one particular State may not be in another. Therefore, issues of budget neutrality or cost-effectiveness must be resolved separately for each State. Finally, as we noted, our paramount concern is assuring that we focus on each waiver separately to assure we protect all vulnerable populations. Waivers that change benefits or make large programmatic changes must be carefully assessed to assure families and children are protected. Given the range of possibilities in both the specifics of waiver proposals and the circumstances of different States, it is very difficult to make generalizations about existing waivers and important to assess each request individually. Time limits on the review of Section 1115 demonstration waiver requests would adversely affect our ability to maintain the fiscal and programmatic integrity of the Medicaid program by reducing the Secretary's and States' ability to negotiate the details of the waiver request.

Overview of Waivers

The Administration is committed to using the Secretary's waiver authority to:

- Increase State flexibility.
- Test innovative service delivery options.
- Expand health care coverage to populations currently uninsured, within the limits of budget neutrality.

Several sections of the Social Security Act give the Secretary authority to grant waivers of certain statutory provisions in ACF programs and in the Medicaid program. The most commonly used authorities are:

- *Medicaid, Welfare, and Child Support Research and Demonstration Waivers:* Section 1115 of the Social Security Act (SSA) allows approval of experimental, pilot, or demonstration projects to promote the objectives of various programs authorized in the SSA, including Medicaid, the old AFDC program, and the child support enforcement program. These demonstration projects, which are referred to as "research and demonstration waivers," often involve expansions of eligibility, and are therefore subject to strict budget neutrality standards, in which the overall cost to the Federal government must not exceed what would have been spent in the absence of the waivers granted.
- *Child Welfare Waivers:* Section 1130 authorizes the Secretary to approve up to 10 child welfare demonstration projects per year. These projects involve the waiver of provisions of the Title IV-B and Title IV-E child welfare, foster care and adoption assistance programs and related regulations, while preserving the eligibility and procedural protections of the child and family. These projects have cost neutrality provisions and provide for the rigorous evaluation of the project's results. Twenty-five waivers have been granted under this authority since 1994.
- *Refugee Assistance Waivers*: The refugee resettlement waiver authority is found in the regulations at 45 CFR 400.300. States most frequently request a waiver of regulations that limit the use of funding for social services and targeted assistance to refugees, who have

been in the U.S. for less than five years. Seven waivers have been granted under this authority since 1997.

- *Medicaid Program Waivers:* Section 1915(b) of the Social Security Act provides a much more narrow authority than the Section 1115 research and demonstration waivers discussed above. These program waivers allow States to waive statewideness, comparability of services, and beneficiary freedom of choice with respect to Medicaid providers, so long as the projects also meet a test of cost-effectiveness. The cost of Medicaid managed care waiver projects must not exceed the cost of Medicaid fee-for-service.
- *Medicaid Home-and Community-Based Waivers:* Section 1915 (c) of the Social Security Act allows States to request waivers of certain Federal requirements to allow development of home and community-based treatment alternatives to institutional care so long as these alternatives cost no more than it would to provide the same care in an institutional setting.

Process for Waiver Review and Approval

The Administration has made State flexibility a high priority and has worked extensively with States to create agreements on waiver process and procedures. In an attempt to streamline the process and increase State flexibility, the Department and the National Governors Association (NGA) agreed on policies and procedures for reviewing Section 1115 research and demonstration waivers in 1994. The purpose of this agreement was to facilitate review at a time when there was increasing demand to process waiver requests. The agreement encourages States to develop research and demonstration projects. In the *General Considerations* portion of that agreement, the Department and NGA agreed that, "to facilitate the testing of new policy approaches to social problems, the Department will:

- Work with States to develop research and demonstrations in areas consistent with the Department's policy goals;
- Consider proposals that test alternatives that diverge from that policy direction; and
- Consider, as a criterion for approval, a State's ability to implement the research or demonstration project."

This document also laid out principles related to evaluation, duration, cost neutrality, and State notice procedures. Copies of this agreement are appended to my testimony as Tab A.

Our commitment to increasing State flexibility has meant that States have had the authority to test innovative practices in both their Medicaid and ACF programs on a scale never before permitted by any other administration. Because of the broad scope of activities proposed in Section 1115 research and demonstration waivers, each waiver must be carefully reviewed in each agency.

ACF Process

Prior to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), HHS used waiver authority extensively to provide States with flexibility in running their welfare programs. On average, it used to take the Department four months from receipt to approval of a welfare waiver and many requests were approved in two

months. Waivers were required to be cost neutral over the life of the demonstration and an experimental design was used for costs and evaluation.

In 1995, with the goal of shortening the review time, ACF developed and announced an expedited 30-day review and approval process for proposals for waivers that addressed five specified strategies for helping welfare recipients become self-sufficient: 1) work requirements, 2) time limits for those who can work, 3) requirements for minor parents, 4) improving payment of child support, and 5) subsidized employment programs. Several States applied under this process. However, applicant States typically sought approval of a wide array of provisions extending beyond those that could not be handled under the expedited process effect on time. Extending expedited review beyond these five areas would have been detrimental to maintaining the fiscal and programmatic integrity of the program. After States implemented Temporary Assistance for Needy Families (TANF), there was less of a need for welfare waivers due to the vast flexibility provided in the welfare reform legislation. Copies of the expedited guidance are appended to my testimony as Tab B.

For both welfare reform and child support waivers, the ACF process includes:

- technical assistance prior to formal submission
- provision for adequate State public notice of pending waiver requests
- review of applications by analysts focusing on costs and programmatic impact
- comments consolidated into State issue papers including discussion of cost neutrality
- negotiation of issues and provisions
- issuance of approvals/denials

The process for child welfare waivers is similar to the welfare reform process. However, as reflected in the statute's limitation on the number of projects that may be approved (ten per year) and the strict requirements in the law about the need for designs that assure cost neutrality and a rigorous evaluation of effectiveness, they are very focused on learning about new cost-effective approaches that contribute to the improvement of child welfare services. For this reason, the process includes a preference for policies and service program alternatives that differ from other demonstration projects. Additionally, priorities identified in the statute, such as kinship care, overcoming barriers to adoption and addressing parental substance abuse, as well as other major issues in the field, are identified in the announcements for the demonstrations. Approvals generally take about four months.

In the case of refugee resettlement waivers, ACF's Office of Refugee Resettlement is responsible for the review process. All such waiver requests are reviewed to determine whether the waiver will advance the primary goal of the refugee program, which is to achieve economic self-sufficiency and social adjustment within the shortest possible time after arrival. In most instances, a decision to approve or disapprove is made within 60 days of receipt of the request.

HCFA Process

In HCFA, the review process differs depending on the type of waiver requested. Approvals and renewals for Section 1915 program and home and community-based waivers are time-limited. Section 1915(f) of the SSA specifies time limits for approving these waivers. The Secretary must either deny the waiver request or ask for additional information within 90

days of the date of the State's submission of a waiver application. During this time frame, a review team must review the details of the waivers requested, and provide feedback and follow-up questions to the State. When these questions are sent to the State, the 90-day clock stops. Upon receipt of the additional information, the clock restarts, terms and conditions are negotiated, and a waiver is deemed granted on the 90th day, unless the Secretary denies the waiver request before the 90th day.

Both types of waivers contain statutory cost effectiveness requirements. Program waivers must demonstrate that the cost of the care system proposed under the program waiver does not exceed what Medicaid costs (combined State and Federal) would have been in the absence of the waiver. These waivers are approved for two years and may be renewed for subsequent two-year periods. Under home and community-based waivers, the cost of the care provided in the community must not exceed the cost of caring for the same beneficiary in an institutional setting.

Section 1115 Demonstration waivers are generally granted for five years and may be extended for an additional three years. Approval time has varied from three months to two years. As with ACF research and demonstration waivers, various groups within the Administration work as a team to evaluate research and demonstration proposals. There is not a 90-day review clock for the research and demonstration waiver proposals, but the review process is similar to the Section 1915, process in that a Departmental team reviews the proposal, initiates discussions with the State, and follows many of the steps discussed above. The Administration and the NGA agreed that there would be a cost neutrality component to Section 1115 research and demonstration projects in the 1994 agreement. This means that the financing for health care reform demonstrations under Section 1115 is calculated by comparing the Federal cost under the demonstration to what Federal costs would have been had there been no demonstration. This requires establishing a base year of costs (usually the last pre-demonstration year) and agreeing to a projection methodology to estimate how much costs will increase over the duration of the project. However for research and demonstration waivers budget neutrality establishes a cap on Federal expenditures, whereas in 1915(b) waivers, the test is whether, in the Secretary's estimation, the managed care program will save money.

Overall Review Process

Research and demonstration waiver requests often raise complex issues that require time and attention to evaluate fully. While the goal of waiver requests is to try different approaches to program administration, all of this must be done in the context of our need to protect vulnerable families while meeting our fiduciary responsibilities. The complexity of many welfare reform research and demonstration waiver proposals is a case in point. Some of these proposals contained extraordinary policy, legal, or program evaluation issues and took long periods of time to resolve. As I have noted, even in the case of the expedited review process for AFDC waivers that was announced in 1995, many provisions in the packages of reforms proposed by the States fell outside of those covered by the 30-day approval time frame making the process of limited use.

We have upheld the President's commitment to expeditious review of Medicaid and ACF-related proposals. However, new policy initiatives may require development of new

decision criteria to evaluate the proposal. For example, as you know, there has been heightened concern in the Administration -- concern which we know is shared in the Congress and in the advocacy community -- about children with special health care needs in capitated, managed care programs. Policy concerns such as these can delay approvals or renewals of State programs, as we review the plans to ensure that vulnerable populations are protected. Finally, our two decades of experience with managed care waivers has made the Department better able to work with States to ensure that they are aware of contract requirements for managed care organizations or necessary protections for special needs populations.

Furthermore, we have taken steps to expedite our existing processes. In 1995, HCFA published the *Proposal Guide for Section 1115 State Health Care Reform Demonstrations* to inform States of guidelines for approval of Section 1115 research and demonstration proposals. In addition, this year, we also revised our pre-print application for 1915 (b) program waivers with the hope of speeding the approval process. The 1915 (c) home and community-based waiver application was also revised at this time. In conjunction with the revisions to the pre-print application, we also convened a conference with State agency representatives to familiarize them with the new application. A copy of this guide is appended as Tab C.

Summary of Waivers Granted

ACF Waivers Pre-Welfare Reform

Prior to passage of the 1996 welfare reform law, HHS worked with almost all States to help them reform their welfare systems through the Section 1115 waiver process. Since the beginning of the Clinton Administration, we have approved 78 welfare reform demonstrations in 43 States. The details of each waiver were unique but major themes across these demonstrations included:

- Linking Personal Responsibility to Benefits - Demonstrations in Michigan, Oregon, Utah and other States included changes to the exemption criteria for the 1988 Family Support Act's Job Opportunities and Basic Skills Training (JOBS) program -- most often requiring more recipients to engage in work activities. A number of demonstrations such as those in Delaware, New Hampshire and Virginia included changes in the sanctioning rules. Additionally, Georgia, Indiana, Maryland, Ohio and other States sought authority to link benefit receipt to personal responsibility in additional areas such as school attendance for dependent children, receipt of appropriate immunizations or health screenings for young children and strengthened requirements for cooperation with child support enforcement. Many of the demonstrations in this category--over 20--were aimed at strengthening child support enforcement.
- Making Work Pay - A very common approach in many State efforts, including such States as Connecticut, Illinois, Minnesota, and Vermont, was to increase the amount of income an individual can earn and still retain some welfare benefit. In addition, State demonstration projects increased the resource/asset limits for welfare families and included waivers that increased vehicle asset limits, allowing families to own reliable automobiles to use for work and other family needs. A number of these demonstrations included extensions or expansions of transitional Medicaid and child care benefits.
- Time Limits - To promote personal responsibility, waivers allowing for various time limits

on the receipt of cash assistance were approved in 23 of the welfare reform demonstration projects such as in Connecticut, Florida, and Virginia.

ACF Post-PRWORA

After enactment of welfare reform, only a small number of pending welfare waivers of limited scope were granted under the provisions of Section 415. The 1996 statute broadened States' flexibility so that most States did not require waivers for their programs. The waivers that were granted gave States greater flexibility in assuring that families obtain needed medical assistance and in simplifying the administrative burden of providing medical assistance to qualified low-income families. They also included a waiver to allow passing through child support collections to welfare families.

The child support waivers that continue to be granted under Section 1115 cover such areas as waiving the application and fee for non-welfare cases in order to expedite services; a fatherhood project to help fathers increase their incomes and child support compliance; and a project to test several initiatives such as evaluating paternity acknowledgment practices. Four waivers, in addition to the child support related waivers in welfare reform, have been granted under this authority.

Child welfare waiver demonstration projects test a wide range of new approaches to the delivery of child welfare services that will provide valuable knowledge to improve the delivery and effectiveness of services to vulnerable children and families. Key requirements of the demonstrations are that they may not waive legal protections for children in foster care and their families and that they may not impair a child or family's eligibility for benefits under Title IV-E. The projects must also be cost-neutral to the Federal government and must provide for an evaluation by an independent contractor, using a scientifically rigorous evaluation design, such as random assignment. These waivers are generally processed within four months.

The waivers provide States with greater flexibility to use Title IV-E funds for services that can facilitate safety and permanence for children. They are intended to further the purpose of parts B and E of Title IV to achieve positive results such as: assuring the safety and protection of children; enhancing and enriching child development; providing permanency for children; strengthening family functioning and averting family crises; providing early intervention to avoid out-of-home placement; reducing the time that children are separated from their families; speeding the process by which children unable to return home are adopted; or preparing young people in foster care for independent living. Among the projects approved to-date are capitated payment models, in which an array of services is provided under a fixed-price arrangement and system reform projects. Other projects are focused on increasing adoptions; developing assisted guardianship models that enable kin to become legal guardians for children in their care; addressing the needs of parents with substance abuse problems; and providing more intensive service options to special populations to prevent foster care placements.

Medicaid Program Waivers, Home and Community-Based Waivers, and Research and Demonstration Waivers

Since the beginning of the Clinton Administration, DHHS has approved almost 300 program waivers under Section 1915(b) (new programs, renewals, and modifications), and over 20 research and demonstration project waivers under Section 1115 authority. In addition, over 240 home and community-based waivers (Sec.1915 (c)) are in operation.

Section 1915 (b) Program Waivers

Under freedom-of-choice waivers, States can establish primary care case management programs, require Medicaid beneficiaries to choose among managed care plans, and selectively contract with hospitals, nursing facilities, or other providers. States use this flexibility to target managed care systems to their high-risk populations and to purchase services in a cost-effective manner. States are taking full advantage of the flexibility to design managed care programs for their Medicaid populations. Approximately 300 freedom-of-choice programs are up and running in almost every State.

States have also developed managed care programs to target a number of specific priorities. For example, the Kansas Primary Care Network (PCN), which was established in 1984, was one of the first managed care programs to provide physician case management to beneficiaries. Under this program, the State assigns each Medicaid beneficiary in the seven most populous counties to a physician case manager. The case manager is responsible for managing all of the recipient's health care. Over 30 percent of the State's Medicaid eligibles are now enrolled in this PCN program. State assessments have shown the program to be cost effective as well as providing better access to services for the participating Medicaid beneficiaries.

Section 1915(c) Home and Community Based Services Waivers

Home and community based services waivers give States the ability to establish home and community based care programs that provide services to beneficiaries in the community setting rather than in nursing homes and hospitals. Home and community based services programs allow States to manage care provided to the elderly and disabled populations in an efficient manner while increasing the consumer's satisfaction with the services provided.

States have made extensive use of this authority as well. Over 240 programs are now operating. Every State is currently serving developmentally disabled and aged individuals under a home and community based services program. States are also serving people with HIV/AIDS, those with traumatic head injury, and medically fragile children. The Administration is justifiably proud of its record in encouraging States to move people from institutions into appropriate community settings.

Service Delivery and Financing Demonstrations

Medicaid's research and demonstration authority, Section 1115 of the Social Security Act, gives States much broader opportunities to develop and test new and innovative ideas. States can use this authority to develop sub-state and statewide demonstrations of new approaches to health care financing and delivery.

This Administration has approved over 20 statewide Section 1115 Medicaid demonstrations, and several more sub-state demonstration projects. Several additional States have submitted proposals that are currently being reviewed. This Administration has approved

more statewide demonstrations than any previous Administration. We have actively encouraged States to develop innovative reform demonstrations including managed care approaches working with the private sector and public health providers.

For example, Hawaii QUEST creates a public purchasing pool that arranges for health care through capitated managed care plans. The Hawaii QUEST program provides seamless coverage to people previously covered through Federal and State programs and the uninsured by building on the State's unique exemption to the Employee Retirement Income Security Act (ERISA) granted by Congress in 1983. The Medicaid income eligibility level has been expanded to 300 percent of the Federal Poverty Level and categorical requirements were eliminated. The proposal was submitted on April 19, 1993 and approved on July 16, 1993. The program was implemented on August 1, 1994.

A second example is Vermont. The Vermont Health Access Plan expands eligibility to uninsured Vermonters with incomes under 150 percent of the Federal Poverty Level, implements a managed care system, and extends a prescription drug benefit to the State's lower-income Medicare beneficiaries. Approximately 90,000 individuals, including 26,000 previously uninsured, will be covered. The proposal was submitted on February 24, 1995 and approved on July 28, 1995. The program was implemented on January 1, 1996.

In addition, the Administration has approved smaller, more targeted Section 1115 demonstrations. Some of these demonstrations provide preventive services to children, test extended family planning services, and establish alternative delivery systems.

Conclusion

The Department of Health and Human Services is committed to the waiver process and to allowing States to improve programs through research and state flexibility with appropriate accountability to the taxpayer and safeguards for affected families and children. I know we all agree that waivers are an important part of our policy development process and provide wonderful opportunities for States to help their citizens in innovative ways. Both the Clinton Administration in general, and HHS in particular, are committed to working with States to develop programs that work. Our critical job is to assure that waivers can expand and change programs constructively while maintaining protective safeguards to assure that families and children are suitably supported while States explore various policy options.

Thank you. I would be pleased to answer any questions you may have.

TAB A

[Federal Register: September 27, 1994]

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of the Secretary
Health Care Financing Administration
Administration for Children and Families
[ORD-069-N]

Medicaid Program; Demonstration Proposals Pursuant to Section 1115(a) of the Social Security Act; Policies and Procedures

AGENCIES: Office of the Secretary, Health Care Financing Administration (HCFA), and Administration for Children and Families (ACF), HHS.

ACTION: Public Notice.

SUMMARY: This public notice informs interested parties of (1) the principles the Department of Health and Human Services ordinarily will consider when deciding whether to exercise its discretion to approve or disapprove demonstration projects under the authority in Section 1115(a) of the Social Security Act, 42 U.S.C. Sec. 1315(a); (2) the kinds of procedures the Department would expect States to employ in involving the public in the development of proposed demonstration projects under Section 1115; and (3) the procedures the Department ordinarily will follow in reviewing demonstration proposals. The principles and procedures described in this public notice are being provided for the information of interested parties, and are not legally binding on the Department of Health and Human Services. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

FOR FURTHER INFORMATION CONTACT: Howard Rolston, Administration for Children and Families, Department of Health and Human Services, at (202) 401-9220.
Thomas Kickham, Health Care Financing Administration, Department of Health and Human Services, at (410) 966-6503.

SUPPLEMENTARY INFORMATION:

I. Introduction

Demonstration Proposals Pursuant to Section 1115 of the Social Security Act--General Policies and Procedures

Under Section 1115, the Department of Health and Human Services is given latitude, subject to the requirements of the Social Security Act, to consider and approve research and demonstration proposals with a broad range of policy objectives. The Department desires to facilitate the testing of new policy approaches to social problems. Such demonstrations can provide valuable knowledge that will help lead to improvements in achieving the purposes of the Act. The Department also is committed to both a thorough and an expeditious review of State requests to conduct such demonstrations.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. In order to ensure a sound, expeditious and open decision-making process, the Department will be guided by the policies and procedures described in this statement in accepting and reviewing proposals submitted pursuant to section 1115.

II. General Considerations

To facilitate the testing of new policy approaches to social problems the Department will--

<bullet> Work with States to develop research and demonstrations in areas consistent with the Department's policy goals;

<bullet> Consider proposals that test alternatives that diverge from that policy direction; and

<bullet> Consider, as a criterion for approval, a State's ability to implement the research or demonstration project.

While the Department expects to review and accept a range of proposals, it may disapprove or limit proposals on policy grounds or because the proposal creates potential constitutional problems or violations of civil rights laws or equal protection requirements. The Department seeks proposals which preserve and enhance beneficiary access to quality services. Within this overall policy framework, the Department is prepared to--

<bullet> Grant waivers to test the same or related policy innovations in multiple States, (replication is a valid mechanism by which the effectiveness of policy changes can be assessed);

<bullet> Approve demonstration projects ranging in scale from reasonably small to state-wide or multi-state, and

<bullet> Consider joint Medicare-Medicaid demonstrations, such as those granted in the Program for All-Inclusive Care for the Elderly (PACE) and Social Health Maintenance Organization (SHMO) demonstrations, and Aid to Families with Dependent Children (AFDC)-Medicaid waivers.

III. Duration

The complex range of policy issues, design methodologies, and unanticipated events inherent in any research or demonstration makes it very difficult to establish a single Department policy on the duration of 1115 waivers. However, the Department is committed, through negotiations with State applicants, to--

<bullet> Approve waivers of at least sufficient duration to give new policy approaches a fair test. The duration of waiver approval should be congruent with the magnitude and complexity of the project (for example, large-scale statewide reform programs will typically require waivers of five years);

<bullet> Provide reasonable time for the preparation of meaningful evaluation results prior to the conclusion of the demonstration; and

<bullet> Recognize that new approaches often involve considerable start-up time and allowance for implementation delays.

The Department is also committed, when successful demonstrations provide an appropriate basis, to working with State governments to seek permanent statutory changes incorporating those results. In such cases, consideration will be given to a reasonable extension of existing waivers.

IV. Evaluation

As with the duration of waivers, the complex range of policy issues, design methodologies, and unanticipated events also makes it very difficult to establish a single Department policy on evaluation. This Department is committed to a policy of meaningful evaluations using a broad range of appropriate evaluation strategies (including true experimental, quasi- experimental, and qualitative designs) and will be flexible and project-specific in the application of evaluation techniques. This policy will be most evident with health care waivers. Within-site randomized design is the preferred approach for most AFDC waivers. The Department will consider alternative evaluation designs when such designs are methodologically comparable. The Department is also eager to ensure that the evaluation process be as unintrusive as possible to the beneficiaries in terms of implementing and operating the policy approach to be demonstrated, while ensuring that critical lessons are learned from the demonstration.

V. Cost Neutrality

The Department's fiduciary obligations in a period of extreme budgetary stringency require maintenance of the principle of cost neutrality, but the Department believes it should be possible to apply that principle flexibly.

<bullet> The Department will assess cost neutrality over the life of a demonstration project, not on a year-by-year basis, since many demonstrations involve making ``up-front'' investments in order to achieve out-year savings.

<bullet> The Department recognizes the difficulty of making appropriate baseline projections of Medicaid expenditures, and is open to development of a new methodology in that regard.

<bullet> In assessing budget neutrality, the Department will not rule out consideration of other cost neutral arrangements proposed by States.

<bullet> States may be required to conform, within a reasonable period of time, relevant aspects of their demonstrations to the terms of national health care reform legislation, including global budgeting requirements, and to the terms of national welfare reform legislation.

VI. Timeliness and Administrative Complexity

The Department is committed to minimizing the administrative burden on the States and to reducing the processing time for waiver requests. In order to accomplish this the Department has adopted a number of procedures, including--

<bullet> Expanding pre-application consultation with States;

<bullet> Setting, and sharing with applicants, a well-defined schedule for each application, with established target dates for processing and reaching a decision on the application;

<bullet> Maintaining, to the extent feasible, a policy of one consolidated request for further information;

<bullet> Sharing proposed terms and conditions with applicants before making final decisions;

<bullet> Establishing concurrent, rather than sequential, review of waivers by all relevant units of the Department and with other relevant Departments and the Office of Management and Budget;

<bullet> Expanding technical assistance activities to the States; and

<bullet> Developing multi-state waiver solicitations in areas of priority concern, including integrated long-term care system development, services for adolescents, and services in rural areas.

The Department will continue to follow and develop procedures, and commit internal resources to reviewing demonstration proposals, necessary for a sound and expeditious review process.

VII. State Notice Procedures

The Department recognizes that people who may be affected by a demonstration project have a legitimate interest in learning about proposed projects and having input into the decision-making process prior to the time a proposal is submitted to the Department. A process that facilitates public involvement and input promotes sound decision-making.

There are many ways that States can provide for such input. In order to allow for public input into the proposals, the Department expects States to ordinarily follow one (or more if the State desires) of the processes described in this section.

1. At any time prior to submitting a section 1115 demonstration proposal to the Department of Health and Human Services, a State may provide to the Department a written description of the process the State will use for receipt of public input into the proposal prior to its submission to the Department.

Within 15 days of receipt of such description, the Department will notify the State whether the described process provides adequate opportunity for public input. The Department will accept any process that--

<bullet> Includes the holding of one or more public hearings, at which the most recent working proposal is described and made available to the public, and time is provided during which comments can be

received; or

<bullet> Uses a commission or other similar process, where meetings are open to members of the public, in the development of the proposal; or

<bullet> Results from enactment of a proposal by the State legislature prior to submission of the demonstration proposal, where the outline of such proposal is contained in the legislative enactment; or

<bullet> Provides for formal notice and comment in accordance with the State's administrative procedure act; provided that such notice must be given at least 30 days prior to submission; or

<bullet> Includes notice of the intent to submit a demonstration proposal in newspapers of general circulation, and provides a mechanism for receiving a copy of the working proposal and an opportunity, which shall not be less than 30 days, to comment on the proposal; or,

<bullet> Includes any other similar process for public input that would afford an interested party the opportunity to learn about the contents of the proposal, and to comment on its contents.

The State shall include in the demonstration proposal it submits to the Department a statement (a narrative of several sentences) briefly describing the process that it followed in implementing the process previously presented to the Department. The Department may find a proposal incomplete if the process has not been followed.

2. A State that has not followed the procedures described in paragraph 1. must submit a description of the process that was used in the State to obtain public input, at the time it submits its demonstration proposal. The Department will notify the State if the process was adequate within 15 days after the application is submitted, applying the same criteria as in paragraph 1. If the process was not adequate, the State can cure the inadequacy by--

Posting a notice in the newspaper of widest circulation in each city with a population of 100,000 or more, or in the newspaper of widest circulation in the State if there is no city with a population of 100,000, indicating that a demonstration proposal has been submitted. Such notice shall describe the major elements of the proposed demonstration and any changes in benefits, payments, eligibility, responsibilities, or provider selection requested in the proposal. The notice shall indicate how interested persons can obtain copies of the proposal and shall specify that written comments will be accepted by the State for a period of thirty days. If a State follows such a procedure, the State should respond to requests for copies of the proposal within seven days. The State should maintain a record of all comments received through this process.

All HHS commitments with respect to times for responding to demonstration proposals shall be tolled until this process is completed.

VIII. Federal Notice

The Department of Health and Human Services intends to publish a monthly notice in the Federal Register of all new and pending proposals submitted pursuant to section 1115. The notice will indicate that the Department accepts written comments regarding all demonstration project proposals.

The Department will maintain a list of organizations that have requested notice that a demonstration proposal has been received and will notify such organizations when a proposal is received.

IX. Comments

The Department will not approve or disapprove a proposal for at least 30 days after the proposal has been received, in order to receive and consider comments. The Department will attempt, if feasible, to acknowledge receipt of all comments, but the Department will not provide written responses to comments.

X. Findings

The Department will prepare a decision memorandum at the time a

demonstration proposal is granted or denied, discussing why the Department granted or denied the proposal and how an approved demonstration meets the criteria established by statute.

XI. Administrative Record

The Department will maintain an administrative record which will generally consist of: the formal demonstration application from the State; issue papers sent to the State and State responses; public and Congressional comments sent to the Department and any Department responses; the Department's decision memorandum regarding the granting or denial of a proposal; and the final terms and conditions, and waivers, sent to the State and the State acceptance of them.

XII. Sub-state Demonstrations

When a demonstration is to be implemented in only part of a State, the State will be required to provide information on the likely demographic composition of populations subject to and not subject to the demonstration in the State. When relevant, the Department will require that the evaluation component of a project address the impact of the project on particular subgroups of the population.

XIII. Implementation Reviews

As part of the terms and conditions of any demonstration proposal that is granted, the Department may require periodic evaluations of how the project is being implemented. The Department will review, and when appropriate investigate, documented complaints that a State is failing to comply with requirements specified in the terms and conditions and implementing waivers of any approved demonstration.

XIV. Legal Effect

This notice is intended to inform the public and the States regarding procedures the Department ordinarily will follow in exercising the Secretary's discretionary authority with respect to State demonstration proposals under section 1115. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations and Experiments.)

Dated: September 16, 1994.
Bruce C. Vladeck,
Administrator, Health Care Financing Administration.
Dated: September 16, 1994.
Mary Jo Bane,
Assistant Secretary for Children and Families.
Dated: September 19, 1994.
Donna E. Shalala,
Secretary.
[FR Doc. 94-23960 Filed 9-26-94; 8:45 am]
BILLING CODE 4120-01-P

TAB B

and some supplemental provisions in these orders.

In addition, many consumer protection federal court orders simply prohibit violations of Commission trade regulation rules (*e.g.*, Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 CFR 436) or statutes otehr than the FTCA enforced by the Commission (*e.g.*, Equal Credit Opportunity Act, 15 U.S.C. 1691). The core provisions in such orders are presumptively valid beyond twenty years in that they require adherence to regulations and statutes that are already binding on the defendants as well as their competitors. Moreover, many of these order do not contain supplemental provisions other than those that, as a matter of Commission policy, normally terminate after up to ten years. Therefore, there is no compelling reason to sunset such orders.

Finally, most competition and some consumer protection federal court orders simply prohibit violations of Commission administrative orders. These federal court orders will cease to have any effect once the underlying administrative orders are terminated pursuant to this Policy Statement. Therefore, there is no compelling reason to sunset these federal court orders.

By direction of the Commission.

Issued: August 7, 1995

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga Concerning Revised Statement of Policy On Duration of Commission Orders

August 1995.

The Commission today has approved a revised statement issued in July, 1994, that applied only perspectively and did not apply to consumer protection orders. In 1994, when the Commission issued its statement, I wrote separately to say that the Commission should apply a sunset policy to all its administrative orders, both consumer protection and competition orders and existing and future orders. I also expressed the view that the Commission need not issue individual orders modifying or vacating existing orders but easily could accomplish the same goal through publication of an appropriate notice in the **Federla Register**. I am gratified that today's statement is fully consistent with myv laws of a year ago and now. I am pleased to join the Commission in its current decision.

[FR Doc. 95-20144 Filed 8-15-95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Aid to Families With Dependent Children Program: Demonstration Projects Under Section 1115(a) of the Social Security Act

AGENCIES: Office of the Secretary; Administration for Children and Families (ACF), HHS.

ACTION: Public Notice.

SUMMARY: This public notice invites States to submit demonstration project applications under section 1115(a) of the Social Security Act to test welfare reform strategies in various areas. It further advises that the Department would commit to approving applications that comply with the demonstration components within 30 days of receipt.

FOR FURTHER INFORMATION CONTACT: Howard Rolston, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, 7th Floor, West Wing, Washington, DC 20447, (202) 401-9220.

SUPPLEMENTARY INFORMATION:

I. General

Under Section 1115, the Department of Health and Human Services (HHS) is given latitude, subject to the requirements of the Social Security Act, to consider and approve demonstration proposals that are likely to assist in promoting the objectives of titles IV-A and B and XIX of the Act. The Department believes that State experimentation provides valuable knowledge that will help lead to improvements in achieving the purposes of the Act. Since January 1993, HHS has approved 33 welfare reform demonstration projects testing a broad range of strategies designed to promote the objectives of title IV.

The Department has reviewed the provisions of these projects, as well as those of prior projects, data from completed and continuing projects, other literature evaluating the welfare system, and the welfare reform proposals being considered by Congress. Based on this review, and our commitment to transform the Aid to Families With Dependent Children system into one that provides maximum opportunities and incentives for families to achieve financial independence, we have identified five strategies for improving the efficacy of the welfare system in helping recipients become self-sufficient for which we believe additional experimentation would be especially useful. We have concluded that demonstrations testing these strategies are likely to provide important new information on ways to accomplish the objectives of the Social Security Act more effectively and efficiently. This information can guide the development of both national and state policy.

These strategies are: (1) Work requirements, including limited exemptions from such requirements; (2) time-limited assistance for those who can work; (3) improving payment of child support by requiring work for those owing support; (4) requirements for minor mothers to live at home and stay in school; and (5) public-private partnerships under which AFDC grants are diverted to private employers to develop jobs and training programs. These areas, and approvable demonstration project provisions, are discussed in detail in section II below.

To date, the Department has approved a number of demonstration projects including components using one or more of these strategies. We have reviewed comments submitted regarding each of these strategies. Our overall judgment is that testing additional demonstrations in each of these areas would likely promote financial security for dependent children within a stable family and, thus, further the objectives of the Social Security Act. (Specific rationales justifying demonstrations in each policy area are set out in section II.) Moreover, in view of every state's unique circumstances, the Department believes that it is critically important that each state be given the opportunity to test combination(s) of these strategies that are designed to address the needs of the recipients in that state.

Accordingly, we plan to approve within 30 days of receipt demonstration project applications that States submit which would implement, on a statewide or substate basis, any (or any combination) of the provisions discussed in section II. Further, because such projects may incorporate only the provisions already announced in this notice, which have been found by the Secretary to further the objectives of the Social Security Act, the Department will not apply its "Federal Notice" procedures generally applicable to demonstration projects. 59 Fed. Reg. 49250 (1994). Other policies and procedures stated in that notice remain applicable, including state public notice requirements, rigorous evaluation, and cost neutrality, except that the application and review process with

respect to the latter two requirements will be modified to facilitate the faster process.

II. Demonstration Project Areas and Techniques

A. Requiring People on Welfare to Work and Providing Adequate Child Care to Permit Them To Do It

Since Congress enacted the JOBS program in 1988, a central goal of the AFDC program has been to move recipients into the labor force, while ensuring that their children receive necessary child care while their parents are in activities that promote self-sufficiency. There is a mounting body of evidence that mandatory activities involving a connection with the work force can lead to substantial increases in employment and earnings among welfare recipients. Studies of various welfare-to-work approaches, conducted over the past decade in different parts of the country subject to different labor market conditions, have consistently shown significant gains in earnings. In the most recent results, from three sites in the Department's JOBS Evaluation, an approach emphasizing job search, work activity, and short-term employment-focused training yielded a 23-percent increase in overall employment and a 22-percent reduction in AFDC expenditures at the two-year point, and a 39-percent increase in employment with earnings equivalent to at least $10,000 per year.

Although much is known in general about the effectiveness of such programs, more study is needed concerning what works and which approaches are most effective for which individuals. Therefore, we are inviting demonstrations that test the effects of requiring recipients to work in subsidized or unsubsidized jobs, to perform community service, or to engage in rigorous job search and job preparation. States can narrow the categories of recipients that are exempt from work requirements. They also can test the effects of progressively increasing the sanctions for non-compliance, so that work requirements have more teeth. To protect children, states must ensure that child care is available for those who are being required to work.

B. Setting Time Limits for Welfare Receipt, to be Followed by Work

Most of the people who enter the welfare system do not stay on AFDC for many consecutive years. Two out of three persons who enter the welfare system leave within two years and fewer than one in ten spends five consecutive years on AFDC. Most recipients use the AFDC program not as a permanent alternative to work, but as temporary assistance during times of economic difficulty.

While persons who remain on AFDC for long periods represent only a modest percentage of all people who ever enter the system, they do represent a high proportion of those on welfare at any given time. Finding ways of helping these persons become self-sufficient is extremely important in promoting their well-being and that of their children. Although many face serious barriers to employment, others are able to work but are not moving in the direction of self-sufficiency.

Many analysts believe that time-limited benefits would help to move employable welfare recipients toward work and away from reliance on welfare. There is not a large body of research in this area. Several states have begun demonstrations of various forms of time limits. More study is needed in order to know the effects of time limits.

For this reason, we are inviting demonstrations that test the effects of systems of individualized time limits, systems of time limits followed by work, preferably in the private sector, in subsidized work or community service if necessary, and systems of straight time limits, with exemptions from the time limit for those who, despite good faith efforts, are unable to work or find a job. Consistent with the objectives of the Act, demonstrations must protect families where the adult, through no fault of her or his own, is unable to find employment.

C. Requiring Fathers to Pay Child Support or go to Work to Pay Off What They Owe

There is substantial evidence that many custodial parents now receiving AFDC would not need this support if they received child support from the non-custodial parent. One of the primary reasons for non-support by some non-custodial parents, especially never-married fathers, is unemployment and underemployment. Many of these fathers need both assistance and incentives to obtain employment and pay support. Without work requirements, job readiness assistance, job training, and community service, it will be difficult for many of these fathers to contribute very much to the financial support of their children.

The available program evaluation research focusing on non-custodial parents indicates that a number of programs show promise in assisting these fathers to support their children. The Parents' Fair Share (PFS) demonstration programs have developed effective procedures to identify eligible non-custodial parents and have established court-based processes to require fathers to participate in work-based program activities and to enforce regular participation. Preliminary data from PFS shows that the work and training requirements provide states a promising mechanism to discover previously unreported income of non-paying, non-custodial parents. Also, in the PFS sites, as well as in other non-custodial parent demonstration programs, title IV-D agencies have developed flexible and responsive child support enforcement systems to complement non-custodial parent work and training requirements.

Further testing of these requirements will assist us in determining whether this approach will result in increased child support payments and will enhance non-custodial parents' overall support of their children. To build on the knowledge base being developed through PFS and similar demonstrations, we are inviting demonstrations that require unemployed or underemployed non-custodial parents who owe child support to work or participate in work experience, community service, or job preparation activities.

D. Requiring Minor Mothers to Live at Home and Stay in School

It has become increasingly important to obtain at least a high school diploma in order to obtain employment and become self-sufficient. Moreover, a high school diploma may be essential to achieve a decent standard of living.

A study of teenage childbearing in the 1980's found that in 1986 only 56 percent of women in their twenties who had given birth at age 17 or younger had completed high school, compared with over 90 percent of those who delayed childbearing until after their teenage years. Little has changed since then. While we are beginning to obtain more knowledge of the types of programs that are successful in encouraging and helping minor mothers finish high school, we need to know considerably more about what works. Therefore, demonstrations testing ways of helping minor parents complete schooling are extremely important.

Congress already has recognized that one means of helping minor parents complete school and meet the needs of their children is to have these young parents live with their own families. States now have the option of requiring minor parents to live at home, provided that this is a safe environment for them. To facilitate these arrangements, and to

ensure that AFDC benefits are spent in a manner that achieves the goals of the Social Security Act, a number of states are experimenting with programs that direct the AFDC payment to the responsible adult, rather than to the minor mother. This strategy recognizes the importance of promoting general family responsibility.

Another strategy that has had success in Ohio and several other demonstration sites is setting up incentives and penalties for teen parents designed to have them stay in school. The recently completed study of Ohio LEAP found the program to be successful in increasing the rate at which teens who were already enrolled in school remained enrolled and in increasing the rate at which those who had already dropped out of school returned to high school or an equivalent program. Further testing of this type of strategy should enable us to determine whether these results can be replicated, and improved upon, in other settings and through variations in program design.

For these reasons, we are inviting demonstrations that require minor mothers to live with parents or relatives or in a supervised living situation, as long as the home is not dangerous to the physical or emotional health or safety of the minor; that direct the AFDC payment to the responsible adult, rather than to the minor mother; and that require minor mothers to stay in school and utilize reasonable sanctions and incentives tied to school attendance.

E. Paying the Cash Value of Welfare and Food Stamps to Private Employers as Wage Subsidies When They Hire People Who Leave Welfare and Go To Work

The effectiveness of subsidized employment in increasing employment, earnings, and self-sufficiency has been studied over the last 20 years. A number of rigorously evaluated programs have shown positive effects on increasing the earnings of welfare recipients who participated in them. This was also found to be true in the more recent national evaluation of the Job Training Partnership Act program.

By combining AFDC and Food Stamp benefits, a state could create a very substantial subsidy that encourages employers to hire AFDC recipients. This form of wage subsidy has the potential of increasing the number of recipients who are able to obtain unsubsidized employment.

Subsidized employment has generally been a very small scale activity within the JOBS program. Demonstrations using AFDC and Food Stamp benefits would provide important information on the ability of this approach, when applied on a larger scale, to increase the employment, earnings, and self-sufficiency of AFDC recipients. They also will provide important information regarding the degree to which employers respond to wage subsidies.

Therefore, we are inviting demonstrations of systems where AFDC and Food Stamps benefits become wages, paid by employers when recipients work, as long as the jobs meet minimum standards, and families receive at least as much total income as they would have from AFDC and Food Stamps. States can choose to ask employers to pay into an account to help the recipient make the transition into unsubsidized employment.

Information on Application

The Administration for Children and Families, will be mailing state welfare departments a "Welfare Reform Demonstration: Special Application Form". This form should facilitate requests for waivers in the five specified areas. Requests for further information and/or forms should be addressed to Howard Rolston at the address listed above. Additionally, by August 21, 1995, states can obtain information on the waiver process and on electronic filing of waiver applications on the internet. On the world wide web, the URL (universal resource locator) is http://www.acf.dhhs.gov. Gopher users can use gopher.acf.dhhs.gov.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: August 11, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95-20294 Filed 8-15-95; 8:45 am]

BILLING CODE 4184-01-P

Pending Demonstration Project Proposal Submitted by Florida Pursuant to Section 1115(a) of the Social Security Act

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice describes a new proposal for a combined welfare reform/Medicaid demonstration project submitted to the Department of Health and Human Services. Federal approval for the proposal has been requested pursuant to section 1115 of the Social Security Act.

COMMENTS: We will accept written comments on this proposal. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, neither approve nor disapprove any component of the proposal for at least 30 days following the date of receipt of the proposal to allow time to consider comments, in addition, we will neither approve or disapprove the school attendance component for at least 30 days following the date of this notice. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of this project contact the State contact listed in II.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. Fax: (202) 205-3598 Phone: (202) 401-9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Pending Proposal Received From Florida

Project Title: Florida—Family Transition Program (Amendments).

Description: Would expand the Family Transition Program demonstration, currently operating in two counties, to six additional counties. The demonstration limits, with some exceptions, AFDC benefits to 24 months in any 60-month period followed by participation in transitional employment. For families subject to the time limit, it replaces current $90 and $30 and one-third disregards with a single, non-time-limited disregard of $200 plus one-half of the remainder;

TAB C

PROPOSAL GUIDE

SECTION 1115 STATE HEALTH CARE REFORM DEMONSTRATIONS

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BACKGROUND AND OVERVIEW
SECTION I

I. INTRODUCTION

State Medicaid waivers and demonstrations present valuable opportunities to both States and Federal policy makers to refine and test innovative policies and approaches that improve access to, and quality of care for, vulnerable Medicaid populations, and to more effectively manage the costs of providing that care. One of the vehicles for States to test new approaches to health care is to obtain approval for Section 1115 demonstrations from the Secretary of the Department of Health and Human Services. These projects allow waivers which permit States flexibility from the Federal Medicaid statutory and regulatory requirements that cannot be altered through the Medicaid State plan amendment process.

The purpose of this guide is to assist States in the preparation of Section 1115 health care reform demonstration proposals. Included within this document is information about State options for waivers from federal requirements, commitments made by President Clinton concerning waivers, background on Section 1115 demonstration authority, and discussion of which requirements can and cannot be waived. Also discussed is the demonstration process itself and specific issues which should be addressed in a proposal. Since each demonstration is different, the guide is not completely comprehensive. Conversely, not all issues presented in the guide will apply to all proposals. This guide has been jointly prepared by the Office of Research and Demonstrations, the Medicaid Bureau, the Office of Managed Care, and the Regional Offices.

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II. STATE FLEXIBILITY OVERVIEW

Two types of Medicaid waivers exist: Section 1915 program waivers and Section 1115 research and demonstration waivers. These waivers allow flexibility from certain requirements of Title XIX of the Social Security Act.

A. PROGRAM WAIVERS

1. Section 1915(b) Program Waivers -
   1915(b) waivers allow States significant waiver authority although not as expansive as the Section 1115 waivers. States are permitted to waive almost all of the 1902 provisions including Statewideness, comparability of services, and freedom of choice. These waivers are limited in that they apply to Medicaid services furnished to Medicaid beneficiaries. For example, program waivers do not allow States to:
   - cover traditionally non-Medicaid populations,
   - modify the Medicaid benefit package,
   - waive Section 1903(m) health maintenance organization (HMO) provisions, such as enrollment composition and disenrollment on demand,
   - restrict access to family planning providers,

   Section 1915(b) waivers do not carry the evaluation requirements necessary for §1115 waivers.

2. Section 1915(c) Program Waivers -
   1915(c) waivers allow waiver of federal requirements to provide a broad array of home and community based services not otherwise covered under the Medicaid program as an alternative to institutionalization. This provision is also limited in scope, authorizing waiver of Statewideness, comparability, and certain community income and resource rules.

3. Section 1915(d) Program Waivers -
   Section 1915(d) waivers allow waivers of federal requirements to provide home and community based services specifically targeted to the elderly as an alternative to institutionalization. This provision authorizes only limited waiver authority, similar to that allowed for under Section 1915(c) waivers.

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B. RESEARCH AND DEMONSTRATION PROJECTS

1. Flexibility under 1115 Research and Demonstration Projects
   Flexibility under Section 1115 is sufficiently broad to allow States to test substantially new ideas of policy merit. In return for greater flexibility, States commit to a policy experiment that can be evaluated.

   Section 1115 projects, sometimes called "research" or "demonstration" projects, have been used by States to enact a broad variety of initiatives. Approved demonstration initiatives range from projects that test providing special services to special populations, to projects that test some major restructuring of the Medicaid program and facilitate the State's goal for health care reform. Section 1115 demonstration authority is also used for welfare reform projects.

   Unlike Section 1915(b) waiver programs, typically a project initiated under Section 1115 should demonstrate something that has not been tried or proposed on a widespread basis. The terms "experiment," "pilot", and "demonstration", all suggest that specific research or demonstration findings will be drawn from the project results. Also unlike Section 1915(b), which clearly contemplates and provides for waiver programs that continue indefinitely if successful, projects under Section 1115 should, at some point, reach a conclusion. Thus, States and health care providers potentially affected by Section 1115 demonstration projects should be aware that Section 1115 cannot be used to "permanently" waive or exempt States from statutory requirements deemed undesirable.

2. Common Characteristics of Section 1115 Statewide Health Care Reform Demonstrations
   Generally, proposals for Statewide reform have several common factors:
   - The State wants to expand its use of managed care--this has included Federally or state qualified HMOs, partially capitated systems, primary care case managers, or other variations.
   - Savings are expected to be achieved as one of the outcomes of increased use of managed care.
   - This savings (plus savings from other actions) is used to finance coverage to individuals previously ineligible for Medicaid.
   - The demonstration is expected to be budget neutral over life of the project (generally 5 years).

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III. PRESIDENT CLINTON'S PROMISE TO GOVERNORS

As part of discussions with the nation's Governors in August, 1993, President Clinton has made several commitments that address Medicaid Section 1115 Statewide Health Care Reform demonstration projects, including flexibility and expedience in the following areas:

A. POLICY OPTIONS

A wide range of policy experiments will be considered. Although States are encouraged to test models consistent with Administration policy goals, other models will be seriously and fairly considered.

B. REPLICATION

Projects to test the same or related policy innovations can be approved in more than one State, where merited.

C. SCALE

Demonstration projects can range in scale from sub-State projects, to State-wide, to multi-State.

D. DURATION

Projects will be of sufficient duration to give new policy approaches a fair test. Generally, the duration of projects approval should be congruent with the magnitude and complexity of the project.

E. PROCESS

Requests for demonstration projects will be treated expeditiously.

F. STATUTORY CHANGE

When a demonstration has shown to be successful, active collaboration will occur between the Federal Government and States to work towards appropriate statutory changes reflecting lessons learned from the demonstration.

IV. AUTHORITY FOR MEDICAID WAIVERS

A. SECTION 1115(a)(1)

Section 1115(a)(1) of the Social Security Act authorizes the Secretary to waive compliance with any of the requirements of Section 1902 of the Social Security Act, which delineates State Medicaid Plan requirements, to the extent and for the period necessary to carry out the demonstration project. It is also possible to waive some other provisions of Title XIX because they are incorporated through Section 1902. This "demonstration waiver authority" in Section 1115 applies only to the requirements found in, or incorporated under, Section 1902 of the Act.

B. SECTION 1115(a)(2)

Section 1115(a)(2) of the Social Security Act authorizes the Secretary "to the extent and for the period [she] prescribe[s]," to "regard as expenditures under the [Medicaid] State plan costs of [the demonstration] project which would not otherwise be included as [federally-matchable] expenditures under Section 1903." This authority has been interpreted by the Secretary to permit Federal financial participation (FFP) to be provided for expenditures for both services and individuals that would not otherwise be covered by Medicaid, and expenditures for which FFP would otherwise be denied based upon a limitation or condition imposed on FFP in Section 1903 of the Act.

This authority is used to provide expanded eligibility or additional services to individuals. For example, it allows States to test income against standards greater then those generally permitted under the Medicaid statute. In addition, it is frequently used to permit FFP for services provided by health maintenance organizations (HMOs) participating in demonstration projects which do not meet certain requirements in Section 1903(m). One such requirement is that a risk contract have a total enrollment that is less than 75 percent Medicaid or Medicare eligible. (Although this requirement may be waived, other protective criteria will be substituted). Another is the requirement that enrollees be permitted to disenroll without cause, at any time, or (in the case of some HMOs in States that provide for this option) no more than twice a year.

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EXAMPLES OF REQUIREMENTS THAT CAN BE ALTERED

1. Statewide Uniformity - Permitting variations in the program in different areas of the State.

2. Comparability Requirements - Allowing different benefits to be provided to one group and not another and/or different eligibility methods and standards for some beneficiaries and not others.

3. Eligibility - Permitting States to revise Medicaid eligibility standards and criteria.

4. Provider Choice/Freedom of Choice - Allowing restriction of beneficiaries' freedom of provider choice and requiring enrollment in managed care systems.

5. Managed Care Organizations - Permitting beneficiaries to receive services through alternative delivery systems that otherwise would not meet existing State and Federal requirements. Under Section 1115, States may contract with HMOs that have Medicare and Medicaid enrollments in excess of 75 percent (although other protective quality assurance related criteria will be imposed), and may limit Medicaid beneficiary disenrollments from HMOs to an annual "open season."

6. Reimbursement - Allowing reasonable alterations in Medicaid payment requirements.

7. Freedom of Choice of Family Planning Services Providers - Allowing States to limit individuals to receiving family planning services from providers within their managed care plans or systems.

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V. LIMITS ON THE SECRETARY'S WAIVER AUTHORITY

Although Section 1115 authority is very broad, certain statutory and policy restrictions exist for State demonstrations:

A. STATUTORY RESTRICTIONS

1. Services for Pregnant Women and Children - The Secretary's Section 1115 waiver authority is specifically limited by Section 1902(l)(4)(A) which requires States with Section 1115 waivers to provide medical assistance to pregnant women and children less than 19 years of age, as described in Section 1902(a)(10)(A)(i), as if the State had in effect a plan approved under Title XIX.

2. Drug Rebate Provisions - Section 1902(a)(54) requires that a State provide medical assistance for covered outpatient drugs in accordance with Section 1927, which also contains the drug rebate program provisions. Since the drug rebate provisions are imposed on drug manufacturers, and not on the State, this provision cannot be waived through a waiver of Section 1902(a)(54). Only those drug rebate provisions of Section 1927 which apply directly to the State may be waived, not those which apply to drug manufacturers. With or without an 1115 waiver, Section 1927(j) excludes drugs dispensed by HMOs from the requirements of the drug rebate program.

3. Copayments and Other Cost Sharing - Section 1916 of the Act authorizes the imposition of deductibles, copayments, and other cost sharing on Medicaid beneficiaries, in certain circumstances. Section 1916(a)(2)(D), however, specifically prohibits the imposition of copayments on categorically eligible persons enrolled in HMOs. The Secretary's authority to waive the provisions of Section 1916 is limited. Section 1916(f) which requires that waivers of Section 1916 must be no more than two years in duration and that participation of beneficiaries must be voluntary. Such restrictions make it impractical to waive Section 1916 to enable states to impose copayments on Medicaid eligible individuals. However, in certain limited circumstances under waiver authority, copayments and other cost sharing may be imposed on the medically needy and on individuals who are newly covered.

   Non-Emergency Use of Emergency Room Services
   Copayment restrictions prohibit imposing copayments on Medicaid eligible HMO enrollees for the unauthorized, non-emergency use of emergency room services. However, at least one State has defined non-emergency services provided in an emergency room as non-covered services and has proposed billing Medicaid eligibles for these non-covered services. Although this is permissible, the State

must address several concerns before implementing such a policy (e.g., assure that the emergency room will perform the screening and assessment and that billing is appropriate, assure that emergency rooms direct individuals to appropriate treatment sources, monitor inappropriate use of emergency room settings, monitor primary care furnished during off hours, provide clear notification to beneficiaries of covered and non-covered services and that non-payment for services will not affect Medicaid eligibility.)

4. Spousal Impoverishment Provisions - Section 1924(a)(4)(A) prohibits the Secretary from waiving spousal impoverishment provisions for institutionalized individuals.

5. Work Transition - Section 1925(c) prohibits waiving work transition provisions extending Medicaid eligibility for certain individuals who lose their eligibility for Medicaid through their loss of eligibility for Aid to Families with Dependent Children.

6. Qualified Medicare Beneficiaries, Specified Low Income Beneficiaries and Qualified Working Disabled Individuals - Section 1905(p) requires States to provide coverage to these groups of individuals regardless of a Section 1115 waiver.

7. FMAP Rates - While the 1115 waiver authority provides great flexibility in new expenditures that can be matched, the rate at which the Federal government matches States expenditures cannot be waived.

B. POLICY RESTRICTIONS

1. Reduced Quality of Care - Programs or policies which inappropriately reduce access, benefits, or otherwise reduce quality of care will not be approved. Further, HCFA requires that State managed care programs enhance access to quality services.

2. Budget Neutrality - While a wide range of models may be tested, the demonstrations must be budget neutral. That is, they cannot be expected to cost the Federal government more than the States' Medicaid plans would cost without waivers.

3. Unnecessary Utilization and Access Safeguards - Section 1902(a)(30) requires safeguards against unnecessary utilization of services as well as ensuring that payments are sufficient to enlist enough providers to make services as available as they are to the general population. Such safeguards must be maintained under 1115 waiver programs.
4. Quality Improvement - States are expected to enhance quality improvement plans

and processes (e.g., eligibility quality control, external medical review requirements, encounter data requirements).

7. Boren Amendment - States are expected to meet the requirements of the Boren amendment in fee-for-service situations. These provisions do not apply to managed care settings.

8. Contract Provisions - Other than the possible waiver of Sections 1903(m)(2)(A)(ii) (75/25 requirements) under certain circumstances, and Section 1903(m)(2)(A)(vi) (disenrollment on demand), generally, all existing requirements for risk comprehensive contractors must be maintained. For example, requirements found in Section 1903(m)(2)(A) of the Act regarding prior approval of a risk comprehensive contract between a State and a managed care organization, where the expenditures under that contract are expected to exceed $100,000 must be maintained.

For an approved demonstration, all other requirements of the Medicaid program expressed in law, regulation, and policy statements, not waived under the terms and conditions and award letter of the demonstration agreement, remain in effect.

C. OTHER STATUTORY REQUIREMENTS

A State may be interested in obtaining waivers from other statutory requirements such as those for Medicare and the Employee Retirement Income Security Act (ERISA). However, there are also limits on waivers that may be authorized for those statutes.

1. ERISA - ERISA preempts a State's attempts to regulate self-insured health plans. There is no authority in Section 1115 or elsewhere to waive the ERISA provisions which affect self-insured employers. Therefore, States are prevented from regulating self-insured health plans as part of a demonstration project. (ERISA is administered by the Department of Labor.)

2. Medicare - Existing Medicare waiver authority is very limited. In the past, waivers have not been granted for projects intending to restrict Medicare beneficiaries' provider choice, restrict beneficiaries' rights to disenroll from a health plan on a monthly basis, reduce Medicare benefits, or increase beneficiary cost sharing. However, some Section 1115 demonstrations have received authority to allow the Medicaid program to impose restrictions on dually eligible Medicaid/Medicare beneficiaries as a condition of Medicaid payment of coinsurance and deductibles.

VI. STAGES IN THE REVIEW PROCESS

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Demonstration waiver projects generally evolve through 4 phases:

- Conceptual development (pre-proposal)
- Proposal submission and waiver decision
- Post approval/pre-operational development
- Operational implementation and evaluation

A. CONCEPT DEVELOPMENT

States are encouraged, but not required, to discuss potential demonstration project concepts with HCFA early in the process. The State may initiate this contact with the Regional Office, the Office of Research and Demonstrations, the Medicaid Bureau, and/or the Office of Managed Care. These components work as a team throughout the waiver process. During this stage, HCFA can provide guidance to States on the process and requirements for submitting demonstration proposals, input on the overall policy relevance of the proposed project, and insights on experiences in other States. HCFA can also help identify necessary Section 1115 waivers and begin assessing local program experiences relevant to the proposal to expedite the review process.

PUBLIC NOTICE

In order to assure that people and providers who may be affected by a demonstration project have the opportunity to provide input into the decision-making process, States must encourage public feedback before submitting a proposal to the Department of Health and Human Services. States are required to follow one or more of the following processes prior to submitting a proposal.

1. At any time before submission of the Section 1115 waiver proposal, a State may provide the Department with a written description of the intended method of receiving public feedback regarding the proposal. The Department will respond within 15 days after receipt of the description.

Acceptable processes include the following:

- hold one or more public hearings to describe and circulate copies of the proposal, as well as to invite public feedback,
- establish a commission or similar entity to develop the proposal, whose meetings are open to the public,
- include the outline of the proposal in State legislation enacting the demonstration project, prior to submitting the demonstration proposal,
- provide formal notice and comment in accordance with the State's administrative procedure act at least 30 days before submitting the proposal
- post information regarding the demonstration proposal in newspapers of general circulation, including a means for interested persons to acquire a copy of the working proposal as well as a period of at least 30 days for public comment and,
- include other similar processes for public input which allow interested persons to review and comment on the contents of the proposal.

B. PROPOSAL REVIEW AND DECISION

The State should submit 25 copies of the waiver proposal to the Office of Research and Demonstrations, 2306 Oak Meadows Building, 6327 Security Boulevard, Baltimore, Maryland 21207 and 12 copies to their Regional Office. At this time a project officer from the Office of Research and Demonstrations will be assigned as the primary contact for State officials. Upon receipt of a formal proposal, all appropriate Federal components review the submittal and develop a list of questions, comments, and issues related to the proposal.

Within a month or so of receipt of the proposal, HCFA notifies the State in writing of potential problem areas and begins a dialogue with the State to determine if additional documentation is necessary and develop alternatives. Detailed questions are forwarded to the State for clarification approximately 60 days from proposal submittal. Throughout this process, federal staff and State representatives continue discussing any remaining issues.

Upon resolution of issues, in the case of an approval, an award letter is sent to the State including specific Terms and Conditions of the demonstration project under which waivers are granted. Terms and Conditions provide the agreements made with the State and overall framework under which the demonstration project will proceed. They include information regarding operational tasks necessary prior to and after implementation, financing agreements, deliverables, reporting responsibilities, etc. They are critical to the following stages of the project.

C. POST-AWARD/PRE-OPERATIONAL DEVELOPMENT

During the post-award/pre-operational development stage, HCFA validates State assurances that pre-implementation Terms and Conditions are met and assesses the State's operational readiness for project implementation. Based on criteria in the Terms and Conditions, States may need to obtain approval of sequential steps as they proceed with implementation. Pre-implementation tasks are critical to successful implementation of the demonstration. States must be prepared to allow sufficient time to complete tasks before program implementation. States should also realize that they must devote major efforts to this phase of the project since these major demonstrations affect almost all aspects of the program. HCFA is available to work with the State to provide technical assistance and resolve any major issues affecting implementation as they arise.

D. OPERATIONAL IMPLEMENTATION AND EVALUATION

During the final stage, the State implements and manages the operations of the project in accordance with the Terms and Conditions and the award letter of approval. HCFA provides operational assistance, oversight and enforcement, reviews modifications to the Terms and Conditions, and assesses cost neutrality. Although these projects are generally approved to operate for a 5-year period, each State must submit an annual request for continuation of the demonstration. At this time, terms and conditions may be modified at the impetus of the State or HCFA.

HCFA maintains the responsibility to evaluate the project. The evaluation will include State specific and cross-State analyses of demonstration impacts on utilization, insurance coverage, public and private expenditures, quality, access, and satisfaction. The effect of the demonstration on many groups of beneficiaries, especially vulnerable sub-populations will be analyzed. To accomplish these tasks, the evaluators will conduct site visits, including interviews with State staff, providers, advocacy group leaders, employers and beneficiaries. In addition, the evaluators will conduct surveys with participants and non-group members. States are required to have staff available for discussions, etc. as appropriate.

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THE PROPOSAL
SECTION II

I. INTRODUCTION

A Section 1115 demonstration proposal application should justify the request by conveying what the State wishes to accomplish, and how the demonstration will alter the State's current Medicaid program. Public notice procedures should be described. Waivers being requested should be identified and justification specific. At a minimum, the application should provide details in the following broad subject areas: program administration, eligibility, benefit package, delivery network, access standards, quality assurance, financial issues, system support, implementation, reporting, and program evaluation.

II. FORMAT AND CONTENT

The following is a general description of minimum information that should be provided in a proposal which is asked of States and which should be addressed within the proposal. This information presented in this guide is only in a suggested format for Statewide health care reform demonstration proposals. States are not required to use this format. The following issues that should be addressed in each section are described.

A. EXECUTIVE SUMMARY

The State should provide an overview of the demonstration projects including information on program administration, eligibility, benefit package, delivery network, access standards, quality assurance, financial issues, system support, implementation, reporting, and program evaluation. Program nuances should also be highlighted within the "Executive Summary."

B. PUBLIC NOTICE

The State must include in the demonstration proposal a brief description of the public notice process followed in implementing the procedure originally submitted to the Department. If the process has not been followed, the Department may consider the application incomplete. The Department will review the process within 15 days.

States with inadequate processes of public notice may remedy the situation by posting a notice in the newspaper of widest circulation in each city with a population of 100,000 or more (or in the newspaper of widest circulation in the State if there is no city with a population of 100,000). The notice must describe the major elements of the proposed demonstration and any changes in benefits, payments, eligibility, responsibilities, or provider selection requested in the proposal. In addition, the notice must indicate how persons may obtain copies of the proposal and that written comments will be accepted by the State for a period of thirty days. In this instance, the State should respond to requests for copies of the proposal within seven days, as well as maintain a record of all comments received through this process.

C. THE ENVIRONMENT

A description of the current system, and information pertaining to the forces in the State that will impact the implementation of the proposed waiver demonstration should be detailed in the "Environment" section. At a minimum, this should include an overview of the current system, previous experience with State waivers, status of any necessary legislation, public input, and overall State budgetary considerations.

1. Overview of Current System -
   - How is care currently being delivered to Medicaid beneficiaries?
   - What experience does the State have with the proposed delivery model?
   - What factions(s) are spearheading the waiver request?
   - What is the public perception of the current system?
   - Are there problems with access, quality, cost, fraud, etc.? If so, what will prevent repetition under the proposed program?
   - Are there additional health reform initiatives being undertaken outside of the waiver?

2. Experience with State Waivers -
   - If the State is currently operating under waiver authority, provide a brief overview of the waiver and experience realized under the waiver. For example, experience with implementation, systems, cost savings, access, quality, reporting, and beneficiary satisfaction should be noted. Further, specify under the proposed program if the waiver will continue, cease, or roll into the new program.

3. Legislation -
   - Does the waiver proposal require legislative action by the State? If so, what is the likelihood of receiving the legislative authority and the timeframe?

4. Input From Public Agencies\Advocates -
   - Has the State solicited and obtained input from public interest groups? If so, in what manner?
   - Is there broad support of the demonstration? If there is, provide tangible evidence of this support such as letters.
   - Are there concerns about the demonstration?

5. State Budget -
   - What is the financial outlook of the current Medicaid program?
   - Can the State sustain adequate financing for the life of the waiver?

D. PROGRAM ADMINISTRATION

The organizational components in the State responsible for implementing and managing the demonstration should clearly be identified in the "Program Administration" section of the proposal. The State should supply evidence to support the belief that there is adequate capacity within the designated organizational structure to appropriately administer and monitor the demonstration. Any subcontracting agreements for administrative or monitoring services should be documented and should also identify whether, and why States intend to use sole source contracting for any aspect of its program.

1. Organization Structure -
   - Information such as the number of positions, titles, training level, and employment status (dedicated full-time or part-time) should be provided for each program component of the demonstration. (It is often helpful if organizational charts are provided as an attachment in addition to a narrative description.)
   - Describe how agencies with shared responsibilities will interact (e.g., How will the State Medicaid Agency and Insurance Commissioner share responsibility for fiscal soundness of plans? How will the Medicaid agency work with the education and health agencies to meet EPSDT requirements for special needs children?)

2. Contractual Relationships -
   - If the demonstration involves subcontracting of any administrative or monitoring functions, information should be provided on the process for selection, method of payment, responsibilities of subcontractor, and structure that will be in place to ensure that the subcontractor is fulfilling their obligations.

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E. ELIGIBILITY

Within the "Eligibility" section, there should be a clear explanation of who will be eligible to receive services under the waiver. In addition, information should be provided on the impact the demonstration will have on current Medicaid eligibles, eligibility determination, and how the eligibility process will be administered.

1. Eligibility Categories -
   - Current Eligible: Clearly identify each category, and the number of beneficiaries who are currently receiving care under the State program and who will continue to receive care under the demonstration. Project the number of eligibles for the duration of the demonstration (five years) on a Federal fiscal year basis. Provide an explanation, and documentation, that supports the growth rate projection.
   - Expanded Population: Identify the categories, and number of individuals who will be eligible to receive benefits under the proposed demonstration but are not currently eligible. Project the number of eligibles for the duration of the demonstration (five years) on a Federal fiscal year basis. Provide an explanation, and documentation, that supports the growth rate projection.
   - Excluded Individuals: Identify any categories and numbers of individuals who are currently eligible for benefits, but will not be eligible under the proposed demonstration. If there are individuals excluded from the demonstration, explain whether or not they will continue to receive care under the current State plan, and why. Project the number of eligibles for the duration of the demonstration (five years) on a Federal fiscal year basis. Provide an explanation, and documentation, that supports the growth rate projection.

2. Eligibility Criteria -
   - Will new eligibility policies be utilized in the proposed demonstration? If so, what are they and how do they differ from the current policies?
   - Will there be presumptive eligibility determinations?
   - Will there be retroactive eligibility determinations?
   - How will the State differentiate traditional Medicaid eligibles from waiver eligibles?
   - What eligibility groups included under the current plan will be included _____ from the determinations?

3. Administration -
   - Who, or what agency, will be responsible for determining eligibility?
   - How will individuals apply for eligibility?
   - Will there be a limit on the total number of individuals eligible for the demonstration?

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F. BENEFITS The "Benefits" section should contain information concerning the services that will be covered under the proposed demonstration, differences between current and proposed service packages, and how beneficiaries will receive services not covered under the waiver.

1. Benefit Package -
   - Covered Services: Clearly define the services that will be covered under the demonstration.
   - Carve-Out Services: Clearly identify services that will be carved-out of the benefit design and the justification for the exclusion. Explain the coordination of covered and carved-out services.
   - Will the full range of EPSDT services be covered under the waiver? How will EPSDT services not provided through the managed care organization be delivered? Describe how the State will identify and report the numbers of EPSDT screens performed on enrollees of managed care plans.
   - If the benefit package is less then the current system, provide information on the difference, and whether or not the beneficiary can continue to obtain the additional services under the existing State program.
   - Will there be different benefit packages available for eligibles to chose from? If so, explain in detail the difference and the justification for the difference. Are there differences in out-of-pocket costs?
   - Explain how changes to the "core Medicaid program" as reflected in the Section 1115 waiver proposal will impact the State's HCBS waivers.

   - Co-payments: If the proposed program includes copayments, provide detail as to what the amount will be, how they were determined, who will be charged, and the circumstances for imposing a charge.
   - Clearly define

2. Special Populations -
   - Special attention should be paid to providing information on how services required by special populations will be provided such as: family planning, mental health, long-term care, transportation, hospice and pregnancy-related services.
   - The proposal should also address how continuity of care will be assured for individuals currently receiving care.

G. DELIVERY NETWORK

Within the "Delivery Network" section, there should be detailed information pertaining to the proposed delivery network. It is advisable to include specific information pertinent to: the proposed means of delivering care, the number of primary care physicians and other

providers (e.g., nurse practitioners) and specialty physicians who will be participating, the role of essential community providers (Federally Qualified Health Centers and Rural Health Clinics), solvency requirements, and contracting and payment policies.

1. Mode for Delivering Care -
   - What type(s) of delivery system(s) will be employed (e.g. fee-for-service, managed care?)
   - What incentives will be in place for participation?
   - Are there different provisions for delivering care to special populations?
   - Will case managers be used in the delivery system?
   - How will certified nurse midwifes and certified family and pediatric nurse practitioners be utilized?
   - What types of school-based health practitioners will be providing care under the proposed program, and in what capacity?
   - Will some services be provided outside capitated plans? How will this be coordinated? (e.g., EPSDT services, family planning, mental health services).

2. Essential Providers -
   - How will essential providers be included under the proposed program?
   - How will reimbursement to essential providers differ from that of other providers?
   - How will transition occur if a member is currently receiving care from an essential provider that does not participate in the new program?

3. Solvency Requirements -
   - Explain in detail the solvency requirements for participating health plans.
   - Are there different requirements for different delivery models?
   - What are the contingency plans for beneficiaries and providers in the event that a health plan fails?

4. Contracting\Payment Policies -
   - What requirements will be in place for participants and how will assurances be made that the requirements are being complied with?
   - Will all interested plans/providers be able to participate in the program? If not, how will participants be selected?
   - What indicators are there that sufficient numbers of managed care plans (if appropriate) and providers will participate in this program?
   - Will school-based health clinics be integrated with managed care plans? If so,how?
   - How will interested parties be accepted into the program after the program has been implemented?

- If the demonstration will involve capitation or a reduced fee schedule, how are the upper payment limits determined, or how will the rate of reimbursement be determined?
- What will occur if a plan or provider agrees to participate in the program and then finds that the compensation is too low?
- Will there be consistent reimbursement rates for all delivery modes or separate rates? If separate, what factors will be considered in determining the applicable rate?
- How will subcontractors be reimbursed and what measures are in place to ensure that the reimbursement rate adequately compensates the provider of care?
- What factors are in place to avoid duplicate payments?
- What types of cost data will the State require from providers? How often?
- Will the State monitor contractual arrangements between plans and providers (i.e., ensure adequacy and timeliness of payments and service delivery).

H. ACCESS

Within the "Access" section of the proposal, the State must provide evidence that there is sufficient access to care for beneficiaries. In addition, the State should show that there will be adequate outreach, enrollment, and marketing activities to ensure that beneficiaries receive information in an acceptable manner and in a manner that facilitates an understanding of their entitlements and how to access care. Specific areas that should be addressed include: capacity standards, emergency policies, marketing, and outreach/enrollment.

1. Capacity -
   - What will be the ratio of Medicaid beneficiaries to primary care providers under the proposed program? What will be the ratio of total patient base to provider ratio? How was this determined? How will this be enforced? How does this compare to the ratio in the existing Medicaid program? How will you define full-time equivalent providers?
   - What are the standards for time/distance to reach providers, waiting time to obtain an appointment, and waiting time at the provider site, and how will they be enforced?
   - What accommodations are made for populations that may need special assistance (e.g., non-English speaking populations, handicapped persons, migrants, individuals with AIDS/HIV).
   - Will provider networks be in place to guarantee access across the State?

2. Emergency Policy -
   - What is the policy for emergencies during normal business hours?
   - What after-hour emergency standards are in place, and how will they be monitored?
   - Describe your "out of service" area policy.
   - What is the policy if a beneficiary receives emergency care from someone other than their primary care provider?
   - Describe your 24 hour/seven day a week access policy.

3. Marketing -
   - What type of marketing activities will be permissible, where will marketing occur, when will it occur, and who is permitted to conduct marketing activities?
   - Will the State provide all marketing services, or will these activities be contracted out in any way?
   - Describe the safeguards to assure that marketing is accurate and not misleading, (e.g., state approval for all marketing materials used by the HMOs, and approval for contract sanctions for inappropriate marketing).
4. Outreach/Enrollment -
   - How are beneficiaries going to be made aware of their entitlements and responsibilities under the proposed program?
   - Are the marketing and enrollment materials written in languages, and at an educational level appropriate to the population being served?
   - Who has responsibility for outreach and enrollment in health plans, and how will this entity be compensated?
   - What restrictions are placed on beneficiary incentives to enroll?
   - How is the effective date of enrollment determined, and how is this communicated to the beneficiary and provider of care?
   - If site/provider selection is part of the proposed program, what is the policy if an individual does not choose a site and/or primary provider of care?
   - If site/provider selection is required, how often and under what circumstances can a beneficiary change their selection?
   - What is the disenrollment policy and process?
   - How will providers be notified of disenrollments and beneficiaries?

I. QUALITY

Within the "Quality" section, clearly define the quality standards that will be imposed on all participants (plans, providers, essential community care providers, etc.), as well as how the monitoring for quality in both the administration of the program and provision of care will occur.

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1. Eligibility -
   - Will there be a Medicaid Eligibility Quality Control program for both waiver and non-waiver participants? If so, will it meet the requirements of Section 1903(u) or is the State proposing an alternative program?
   - What is the process for assuring that individuals are not inappropriately denied care or terminated from the program?

2. Services -
   - How will assurances be made that quality care is being provided?
   - Will 100 percent encounter level data be required? If so, how often? What data elements will be collected and for what range of services?
   - What are the qualification requirements for providers of care in the demonstration?
   - Will the State require health plans to credential and re-credential providers? If so, what are these credentialing standards?
   - Will there be professional review of medical practices, and if so, how will it be accomplished?
   - What clinical outcome standards will be measured and how will they be monitored?
   - How do these clinical outcome measures compare to those currently being measured under the current State plan?
   - Will there be a grievance procedure that includes appeals to plans and the State agency? If so, how will this process be monitored and coordinated?

What types of reports will the State require for monitoring and how often?

J. FINANCE

In general, the purpose of the "Finance" section is to convey the cost of the proposed demonstration. Demonstrations must be budget neutral -- cost no more than the current program. Budget neutrality is typically conveyed by comparing the Federal cost under the demonstration to what would have been the Federal cost if there were no demonstration. This requires establishing a base year for costs, and trending or projecting to estimate how much costs would have increased. When determining and reporting costs, there are general guidelines that should be followed. A summary of these guidelines follows, as well as additional components that should be included in the "Finance" section.

1. General Rules
   - States should incorporate their most recent available, applicable and relevant

data into historical tables and projections.

- States should provide all annual expenditure and enrollment information on a Federal fiscal year (FFY) basis. States may also provide additional tables based on State fiscal years (SFY), but may not substitute SFY tables for the required FFY tables.
- States must compute expenditure totals on a date of payment basis, comparable to the expenditure totals and categories reported on the HCFA-64. Totals must match line 11 on the HCFA-64. States may provide additional tables on a date of service (or other) basis, but may not substitute these tables for those computed on a date of payment basis.
- Expenditure totals should represent total Medicaid program expenditures (i.e., "total computable"), broken into the State and Federal shares. Budget neutrality will be determined by the Federal share.
- Program enrollment should be expressed in terms of total enrollee/months, or average monthly enrollment.
- Copies of all statistical tables must be furnished on diskette, using Lotus 123 (version 2.01 or earlier) files, or a format readily imported into Lotus 123.
- Disproportionate Share Hospital (DSH) projections must be consistent with P.L. 102-234 and the Omnibus Reconciliation Act (OBRA) of 1993. The State must adjust its DSH projections to conform with current law if its DSH program will be affected by these statutes.
- Without waiver projections should include only program components that are already included in the State Plan. Provider taxes will be handled on a case by case basis.
- States should consult with HCFA while they are developing their financial data to assure that submission of necessary data is in a format that is understandable to the reviewers.

2. Specific Worksheets Required

- Historical Information – States must provide three categories of historical data: (a) Medicaid medical service expenditures and enrollment, (b) disproportionate share (DSH) payments, and (c) administrative expenses. This information must be provided for the most recent Federal fiscal year for which complete data are available, and the five preceding years.

  a. Medicaid program expenditures. States should provide total Medicaid medical service expenditures, along with corresponding enrollment totals. Disproportionate Share Hospital (DSH) payments should not be included in these expenditures. States should provide the following break downs:

WORKING DRAFT 3/14/95

1. by basis of eligibility: up to **eleven (11)** unduplicated categories are required, depending upon the scope of the waiver proposal:

   Adults (age 21 or over)
   - AFDC cash beneficiaries
   - SSI - aged (all those who are age 65 or over)
   - SSI - blind/disabled (age 64 or less)
   - Medically Needy
   - AFDC related non-cash recipients
   - QMB, SLMB, and other non-cash recipients

   Children (age 20 or less)
   - AFDC cash beneficiaries
   - SSI and SSI-related non-cash
   - Medically Needy
   - AFDC related non-cash recipients
   - other non-cash recipients

2. by whether enrollees or services are to be in or out of the demonstration. The following **three (3)** categories are required:

   Individuals to be included in the demonstration

   A. Expenditures for services that will be included in the demonstration

   B. Expenditures for services that will not be included in the demonstration

   The historical expenditure totals reported by the State will be used to estimate what future Medicaid expenditures would be if there was no demonstration. These expenditure projections will in turn be used to establish a limit on the amount of Title XIX funding that the State will receive from the Federal Government during the demonstration period. All expenditures for recipients and services that will be affected by the demonstration must be included in the "in demonstration" category (category "A" above). Beyond that, for accounting purposes, HCFA prefers that the service breakdowns from form HCFA-64 be used as a basis for distinguishing between "in demonstration" (category A) and "out of demonstration" (category B) services. Specifically, if any services that normally reported in a given HCFA-64 line item are included in the demonstration, then all services that are reported on that line should be counted as "in demonstration" for this purpose. Please note, however, that

if a service was counted as "in demonstration" for the purpose of calculating the without-waiver cost estimate, expenditures for those services will be counted against the budget neutrality expenditure limit, whether or not the services acually are part of the demonstration. HCFA will consider other methods for creating "in demonstration" and "out of demonstration" expenditure totals.

Individuals to be excluded from the demonstration

C. All expenditures

3. by delivery system enrollment. The following **four (4)** categories are required:

- fee-for-service only
- fully-capitated enrollment
- partially-capitated enrollment
- primary care case management (PCCM) systems

The breakdowns outlined above are cumulative. For example, a separate expenditure and enrollment total must be reported for adult SSI - blind/disabled beneficiaries who are to be included in the demonstration, and who are enrolled in HMOs, and similarly for all other possible combinations of basis of eligibility/in vs. out of demonstration status/managed care enrollment.

b. Disproportionate Share Hospital Payments. The State must report DSH spending for the most recent year for which complete data are available and the five preceding years. This table should include separate lines for inpatient DSH payments and mental hospital DSH payments, if appropriate. The State should also calculate the proportion of total State Medicaid spending spent on DSH payments for each year.

c. Administrative Expenses. The State should report spending on administrative payments for the most recent year for which complete data are available and the preceding five years. These expenses should be divided into those in and outside of the demonstration program.

Projections -- The State should provide both without waiver and with waiver projections for the duration of the demonstration program. The State should provide projections for the same categories as historical data, i.e., (a) Medicaid medical service expenditures and enrollment, (b) DSH payments, and (c) administrative expenses. The State should use the most recent year for which complete data is available as the base for all projections, and may therefore need to project to the first year of the demonstration.

Without Waiver Projections

a. Medicaid program expenditures

- The State should project without waiver spending for all eligibility categories included in the current Medicaid program, using the same eligibility categories required for historical data.
- The State should separately project spending for expansion groups allowable under current law, i.e., 1902(r)(2) eligibles, if applicable.

b. Disproportionate Share Hospital payments

- The State should provide spending projections for DSH payments without the demonstration program. As mentioned above, DSH projections must be consistent with current law.

c. Administrative expenses

- The State should provide projections of without waiver administrative spending.

With Waiver Projections

a. Medicaid program expenditures

- The State should provide worksheets which project spending for current eligibles who will be included in the demonstration program and new eligibles

who will participate in the demonstration. The State should provide projections on current eligibles and new eligibles in separate categories.

- The State should include enrollment estimates and per capita spending for each distinctive enrollment group under the demonstration. That is, if the demonstration will include separate program components with different eligibility rules and benefit packages, projections should be provided for each separate component. Similarly, if the State will separate services into different delivery systems, projections should be provided for each service package/delivery system.

b. DSH payments

- The State should provide projections of any DSH spending that continues under the demonstration program. These payments must be consistent with current law.

c. Administrative expenses

- The State should provide projections of administrative spending during the demonstration program.

3. Adequacy and Availability of Funding -
   - How will the State share of the waiver demonstration (service and administrative costs) be funded? What is the status of securing the funds?

4. Cost Sharing -
   - Will the State collect premiums or implement other cost-sharing?
   - If copayments are included as part of the program, how has the State taken the copayment amounts into account in developing the capitation rates?

5. Third Party Liability (TPL) -
   - Will Medicaid beneficiaries with TPL be included in the managed care plans? If yes, specify who will have responsibility for pursuing TPL for the managed care enrollees: the managed care plans or the State Medicaid agency?
   - How will the State identify TPL resources for all eligible persons? Will they subsequently be adjusted periodically based on the managed care plan's experience?
   - How will TPL be collected and by whom, and how will this be tracked? Will payments to plans be reduced to reflect expected TPL recovery?

- Will the State continue to pursue estate and trauma-related recoveries?
- Will the State continue to perform the full range of required TPL activities for those beneficiaries or services not covered under Medicaid managed care plans?
- How will Health Insurance Premium Payment (HIPP) related activities be handled?

K. SYSTEMS SUPPORT

Within the "Systems Support" section, information should be provided on the system that will be employed to implement, administer, and monitor the demonstration. The proposal should address the changes that need to be made to the current system, the capabilities that will exist, and the timeframe for making the changes or acquiring additional system support. Prior approval requirements related to procurement documents or contract amendments may not be waived.

- What changes, if any, need to be made to the current system?
- Provide a detailed implementation plan and timeline for the development, testing, and implementation for all systems and system changes.
- What will be the system capabilities when fully functional?
- What assurances have been made that interfaces are completed and functional prior to program rollout?
- How will eligibility and enrollment be validated?

L. IMPLEMENTATION/TIMEFRAMES

Within the "Implementation/Timeframe" section, each of the tasks necessary for implementation of the demonstration should be documented. Each task should be categorized as pre-implementation or post-implementation. The individual/position responsible for each task should be identified. Detailed timelines should be provided for development, testing, and implementation of the tasks identified.

- What are the tasks necessary to meet the goals of the project?
- What is the timeframe for each task identified?

M. EVALUATION/REPORTING

The Office of Research and Demonstration will evaluate every Statewide demonstration through a competitively selected contractor. Within the "Evaluation/Reporting" section, the State must provide evidence that sufficient data will be available to conduct the independent evaluation. In addition, States must meet the usual reporting requirements of the Medicaid program.

- Are the providers required to report 100 percent encounter-level data on a beneficiary-specific basis, for all appropriate medical service utilization? In turn, are plans required to report encounter-level data to the State? If so, how will this be recorded and how often? How will the State ensure completeness and validity of the data reported? What compliance measures will be taken against providers or plans that do not report this data?
- What are the data element requirements for reporting? For what service categories is this information required?
- Will the State be providing HCFA-416 (EPSDT) and HCFA-2082 reports? How will the State ensure that EPSDT screening data is collected and reported from managed care plans?
- How will the State identify and track individuals who would be eligible for the State plan without the waiver, from those who will be eligible only because of the waiver?

N. WAIVERS

Within the "Waiver" section, a list should be provided of each of the provisions of the Medicaid statute that the State is requesting waived, in addition to a justification for the request.

SECTION III.

HCFA LIASION

If you have questions or comments about the Proposal Guide, please contact Kathy L. Rama, Health Care Financing Administration, Office of Research and Demonstrations, 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207. (410) 966-6659.

Mr. RYAN. Mr. Chambers.

Mr. CHAMBERS. Good afternoon, members of the committee. I am Samuel Chambers, Jr., Administrator of the Food and Nutrition Services at the U.S. Department of Agriculture. I am pleased to speak to you this afternoon about how the Food and Nutrition Service [FNS] manages the Federal grant funds for the Nation's Federal domestic nutrition assistance programs, as well as how FNS implements grant waivers. I would also like to share the Department's comments on the bill before you.

The Food and Nutrition Services administers 15 domestic nutrition assistance programs. We believe that these programs form a nutritional safety net for America's low-income families, providing the Nation's children and their families with access to a more nutritious diet and encouraging better eating choices.

Each of these 15 programs is targeted at populations with specific nutritional needs, and all of these programs operate under Federal assistance awards to States who agree to operate them under requirements established in the authorizing legislation and through regulations, formal instructions, policies and procedures.

The largest nutrition assistance program FNS administers is the Food Stamp Program. Currently, approximately 18 million Americans receive nutrition assistance in the form of Food Stamp coupons or electronic benefit transfer [ebt] payments in order to purchase their food.

The Food Stamp Program consists of two parts: benefits provided to households, and an administrative grant that provides funding to State agencies for administering the program. Benefits, of course, are 100 percent federally funded, while most administrative expenses are at a 50–50 match ratio.

Now, our agency has authority granted for three types of waiver situations in the Food Stamp Program. The first, of course, is program administration. The second is with regard to work requirements, and that is the one that probably gets the most attention. And then, of course, demonstration projects.

In the first area, administrative waivers, our regulations allow us to waive Food Stamp Program requirements so long as such a waiver is consistent with the provisions of the Food Stamp Act, and of course does not result in material impairment to participants or applicants.

Now, to give you an example, we recently approved a waiver for the State of Maryland concerning when a household must report income changes. Under the new procedure, a household will be required to report new employment within 10 days of the start of employment, instead of 10 days after the household is aware of that new employment. This waiver we believe will help households better understand when they need to report a change in earned income due to a new job, and will also make it easier for caseworkers in that State to determine when a household should report a change and whether that household is complying with the change report requirements.

Now, in this area as well as the other two areas, our standard for responding to waiver requests, once they are filed with one of our seven regions, is 60 days—not 6 months but 60 days.

In the second area, the one that I referred to as being probably the one that's most popular, that having to do with work requirement waivers, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 restricts participation in the Food Stamp Program to 3 months during any 3-year or 36-month period for certain able-bodied adults between the ages of 18 and 50. FNS may waive this requirement when an area has an unemployment rate greater than 10 percent or insufficient job opportunities. Currently, FNS has approved 39 State requests for such waivers.

Again, we currently act and our standard for acting on these waiver requests is also 60 days. When a State agency can certify data from the Bureau of Labor Statistics showing an unemployment rate above 10 percent in a specified area, FNS actually allows those States to operate under that waiver starting at the time that they actually request the waiver, so that those happen in a much, much shorter period of time than the 60-day standard that we normally provide.

The third category, which is, of course, demonstration grants, allows us to permit States to conduct pilots or experimental projects. Currently, 13 States are operating demonstration projects so that they can test new techniques to increase the efficiency of the Food Stamp Program or to improve delivery of benefits to eligible households.

Under this authority, FNS is required by statute to respond to waiver requests, again within 60 days from receiving the request, by either approving or denying the request or by requesting clarification of a particular request. If we fail to respond within that 60-day timeframe, the waiver is approved unless its approval is specifically prohibited by statute. So again, you're talking about the same 60-day span that is applied across all three categories of waivers.

The Food and Nutrition Services uses its waiver authority appropriately, giving prompt and careful consideration to each State's proposed changes in program requirements. Because the Food Stamp Program and other programs that we administer comprise a nutritional safety net for millions of low-income families and are national in scope, each change in program rules has the potential to affect the health and well-being of millions of Americans. Recognizing this, the Department approves many waivers each year, allowing States to experiment with changing program requirements in the interests of improving the effectiveness of program administration and service to our Nation's families.

As an aside, I don't know if Mr. Scheppach has left, but he mentioned during his testimony that he was not aware that our agency had approved any waiver requests, and I think we've submitted information to the committee already but I'd like to at least clarify for his benefit, if not others, that for the year 1999 we approved 116 requests, waiver requests, for 47 States. For 1998, the year before, we approved 163 waivers for, again, 47 States.

Mr. RYAN. How many denials?

Mr. CHAMBERS. In both of those years, in 1999 we denied 17, and in 1998 we denied 25, so overwhelmingly the great majority of the waiver requests that we received in each case from the majority of States, 47 States, were responded to in the affirmative.

On occasions, different States may seek waivers from our agency to test a familiar programmatic change, which is something that's been referred to here. FNS believes it is necessary to test the waiver of a program requirement first in a particular geographic area or in a limited population, so that its effects can be thoroughly evaluated before additional waivers are granted.

You heard previously numerous individuals testified that no State is created entirely equal to another, and that is one of the reasons that we try to be very judicious in our review of waivers, to make certain that the externalities, if you will, or spillover effects of a particular waiver that is proposed in one particular State and approved, is tested thoroughly and documented as being not only in support of the programs mission goals and objectives, but that it does not create an undue hardship on either the State that is administering that change or the individuals who are in fact the recipients, intended recipients of those benefits.

The committee is considering a bill today which would require agencies such as ours to expedite its review of a State's waiver request. The Department believes that this proposed legislation is unnecessary, and I don't think I need to say anything more about that except to reiterate that the—that has already been indicated.

While the waiver requests FNS receives from States may appear to be similar, again, each State situation is unique. In giving each waiver request prompt and careful consideration, FNS must not only consider the requesting State's particular circumstances, but we believe we must also, if the proposed change is already being tested and evaluated elsewhere, under what circumstances.

In this way, we are able to support State innovation while at the same time providing the necessary oversight to ensure that programmatic changes are effective and beneficial. When an approved waiver unexpectedly results in problems for a State or its recipients, the impact is limited in scope, and the Department and other States are able to learn from that test case.

Mr. Chairman, this concludes my prepared remarks, and I would be pleased to answer any questions that you or other Members may have at this time. Thank you very much.

[The prepared statement of Mr. Chambers, Jr., follows:]

TESTIMONY OF SHIRLEY R. WATKINS
UNDER SECRETARY FOR FOOD, NUTRITION, AND CONSUMER SERVICES
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE
HOUSE COMMITTEE ON GOVERNMENT REFORM SUBCOMMITTEES ON
NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND
REGULATORY AFFAIRS
AND
GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY
SEPTEMBER 30, 1999

Good afternoon, Mr. Chairmen and Members of the Committee. I am Shirley R. Watkins, Under Secretary for Food, Nutrition, and Consumer Services at the U.S. Department of Agriculture (USDA). I am pleased to speak to you this afternoon about how the Food and Nutrition Service (FNS) manages the Federal grant funds for the nation's Federal domestic nutrition assistance programs as well as how FNS implements grant waivers. I would also like to share the Department's comments on H.R. 2376, a bill that would require executive agencies to establish expedited review procedures for granting a waiver to a State if a similar waiver under the same grant program has already been approved for another State.

The Food and Nutrition Service administers 15 domestic nutrition assistance programs. These programs form a nutritional safety net for America's low-income families, providing the nation's children and their families with access to a more nutritious diet and encouraging better eating choices. Each of the 15 programs is targeted at populations with specific nutritional needs. All of these programs operate under Federal assistance awards to States who agree to operate them under requirements established in the authorizing legislation and through regulations, formal instructions, policy, and procedures.

The largest nutrition assistance program FNS administers is the Food Stamp Program. Nearly 18 million Americans receive nutrition assistance in the form of food stamp coupons or EBT (electronic benefit transfer) benefits to purchase food. The Food

Stamp Program consists of two parts: benefits provided to households and an administrative grant that provides funding to State agencies for administering the program. Benefits are 100% Federally funded, while most administrative expenses are a 50/50 match.

FNS has authority to grant waivers in three areas of the Food Stamp Program -- program administration, work requirements and demonstration projects:

- **Administrative waivers** – FNS regulations allow it to waive Food Stamp Program requirements so long as such a waiver is consistent with the provisions of the Food Stamp Act, and does not result in material impairment to participants or applicants.

  For instance, FNS recently approved a waiver for Maryland concerning when a household must report income changes. Under the new procedure, a household will be required to report new employment within 10 days of the start of employment, instead of 10 days after the household is aware of new employment. This waiver will help households better understand when they need to report a change in earned income due to a new job and will also make it easier for caseworkers to determine when a household should report a change and whether the household is complying with the change report requirements.

  FNS usually acts on administrative waiver requests within 60 days from the time a State submits a request.

- **Work requirement waivers** – The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 restricts participation in the Food Stamp Program to 3 months during a 3-year period for certain able-bodied adults between the ages of 18 and 50. FNS may waive this requirement when

an area has an unemployment rate greater than 10 percent or insufficient job opportunities. FNS has approved 39 State requests for such waivers.

FNS also generally acts upon these requests within 60 days. When a State agency can certify data from the Bureau of Labor Statistics showing an unemployment rate above 10 percent in specified areas, FNS allows the State to operate under the waiver at the time it requests the waiver.

- **Demonstration projects** – FNS may approve waivers to permit States to conduct pilot or experimental projects. Currently 13 States are operating demonstration projects so they can test new techniques to increase the efficiency of the Food Stamp Program or improve delivery of benefits to eligible households. Under this demonstration project authority, FNS is required by statute to respond to waiver requests within 60 days from receiving the request by approving or denying the request or by requesting clarification of the waiver request. If FNS fails to respond within the 60-day time frame, the waiver is approved unless its approval is specifically prohibited by statute.

The other major programs that the Food and Nutrition Service administers—Child Nutrition, Food Distribution, and the Supplemental Food Program for Women, Infants and Children—have only limited waiver authority; thus, the amount of waiver activity is minimal and I have provided this information separately to the Committee.

The Food and Nutrition Service uses its waiver authority appropriately, giving prompt and careful consideration to each State's proposed changes in program requirements. Because the Food Stamp Program and the other programs FNS administers comprise a nutritional safety net for millions of low-income families and are national in scope, each change in program rules has the potential to affect the health and well-being of millions of Americans. Recognizing this, the Department approves hundreds of waivers each year, allowing States to experiment with changing program requirements in the

interest of improving the effectiveness of program administration and service to our nation's families.

On occasion, different States may seek waivers from FNS to test a similar programmatic change. FNS believes it is necessary to test a waiver of a program requirement first in a particular geographic area or in a limited population so that its effects can be thoroughly evaluated before additional waivers are granted.

The Committee is considering a bill today which would require agencies such as the Food and Nutrition Service to expedite its review of a State's waiver request when a similar waiver has already been approved in another State. The Department believes that this proposed legislation is unnecessary. While the waiver requests FNS receives from States may appear to be similar, each State's situation is unique. In giving each waiver request prompt and careful consideration, FNS must not only consider the requesting State's particular circumstances, but also if the proposed change is already being tested and evaluated elsewhere, and under what circumstances. In this way, the Department is able to support State innovation while at the same time providing the necessary oversight to ensure that programmatic changes are effective and beneficial. When an approved waiver unexpectedly results in problems for a State or recipients, the impact is limited in scope and the Department and other States are able to learn from the "test case."

Mr. Chairmen, this concludes my prepared remarks. I would be pleased to answer any questions that you or the Members have for me at this time.

Mr. RYAN. Thank you, Mr. Chambers.

Mr. Bramucci.

Mr. BRAMUCCI. Mr. Chairman, members of the subcommittee, my old friend Major Owens, I am pleased to be here to talk about Federal grant waivers. I will summarize my testimony and it's pretty straightforward. We believe in waivers. We are using waiver authority to the maximum in terms of sound policy, and we are pushing the envelope whenever and wherever it is sound to do so, actively looking for ways to grant waivers rather than reject them, or to work with States to help them accomplish their goals in other ways.

We are doing business in a new way at the Department of Labor, and it's very much in keeping with the spirit of the Workforce Investment Act. This act was unique, in that it brought members of both parties together in agreeing that the best job training or worker assistance programs are those that are designed at the local level.

Mr. Chairman, since we responded to Chairman McIntosh's August 3rd request, we've continued to analyze, and my formal testimony provides you with more detailed information, but it boils down to this: Under the Secretary's waiver authority for 1997 and 1998, 40 States and one Territory requested and were granted waivers of JTPA and Wagner-Peyser requirements. We approved 423 waiver requests; 26 other requests were not needed because States could do what they were requesting. We didn't have the legal authority to waive 98 requests, and we disapproved 54 requests. So we were approving about 9 out of 10.

My written testimony describes in detail our use of waiver authority, with a special emphasis on waivers under the JTPA program. With due respect to that law, it's history.

I became Assistant Secretary of Labor for Employment and Training the day the Workforce Investment Act was passed. Before that, I spent 4 years as New Jersey's Commissioner of Labor, and I know how important it is to partner with States and with local communities to make good things happen, and I witnessed firsthand the wariness of State officials to Federal officials, and I witnessed also the wariness of local officials to State officials and Federal officials.

We are working hard to ensure that our actions reflect the spirit of partnership and the flexibility that is inherent in the act, and the best way the States can ensure they have the flexibility they need is to take the authority to set their own course that the Workforce Investment Act gives them by moving expeditiously to write a State WIA plan and submit it.

Our current policy on waivers is grounded in the work started by Senator Mark Hatfield of Oregon. He worked on one State waiver authority with Oregon State and local officials, and we worked with them to try to figure out how to help them improve job training and employment programs. When Senator Hatfield expanded the waiver authority under JTPA, he agreed that certain key features of the program, such as eligibility, allocation of funds, and labor protections, should not be waived. I wholeheartedly support the Hatfield doctrine.

One of the principles of the President's "GI Bill for American Workers" which evolved into and was enacted as the Workforce Investment Act, was State and local flexibility. Accordingly, the administration proposal included a codification of Senator Hatfield's waiver authority that has been contained in annual appropriation bills.

Under Welfare-to-Work, the Secretary has the authority to waive the statutory requirement that programs at the local level be administered by the Private Industry Council if the State shows that designating an alternative agency would improve service. In 1998, a total of 20 requests from 5 States was received for waivers, and they were approved.

Getting back to the Workforce Investment Act, one of its key principles is State and local flexibility. The form and substance of the interim final rule for WIA reflects our commitment to regulatory reform and to writing regulations that are user-friendly, and in a question and answer format to make them easier to use. And to provide greater flexibility, the regulations do not include all of the procedures mandated under JTPA. As a result, they were only half the length that JTPA's were, as they were published in the Federal Register, and we used far more "mays" than "shalls."

Under WIA, 90 percent of the waivers granted in the past won't be necessary. Since WIA is inherently more flexible than JTPA, we won't get as many waiver requests and the ones we get will be handled faster. But there are limitations to what we'll allow. We won't allow waivers of the basic purposes of title I of the act: establishment and functions of local areas and local boards; review and approval of local plans; and worker rights, participation and protection.

Mr. Chairman, I thank you for the opportunity to present the Department of Labor's point of view, and stand ready to answer any of your questions.

[The prepared statement of Mr. Bramucci follows:]

Testimony of Raymond L. Bramucci
Assistant Secretary of Labor
Employment and Training Administration
Before the
Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs
and
Subcommittee on Government Management, Information and Technology
Committee on Government Reform
United States House of Representatives

September 30, 1999

Chairman McIntosh, Chairman Horn and Members of the Subcommittees:

I am pleased to have the opportunity to appear before you at today's hearing on the Federal grant waiver process. As you may know, I have been Assistant Secretary of Labor for Employment and Training since August 1998. Before coming to Washington last year, my public service includes four years as New Jersey's Commissioner of Labor.

Let me begin by saying that the Department strongly supports allowing its grantees access to waivers from many statutory and regulatory requirements in exchange for State and local accountability for results, including improved performance. Many of our programs for which I have responsibility have statutory authority for the Secretary of Labor to grant such waivers, and where this authority does not exist, we have taken the initiative in some cases to establish administratively a means whereby grantees can request waivers of regulatory requirements.

Legislative History of Waiver Authority

The current authority for granting waivers of statutory requirements in our adult and youth formula grant programs authorized under the Job Training Partnership Act (JTPA), and the Employment Service authorized by the Wagner-Peyser Act, originated in, and continues in, our Department of Labor Appropriations Bills. The waiver authority began with our FY 1997 Appropriations Act (P.L. 104-208), and was conceived of and promoted by the then-Chair of the

Senate Appropriations Committee, Mark Hatfield. Senator Hatfield had worked with Oregon State officials the previous year on a similar one-State waiver authority known as the "Oregon Option". As much as we agreed on the principle of expanded State and local flexibility, Senator Hatfield and the Department were concerned that certain key features of the programs, such as eligibility, allocation of funds to local areas, and labor protections, not be subject to waivers, and accordingly crafted language proscribing waiver of these key requirements. As a result, the Employment and Training Administration's waiver authority is somewhat limited–it is not a blanket authority.

One of the principles of the President's "G.I. Bill for America's Workers," which evolved into, and was enacted as, the Workforce Investment Act of 1998, was State and local flexibility. Accordingly, the Administration's proposal included a codification of the waiver authority similar to language included in our recent appropriations bills. This authority, and the principles of State and local flexibility, are imbedded in the Workforce Investment Act, which we are now implementing, and which will replace the Job Training Partnership Act on July 1, 2000.

In response to Chairman McIntosh's August 3 request, we have provided to the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs detailed responses to a series of questions relating to the use of waivers in the grant programs the Department administers. The Subcommittee asked us to provide:

- The text and citations for the Department's statutory waiver provisions;
- The text and citations for regulatory waiver provisions;
- The number of waivers granted in Fiscal Years 1997, 1998, and 1999 (to date);
- A list of States that received waivers and States that were denied waivers; and

- A list of States that were denied a waiver but whose waiver application was similar to another State that received a waiver.

Since we provided this information to the Subcommittee on August 23, we have undertaken further analysis of our records, and have more detailed information relating to the table we sent you last month. I am providing a copy of this information to the Subcommittees today. We are continuing to analyze our records and will provide you with a revised table that disaggregates, by State, waiver requests that were disapproved because we did not have statutory authority to approve them, and waiver requests that were disapproved for other reasons. Based on our analysis to date, over two-thirds of the requests that were not approved were denied simply because we did not have statutory authority to approve them.

I will briefly summarize the information we provided to Chairman McIntosh and I would be pleased to answer any questions you may have on the material.

Appropriations Act Waiver Authority

General Waiver Authority

The 1997 DOL Appropriations Act authorized the Secretary of Labor to grant waivers of certain statutory and regulatory requirements of titles I-III of the JTPA and sections 8-10 of the Wagner-Peyser Act, pursuant to a request containing specified information submitted by a State. This was a one-year authority and only applied to funds made available in Program Year (PY) 1997. The Secretary's waiver authority was continued for two additional one-year periods in the Fiscal Year 1998 and 1999 DOL Appropriations Acts.

Certain statutory and regulatory requirements are specifically excepted from the Secretary's waiver authority for JTPA titles I-III. Requirements relating to wage and labor standards, worker rights, participation and protection, grievance procedures and judicial review, non-discrimination, allocation of funds to local areas, eligibility, review and approval of plans, the establishment and functions of service delivery areas and private industry councils, and the basic purposes of the Act are excepted from the Secretary's waiver authority. The waiver exceptions for the Wagner-Peyser Act are requirements relating to the provision of services to unemployment insurance claimants and veterans, and to universal access to basic labor exchange services without cost to job seekers.

The Secretary's waiver authority has been applied in a manner consistent with the waiver provisions, to assist States in addressing requirements that impeded their efforts to reform and streamline their workforce investment systems. In return for the increased flexibility afforded by waivers, States are required to meet agreed-upon outcomes for the period of the granted waivers, as required by the Appropriations statutes.

In order to streamline the process of reviewing waiver applications by the Department, we issued clear instructions to the States at the beginning of the process in the form of a Training and Employment Guidance Letter (TEGL) in 1997 and 1998. The TEGLs described the process States were to use to apply for waivers, as well as the process the Department planned to use to review the waiver request. In addition, the TEGLs described the Department's expectation that the State involve local elected officials, business-led Private Industry Councils, community-based organizations, labor, and other stakeholders in the process of developing the waiver requests. The guidance also described the statutory limitations on the Secretary's waiver authority and

clarified that we would not grant waivers that would result in the commingling funds or that would undermine accountability.

The Department developed an internal review process to ensure that identical or similar waiver requests from various States received like treatment. Our Regional Offices played a key role in this process by working closely with the States as they developed their waiver requests. We made every effort to work with States to make revisions so that requests could be approved. After the requests were reviewed, each State received a detailed letter describing which waivers had been approved, and which had been denied. In cases where requests were denied, the Department offered to provide technical assistance and suggested alternative approaches the State could pursue to achieve its goal.

Under the Secretary's waiver authority for PY 1997 and PY 1998, 40 States and one territory requested, and were granted, waivers of JTPA and Wagner-Peyser requirements. State waiver requests routinely sought authority to waive multiple provisions, the vast majority of which were granted. In PY 1997, 255 waivers were granted in response to requests from the various States. For the PY 1998 period, a total of 168 new waivers were granted, and there were extensions of 255 of the waivers that were initially granted in PY 1997. Each approved waiver often resulted in waivers of multiple statutory and regulatory provisions. For example, a single waiver of cost limitations and categories required waiver of 21 legislative and regulatory provisions. For the PY 1999 period, which began on July 1, 1999, no new waivers have yet been granted. However, we are in the process of considering extensions for the all States that currently have waivers.

While the Department has not approved a total of 154 of the total of 608 waivers requested, the reasons for these disapprovals fall into two categories: (1) the request consisted of requests to waive provisions that exceeded the Secretary's waiver authority; or (2) the request was to waive provisions related to fiscal and program accountability. For example, many Wagner-Peyser Act requests were not approved because they were for provisions other than sections 8-10. Many of the JTPA requests that were not approved related to eligibility provisions under title II, one of the elements the Department was prohibited from waiving by the statutory language. However, it should be noted that the new WIA eliminates the income criteria that were the subject of many of these requests, making further waiver flexibility in this particular area unnecessary.

Work-Flex Authority

The Department of Labor Appropriations Act of 1997 authorized the Secretary of Labor to grant Work-Flex authority to a limited number of States. This authority allows Governors to waive JTPA requirements applicable to local areas; JTPA requirements applicable at the State level had to go through the general waiver process. Work-Flex authority was limited to a maximum of six States (of which three must have populations not in excess of 3.5 million) on a competitive basis. Preference was to be given to States designated as Ed-Flex Partnership States under the Goals 2000: Educate America Act. In February of 1998, the Secretary granted Florida, Iowa, Ohio, Oregon, South Dakota, and Texas Work-Flex authority.

The Appropriations provision provides that under the Work-Flex program States could be authorized to waive:

1. Statutory and regulatory requirements applicable to service delivery areas or substate areas within the State under titles I-III of the Job Training Partnership Act (except for requirements relating to wage and labor standards, grievance procedures and judicial review, non-discrimination, allotment of funds, and eligibility); and
2. Statutory or regulatory requirements of sections 8-10 of the Wagner-Peyser Act (except for requirements relating to the provision of services to unemployment insurance claimants and veterans, and to universal access to basic labor exchange services without cost to job seekers).

In April 1997, the Department issued a request for Work-Flex applications in the Federal Register that expanded upon the statutory language to set additional parameters and guidelines for Work-Flex applications. Applicants were required to submit a comprehensive plan that contained the following additional information:

- Examples of the waivers of JTPA requirements that will likely be considered for approval;
- A process for providing an opportunity for public review and comment;
- The process the State will use to monitor and evaluate the implementation of waivers by local areas;
- The process by which service delivery areas and substate areas may apply for and have waivers approved by the State;
- The requirements of the Wagner-Peyser Act to be waived;
- Requirements for identification and improvement in outcomes; and
- Other measures to be taken to ensure appropriate accountability for federal funds.

Although all 50 States were eligible to apply for Work-Flex under the April 1997 Federal Register notice, only 8 chose to do so. The six Work-Flex States were announced after several months of intensive review by the Department and negotiations with State officials. (Applications from Maryland and Michigan were not approved.) During the process, States were required to provide an assurance that they would not waive any provision for which the Department had denied a waiver request under the general waiver authority.

Our experience in administering the general waivers and the demonstration WorkFlex authority has taught us several lessons. We believe this authority has engaged States to identify and eliminate problems that were barriers to effective service delivery. For example, the combining of cost categories substantially simplified the reporting that each local program had to make to the State. In some states a major benefit of the waiver process was their recognition of the need to look very carefully at the barriers they are trying to address, and determine whether State or local requirements or practices, not Federal requirements, needed to be revised.

Other Waiver Authority

In addition to the authority described above, the Secretary of Labor has waiver authority under the School-to-Work Opportunities Act of 1994 (STW) and the Welfare-to-Work program (WtW) established under title IV of the Social Security Act as amended by the Balanced Budget Act of 1997.

The STW initiative is jointly administered by the Departments of Labor and Education. The Act grants waiver authority individually to both the Secretary of Labor and the Secretary of Education for certain programs administered by the respective Departments. A total of seven

waiver requests were received (all in PY 1996), four of which applied to the Department of Labor. Of the four: two requests were granted; one request was withdrawn; and one request was denied due to lack of statutory authority.

Under the WtW program, the Secretary has the authority to waive the statutory requirement that programs at the local level be administered by the Private Industry Council (PIC), if the State requesting the waiver can provide compelling evidence that designating an alternate agency would improve the effectiveness or efficiency of the administration of WtW funds in the local area. FY 1998 was the first year of operation for this program. In FY 1998, a total of 20 requests from 5 States (New York, Alaska, Delaware, New Jersey, and Puerto Rico) were received and approved. There have been no WtW waiver requests received to date in FY 1999.

Waivers under the Workforce Investment Act

As I noted earlier, one of the key reform principles embodied in the Workforce Investment Act of 1998 (WIA), which replaces JTPA, is State and local flexibility. The waiver process of the prior three years served as a guide to building State and local flexibility into the WIA requirements. In fact, we estimate that 90 percent of the waivers granted under the JTPA would not be necessary under the WIA because it does not contain corresponding restrictions or restraints. Despite the removal of those barriers, two tools designed to enhance flexibility are continued in the WIA: permanent general waiver authority and expanded Work-Flex authority.

WIA General Waiver Authority

The WIA establishes permanent authority for the Secretary of Labor to waive certain provisions of the WIA title I, subtitles B and E, and sections 8-10 of the Wagner-Peyser Act. This general waiver authority is substantially the same as the authority granted to the Secretary for one-year periods in the DOL Appropriations Acts for 1997 through 1999. Unlike the discrete one-year waiver authorities in the various Appropriations Acts, the new waiver authority is effective for the five-year period of a State and local area's WIA plan, so waivers will not have to be renewed annually.

The waiver provisions under the WIA are essentially the same as those under the JTPA. However, since the WIA is inherently much more flexible than the JTPA, we expect to receive significantly fewer waiver requests under this new authority. For example, many States requested a reduction in the number of cost categories under the JTPA from three to two. Since there are only two cost categories required under the WIA (programmatic and administrative), such waivers are no longer necessary. The WIA also provides specific time frames for the Department to review waiver requests. Specifically, the Secretary must provide a waiver not less than 90 days after the original submission if it is determined that: (1) the requested waiver will address requirements that impede implementation of the State's Waiver Plan; and (2) the State has executed a memorandum of understanding with the Secretary describing the outcomes expected as a result of the requested waivers.

WIA Work-Flex Authority

During the development of the WIA, the Administration supported the expansion of the Work-Flex authority that had been contained in the FY 1997 DOL Appropriations

Act. The WIA expands eligibility for Work-Flex authority to **all** States and continues the six-State demonstration program initiated under the JTPA. The Work-Flex provisions under the WIA are essentially the same as those under the JTPA. One difference is that the WIA Work-Flex designations will now be made on a noncompetitive basis. The six demonstration States will be able to continue their current Work-Flex activities under the WIA.

It is important to note that Congress continues to express its concern that waivers not be the route to eliminating statutory requirements altogether. The WIA tightens current authorizing language contained in the Department's Appropriations Act by adding several provisions to the list of provisions that are exempted from Work-Flex waiver authority. These are: the basic purposes of title I of the Act; establishment and functions of local areas and local boards; review and approval of local plans; and worker rights, participation and protection. However, the current waiver language is expanded by including authority to waive certain statutory and regulatory requirements applicable to State agencies on aging with respect to the Senior Community Service Employment Program (SCSEP) authorized under title V of the Older Americans Act.

H.R. 2376

Chairman McIntosh and Chairman Horn, your letter of invitation asked that I comment on H.R. 2376, legislation introduced by Congressman Green that would require Executive Agencies to establish expedited review procedures for granting a waiver to a State under a grant program administered by the agency if another State has already been granted a similar waiver by the agency under the program. It is important to note that this legislation does not modify the

requirements in current law regarding the conditions governing waiver approval or the provisions that cannot be waived. Rather, it addresses only the review procedures establish by the Executive Agency. While we are sympathetic to the objectives of H.R. 2376, we believe the legislation is unnecessary and could create problems were it to be enacted.

We believe there is no need for government-wide legislation in this area. The overall topic of Federal agency review and approval of State waiver requests is already dealt with more broadly and effectively by the President's August 4, 1999, Executive Order on Federalism (E.O. 13132). Furthermore, the 90-day time for Departmental review of State waiver requests under WIA will accomplish the objective of "expedited review" with respect to job training programs.

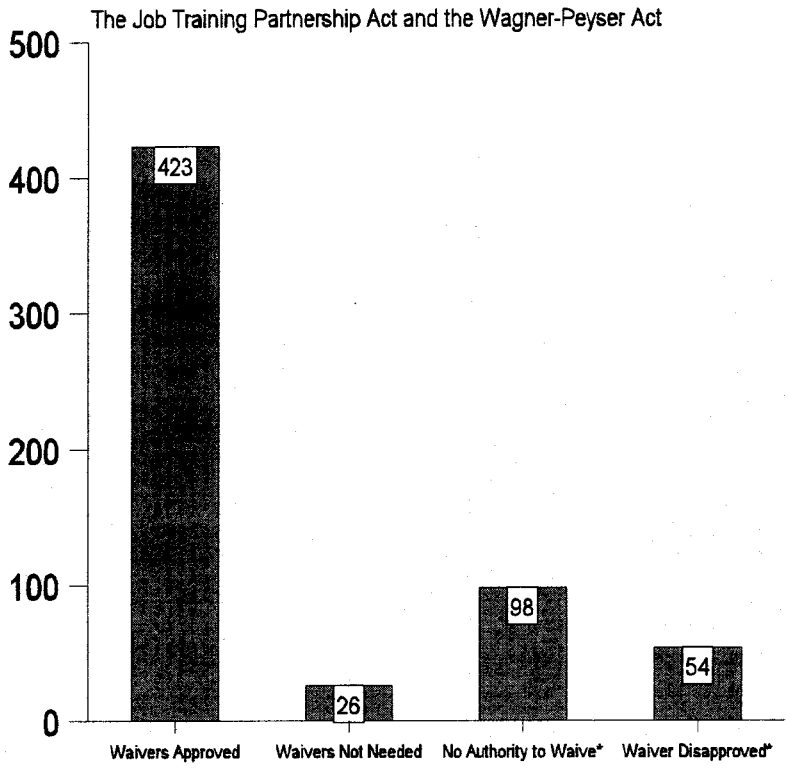
We currently make every effort to consistently apply criteria across States with respect to the granting of waivers. If a particular State has been granted a specific waiver, it eases and speeds our job in reviewing waiver requests if another State requests the same waiver. However, States usually submit a package of waiver requests together with the performance improvements they anticipate if the waivers are granted. The Department must consider the waiver request package of each State in its totality, and it would be highly unlikely that the package of waivers requested by one State would be identical to another.

We do not believe there is justification for requiring every Federal agency to develop regulations for review of State waiver requests. We already have new regulations relating to the WIA waiver process and requirements. The Department of Labor has reduced the volume of its regulations in recent years and does not believe that new Department of Labor regulations are necessary to govern its internal review of waiver requests.

In sum, we believe that the objectives of H.R. 2376 could be accomplished administratively, and through enhanced coordination within and across Federal agencies, without enactment of new legislation.

This completes my prepared statement. I would be pleased to answer any questions that you may have.

The Department of Labor's Record on Waivers



*See Attachment for further details

Source: U.S. Department of Labor

September 29, 1999

GENERAL JTPA AND WAGNER-PEYSER ACT WAIVER REQUESTS NOT GRANTED

On August 23, 1999, the Department of Labor (DOL) provided information on waivers under DOL grant programs to the Honorable David M. McIntosh, Chairman of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Government Reform Committee. A chart provided to Chairman McIntosh indicated that the Department approved 423 waiver requests; 26 were not needed because the State already had the authority to do what it was requesting; and the Department either had no authority to waive or disapproved 152 waiver requests. The Department has undertaken further analysis of the 152 waiver requests that were not approved and determined that for 98 requests we had no authority to waive. The remaining 54 requests were disapproved because they related to fiscal and programmatic accountability, and the Department had clearly indicated in the PY 1997 waiver guidance that such waivers would not be granted. A more detailed listing of the reasons for not approving waiver requests follows.

NO AUTHORITY TO WAIVE: Consists of 1) requests to waive specific areas excluded from the Secretary's general statutory and regulatory waiver authority, and 2) requests to waive provisions outside of the Secretary's waiver authority limited to provisions of Titles I - III of JTPA and sections 8 - 10 of the Wagner-Peyser Act. Such waiver requests not granted are comprised of:

- 49 requests to waive JTPA title II and III eligibility requirements, which is an area excluded from the Secretary's waiver authority (e.g., requests to serve non-economically disadvantaged youth in the summer program and eligibility requirements for needs-based payments);
- 31 requests to waive allocation/reallocation provisions, which is an area excluded from the Secretary's waiver authority;
- 4 requests to waive labor standards which is an area excluded from Secretary's waiver authority;
- 3 requests to waive requirements on the establishment and functions of service delivery areas (SDAs) and private industry councils (PICs), which are areas excluded from the Secretary's waiver authority (e.g., waive PIC membership requirements and SDA designation requirements);
- 3 requests to waive plan review and approval provisions, which are areas excluded from the Secretary's waiver authority; and
- 8 requests to waive other Federal statutory provisions outside of the Secretary's limited waiver authority (e.g., requests for waiver of provisions of other laws).

Total 98

DISAPPROVED: Consists of requests to waive provisions related to fiscal and programmatic accountability that the Department clearly indicated in the PY 1997 waiver guidance would not be granted:

- 19 requests to waive JTPA reporting requirements which would affect the Department's ability to account for fundamental programmatic and financial outcomes or the ability to make basic comparisons in the performance among States for adult and youth programs, which the waiver guidance indicated would not be granted;

- 2 requests to waive performance measures which were inconsistent with the waiver guidance;

- 6 requests to waive provisions affecting program accountability which were inconsistent with the waiver guidance;

- 9 requests to permit the combining of funding streams from separate appropriations (commingling of funds), which is inconsistent with the Generally Accepted Accounting Principles (GAAP), and which the waiver guidance specifically indicated would not be granted; and

- 5 requests to waive JTPA procurement provisions, consisting of:

  - 1 request to waive a procurement procedure which is not based on a Federal requirement and therefore not waivable by the Secretary; and

  - 4 requests to eliminate the requirement for competition under the JTPA procurement provisions;

- 5 requests to waive all ETA Form 9002 (Data Preparation Handbook) data elements (except for veterans, claimants and disabled) needed for program accountability under Wagner-Peyser Act related to job seeking applicants;

- 3 requests to waive the records retention requirements needed for assuring compliance with program accountability and for Civil Rights Act requirements;

- 3 requests to waive the JTPA prohibition on the use of funds for public service employment (PSE);

- 1 request to waive the 50-percent wage reimbursement limit on on-the-job (OJT) training contracts-- retention of reimbursement rate deemed appropriate since State requesting this waiver had already been granted a waiver of the duration of OJT (6 months or 499 hours) and combined with this waiver, if granted, would result in fully subsidized private sector employment, and

- 1 request to permit the use of JTPA funds for Individual Development Accounts which is outside of the Secretary's authority under current JTPA legislation. The State requesting this waiver was advised that this was something for discussion under the new Workforce Investment Act legislation which includes provision for Individual Training Accounts.

Total 54

Combined Total 152

Mr. RYAN. Great. Thank you, Mr. Bramucci.

Let me start with you, Mr. Callahan, and then the other two witnesses. With the letter you sent here to the subcommittee, you stated, "Waiver applications are highly individual, in that each embraces matters grounded in the specifics of the State's current plans, demographics, needs, resources and priorities. Therefore, each application is considered individually and not in comparison with other applications."

I think that is a very valid point and it is a very noteworthy point, but does HHS streamline its review process in any way for a State waiver application which is similar to that approved of another State? If not, can you explain that more fully? I mean, aren't there some cases where some of these things do resemble other cases, other States, or is every single one clearly and distinctly different.

Mr. CALLAHAN. Well, I think there's always differences in probably virtually every State waiver that comes in. I think your point may be correct that there's not major differences in every application——

Mr. RYAN. Right.

Mr. CALLAHAN [continuing]. And that's a valid point. But I think one of the things that probably ought to be kept in mind here is, when the waiver is finally approved, it is for a rather long period of time.

So, for example, on the major demonstrations that you're concerned about, the 1115's, when a State waiver is approved, it's approved for 5 years. It's also renewed for 3 years. And the other ones that we're talking about, they're generally approved for 2 or 3 years and renewed for 2 or 3 years.

So the key thing here is, aside from the streamlining that you're concerned about, is to have a constructive process so that you get a good, solid waiver, and once it's agreed to, it's locked in for a long period of time. So I guess our feeling on this would be, the important thing is the end goal, which is to get to the approval of a waiver that both sides——

Mr. RYAN. A quality waiver.

Mr. CALLAHAN. A quality waiver. That's a good point.

Mr. RYAN. Sure.

Mr. CALLAHAN. And I think the record would indicate, again given the number of waivers, we've achieved that.

Mr. RYAN. Well, and I think you will find no disagreement on the fact that we want to achieve a quality waiver so it is a program that can be locked in, but aren't there similar quality waiver requests coming, and aren't there some coming in 1 day, and then a few days down the road or a year down the road, very similar waiver requests that are structured the same way because another State got them in just as quickly?

Mr. CALLAHAN. Undoubtedly that may occur. Obviously, not having sat in front of those 685 waivers that have been approved, I can't give you a very specific answer. But I do think we are mindful of time. Not only are the State people, the State officials that deal with us are mindful of time, we're mindful of time as well.

But we want to make sure, when we approve that waiver, that we do the two things that I talked about earlier. It has to be budg-

et-neutral, and that was agreed with us by the National Governors' Association. They signed on to that agreement. And, second, we have to make sure that the people that are served under these programs are well served, and that's the thing that we're aiming at.

Mr. RYAN. Well, and that is our question with Wisconsin. Had BadgerCare been approved a year earlier, we could have served all those extra low-income people, had it been approved earlier. So the consequences of not acting, not granting approval, are fairly dire as well.

Have you estimated a ball park timeframe as to what the average approval process is at HHS?

Mr. CALLAHAN. We will supply that for the record in detail, but let me say it's my general understanding that in the area of the major demonstrations, which are the 1115's, there have been some that have taken a long time. The New York case was a long time. I think you've already eloquently stated that the Wisconsin case took a long time. Some of the other major demonstrations took as little as 3 months, sometimes more, in the 6 or 7 month timeframe.

Mr. RYAN. Well, as you know, the Executive order says 120 days is the goal.

Mr. CALLAHAN. Right, but again, these are the most complex ones because they deal with revisions in the Medicaid program. It is very clear, because the Medicaid program is an entitlement program, we're not going to push people who are entitled to Medicaid out of it.

And, second, we do have to do these budget neutrality calculations, which are complex, which apply to a 5 year period, and we work with the States to determine what we call the "without waiver baseline" which is the projection of what we believe a normal projection of Medicaid expenditures without the waiver would be for 5 years.

So these are more complex, and I would suggest that I'm not sure you'd want to do those in 90 or 120 days, because if you set a very arbitrary standard, saying, "OK, we've got to conclude it in 90 days," and we agree to say, "OK, we'll either approve it or deny it within 90 days," you might get more denials.

I guess my point here is, it's better to keep the parties at the table, and that's what we're aiming for.

Mr. RYAN. Sure, but wouldn't you agree that it could be done a little faster? I mean, given the fact that the administration's own Executive order says we want to do this within 120 days? I agree, an arbitrary date may increase the possibility of denials, but can't progress be made.

Mr. CALLAHAN. Yes, I don't deny that progress can be made, and we have on our part put out a lot of technical assistance guidelines to the States to indicate the things that we're concerned about when we come to the table. We would hope that sort of technical assistance will create a situation where we'll come to the table as quickly as possible and get these things approved as quickly.

Mr. RYAN. We will go to another round of questions, but I would like to ask my colleague, Mr. Owens, if he would like to ask any questions at this time.

Mr. OWENS. Yes. Thank you very much. I hate to sound like an old-fashioned Democrat liberal, but the assumption is being made

that the more freely waivers are granted, the more improved government, and I think that both the White House and the Republican majority in the Congress agree with that assumption and are pushing very hard, and your record demonstrates that. I think you—had we been talking about this 10 years ago, the record would be quite different in terms of the kind of waivers, number of waivers and kind of waivers granted.

But I really have some problems with the assumption that automatically things are done better at the State and local level. You know, we have a scandal in New York where a clerk for the last 7 years has been taking bribes to marry people without making them follow the proper requirements, and some folks are wondering whether they are married or not, you know, appropriately. We have a situation where 20,000 kids were forced to go to summer school because there were blunders on the testing, the process of scoring the test. We have a Governor of the State of New York under investigation and scrutiny because of some ethical questions, ranging from his fee, the fees he collects for his speeches, to the way they let contracts.

And on and on it goes. Corruption at the local level, you know, I know we are all familiar with. I think, Mr. Bramucci, you were with State government. I know that local government is the same thing. You would concede that it isn't the most efficient and the cleanest form of government. We had a situation recently where the mayor of New York had to be ordered by the Federal court to stop abusing potential welfare recipients and Food Stamp recipients.

So, I just wonder, in this process of rushing to grant waivers and place our faith in the State governments, do we have some safeguards? And can we have more safeguards and some stringent penalties for people who violate the law because the waivers give them a situation where nobody will be watching, monitoring, holding them accountable?

We have large amounts of money not being spent, that we think ought to be spent for job training, day care. We have a situation where large amounts of money are being saved by adopting certain policies, because the Federal share is part of it and there is a State and local share, and therefore these waivers give the government a chance to save a lot of money on the backs of people who are in great need, and they are being denied things that they really are due according to the legislation and they are eligible for.

So I wonder if you would comment on any safeguards that we might need, like penalties in the law which really put people in jail for violating the law. After they have been given all this freedom, if they are caught violating the law, they really have to pay a price. Or some other means of making certain that while we give this greater flexibility and freedom, we don't undermine the real purpose of the laws, mostly the safety net laws that people want to push for waivers with. And I just wonder if you want to, each one of you might want to comment on that?

Mr. BRAMUCCI. Since the Workforce Investment Act envisions the greatest transfer of authority and initiative to the local level under State auspices, remember I said in my testimony that notwithstanding that transfer and that new partnership from the bottom

up, we would not give waivers on eligibility for benefits and for programs, allocation of funds, nor labor protection. We'll be watching that very closely, because what we're not trying to do here is have an excuse for less people being trained, but for more, and to do it more expeditiously, however, by having fewer rules and regulations and more flexibility on the part of local communities to design the kind of programs they need for the local citizens.

But the aim is to expand the availability of training and education to people who direly need it in our economy. We'd be sweeping things under the rug to take that—to take a point of view that we're trying to save money here on services. We're trying to save money on red tape. We're trying to extend the availability of the service to eligible workers, Congressman.

Mr. OWENS. Now I would like to see about that waiver for truck drivers in New York City.

Mr. BRAMUCCI. Yes. You asked me about that before.

Mr. CHAMBERS. I'd like to make a few comments in response to that question. I've had 31 years of experience in government, all of that time in human services, working with Food Stamps and similar programs, TANF, the old AFDC program. I've been a caseworker, a child welfare worker. I've been a supervisor, manager. I've done constituency services. I've been a county director, I've worked at the county level, I've worked at the State level. I've only had 1 year of experience at the Federal level, and I can tell you, I've seen in that 31 years some of everything. I think when I'll retire I'll write a book and call it "Anything You Never Want To Know About Government, And Then Some."

But, at the same time, I've seen some absolutely wonderful, creative work done at every level of this American government, and I have to believe that my collective experience over that period of time at the three levels of government, at least in the human services, suggests to me that in the main the people who are managing these programs and who are carrying out the directives of the administration and Congress really are people of good will and intent and tremendous talent and expertise.

I believe, and I think it would be my—hopefully my colleagues' perspective also, that the waiver authority that we currently have granted to us allows us a lot of opportunity to do real partnership and collaboration with our peers. And by virtue of the fact that we have been able to do waivers, I think, and meet many of their requests, in fact, in the majority of cases, their requests for innovation and creativity, I think we pretty much feel that we've got our hands pretty well firmly on the throttle here.

I think in terms of situations where experiments go awry or perhaps the results that are achieved are not precisely what others or individuals might have hoped, I think there are means that we have at our disposal for addressing that, both in terms of negotiating with those States that have gotten the waivers, changes in those provisions so that the problems can in fact be corrected and the results can in fact be improved.

So I think as long as we can maintain a spirit of collaboration, partnership and cooperation in this regard without the rancor that sometimes pervades discussions between advocate groups and States as well as the Federal agencies, and then even our customer

constituents, as long as we can somehow get past all that, I think we have a real opportunity for real success here in terms of reinventing government and making a positive step for quality of life for all of our citizens, the ones that we represent who are here as well as those that are not here, that need our services. So, thank you, that's my perspective.

Mr. OWENS. Thank you.

Mr. CALLAHAN. I think with regard to the waiver process, your point is a correct one. These are waivers, these are time-limited waivers, so it is incumbent upon all the agencies that have the waivers, including our own, to look at and evaluate these waivers not only to see whether they made improvements in the program, but clearly that there were no adverse effects on the beneficiaries of the program. And that's the basic philosophy that we use in dealing with the waivers, so your point is a correct one.

Mr. RYAN. Mr. Owens, let me respond. As an old classical liberal, I guess as a young classical liberal, I just think it is important to quote Winston Churchill at this time, who said that democracy is the worst possible form of government except for all other forms of government. It is a sloppy process. You do have graft and corruption. You do have unintended results.

But the foundation of democracy, from my perspective, is the idea that government which governs closest to the people, governs best. That way you have those who are right there in the streets, in the schools, in the hospitals, on the front lines of the fight for reviving our society, helping make the decisions on how to improve the conditions in our society.

And I think what we're trying to achieve here is a good cooperation, not a Federal Government hunkering down on top of the State governments or the local governments. And, Mr. Chambers, I think what you said was a wonderful statement, which is, we are not trying to achieve finger-pointing, we are just trying to achieve results.

I think everybody that works at all of these departments and in these State governments, and here in Congress for that matter, are well-intentioned people trying to achieve good results for their citizens, their fellow citizens. Our constituents, your constituents, are all citizens of the United States of America.

But, having said that, we do have this wonderful thing in America, and that is, we have these institutions of democracy, State and local governments, all over the country who have a good, in most cases better perspective on how to help and care for people in their areas. The whole purpose of waivers is to try and get those tools in the hands of those local governments, those State governments.

Mr. OWENS. Would the gentleman yield?

Mr. RYAN. I would be happy to yield.

Mr. OWENS. I have to run, but I just want to say I have served at all three levels of government, and I don't agree with you at all.

Mr. RYAN. Well, thank you, Mr. Owens. I appreciate that. I think we are just going to agree to disagree on some of these things.

Let me go to you, Mr. Callahan. I wanted to ask you a few specific questions, because we were going down the path on the some of the health care programs that you administer, and in NGA's written testimony they explain that Texas and Michigan's applications to combine waivers under Section 1915(b) managed care and

Section 1915(c) long-term care, to create managed long-term care programs under Medicaid, required more paperwork and more staff resources than if they had requested separate waivers for each section.

Why was this the case? I mean, why did HHS require more paperwork for a combined application than for separate applications?

Mr. CALLAHAN. Well, I haven't had the benefit of seeing Mr Scheppach's testimony, and I will have to supply that answer for the record.

Mr. RYAN. If you could, please.

Mr. CALLAHAN. Yes, sir.

Mr. RYAN. Let me go on and let me ask you, maybe you can do this in written followup, but later in their testimony they said, "Currently many States are interested in pursuing coordinated care options for individuals who currently have a fragmented health care delivery system"—that is something we are experiencing here in my home State of Wisconsin—"those frail seniors eligible for both Medicaid and Medicare. Several States have engaged in protracted negotiations with HCFA"—the Health Care Financing Administration within HHS—"but have ultimately, and for several years in some cases, withdrawn their application."

The goal of State experimentation, State improvement in my State is to try and get at all slices of society, to make sure no one is slipping through the cracks. We do have different health care policies, different health care services out there that people can at the same time qualify for, yet it is sort of a stovepipe viewpoint from the Federal Government.

Mr. CALLAHAN. I understand the concerns that you have raised about the seamlessness of care. However, we do have to acknowledge the fact that Medicare and Medicaid are two very different programs.

Mr. RYAN. Clearly.

Mr. CALLAHAN. In Medicare, there are concerns that we have to deal with vis-a-vis the trust fund on Medicare, in terms of, for example, if there were a basically a waiver that was designed just hypothetically, say, to save Medicaid funds but expand Medicare funds. That has an impact on the Medicare trust fund. I think that's something that actually the Congress would have to consider, as well.

Mr. RYAN. Are the budget neutrality——

Mr. CALLAHAN. If I could just finish——

Mr. RYAN. Oh, sure.

Mr. CALLAHAN [continuing]. There are a couple of other things, too. There are differences in the Medicare and Medicaid beneficiaries, in eligibility rules. For example, in Medicaid programs we have permitted waiving freedom of choice in providers of programs. That is, States as part of their demonstrations have put a lot of Medicaid beneficiaries in managed care programs.

A Medicare beneficiary is free to choose. A Medicare beneficiary is free to choose as to whether he or she wants to be in fee-for-service or whether he or she wants to be in managed care. That's part of the basic statute.

So those sorts of things have to be weighed in these matters, and I think it's those, among other considerations, that I think are le-

gitimate concerns we'd have to deal with before we resolve the problem along the lines that have been suggested.

Mr. RYAN. Do you have any thoughts on how we can resolve that, any statutory changes or anything like that?

Mr. CALLAHAN. Well, I think you'd have to look at changes in both the underlying authorizing statutes, both Medicaid and Medicare. I think one of the points that your colleagues made here which is a good one, if these things become so routine and accepted over time, maybe what we have to do is, go back and change the basic underlying statute. And insofar as this committee can look into that and can suggest that, then I think that's something you should——

Mr. RYAN. Yes, I think that is a very—that is what we did with welfare reform.

Mr. CALLAHAN. Right.

Mr. RYAN. I think it is a very, very valid point.

The CHIP program, I know the CHIP program is relatively new and waivers have been set aside for a year.

Mr. CALLAHAN. Right.

Mr. RYAN. What is the status of that right now?

Mr. CALLAHAN. As you know, in the CHIP program, I think it's within the last 4 to 6 weeks we had the last two States finally come in and have their CHIP programs approved, so all States now have either a separate CHIP program or, as you know, what they call the M–CHIP program, where they cover the children under Medicaid expansion as opposed to the CHIP program per se, the S–CHIP program.

And, as you know, we estimate that somewhere in the order of 1.3 million children are now covered under the CHIP program. The President has asked and directed our agency to go out and actually visit all 50 States, right now which we're finishing up, to see why we aren't getting more kids that are Medicaid eligible and/or CHIP eligible, enrolled in Medicaid and CHIP. I'm sure some of your State legislators have talked to you about that.

So I think we want to be in the process of getting this overall program up and running at a fairly high rate before we get back into the waiver process. I think we will get into the waiver process at some point.

Mr. RYAN. Do you have any idea what the time line is?

Mr. CALLAHAN. I'd like to supply that for the record, because I——

Mr. RYAN. Because I think the legislation had some requirements within it that——

Mr. CALLAHAN. Oh, I understand.

Mr. RYAN. A specific time line.

Mr. CALLAHAN. Right. I understand, but I'd like to confer with the HCFA administrator on that.

Mr. RYAN. If you could, I would appreciate that.

Mr. Bramucci, I just wanted to ask you a quick question. I was intrigued with your testimony, but I also notice that, looking at the statistics that the Department supplied the subcommittee and the other departments supplied the subcommittee, that the Department of Labor has the highest denial rate of any other department in the Federal Government, a 29 percent denial rate.

Could you—you briefly touched on some of the denial reasons, but could you go into a little more specific why your Department is the highest, has the highest denial rate, and what are the reasons for the bulk of these denials?

Mr. BRAMUCCI. Well, statutorily we have—the biggest number that you saw in our graph. By the way, this has been added to our testimony. You'll notice that the biggest number on negativity are the "no authority to waive." That isn't a denial, it's simply a denial of authority under the statute.

We simply—54 cases are all that we denied over those years, and in most instances we're eager—I mean, some of the things talked about here, when we have a request for a waiver, for instance, that's on our website. We publish not only the request for a waiver but the answer, so that States can pick up information as to what is OK and what isn't, in order to facilitate discussion.

We have detailed meetings with our partners all over the country on these issues. And, you know, I've been around the country now. I've been on this job 14 months. I have traversed hundreds of programs out there with all kinds of officials. I've never heard an official, Republican, Democrat, or a Ventura-ite, ever question our waiver objectivity. I have never——

Mr. RYAN. Jesse Ventura has never questioned your waiver?

Mr. BRAMUCCI. No, he has not.

Mr. RYAN. OK.

Mr. BRAMUCCI. No, they have not questioned our—in all the time I've been in this office, 14 months, not one person has accosted me or said to me, "Bramucci, the Labor Department is not doing its job properly."

Mr. RYAN. Let me ask you about the 54 discretionary waiver denials or the 54—I just saw your chart for the first time here—where the waiver was disapproved. Is there a pattern there? Is there a systematic pattern? Is there a reason why those were disapproved? It sounds like those were disapproved by discretionary decisionmaking within the Department of Labor.

Mr. BRAMUCCI. Basically it's commingling of funds or requests to waive outcomes or performance data that we found we couldn't live with. It would just not be proper under our stewardship of the law. You know, Congress just didn't say, "Here, send the money out and there are no requirements," and so we're the referee. We have to call it.

And we would like to say yes because we have an active partnership going. But I will point out to you, Congressman, that most of that is all moot because we have moved to a new era. We're out of the business of doing——

Mr. RYAN. With the new law?

Mr. BRAMUCCI. With the new law. Ninety percent of the requests and approvals we made would not be germane today.

Mr. RYAN. I think that's a very good point. The new law hopefully will take hold, and hopefully we can take care of this experimentation.

Mr. BRAMUCCI. We've got to get the States to file their plans, and we've got I think 16 in the house now, because this is a massive enterprise of passing authority and initiative out to the States and to the local communities. And we think it's going to work, and

there is an enormous push for it, and it will remove a tremendous amount of frustration at intergovernmental relations.

Mr. RYAN. Well, let me ask each of the three of you this: To get a better handle on the 85 percent approval rate reported by the agencies to the subcommittees, 85 percent of the waivers being approved, were any State waiver requests only partially approved by each of your agencies? And if so, what percent of your agencies' approvals were partial approvals, and can you give me the nature of the partial approval process? Let's just go down the line. Mr. Callahan?

Mr. CALLAHAN. In terms of partial approval, I suppose the question may be a definitional one. And you'll forgive me for a moment, but if a State comes in and puts in a waiver request, and then we negotiate with them and we come out with a different product in the end, is that—do you determine that to be a partial waiver?

Mr. RYAN. I would think so.

Mr. CALLAHAN. Well, why?

Mr. RYAN. Well, the input is, the State legislature passes a program. Let's take BadgerCare, our own program back home. It requires so many waivers. The output is something that looks different than what the State government passed.

Mr. CALLAHAN. So in essence, then, if I may, in that case I'd have to give you precise information as to whether the initial waiver was not approved in its entirety, as opposed to whether a different waiver was approved, and we'd have to do that. That would take quite a bit of work.

Mr. RYAN. I think a better question would be, in the approval where it ends up becoming a partial approval, are there cases where with other States they did get approval, and another State did not get approval, for very similar provisions or waivers that were being requested?

Mr. CALLAHAN. Well, that would require a detailed examination of all these 684 waivers that we've approved.

Mr. RYAN. Just off the top of your head, as an administrator.

Mr. CALLAHAN. I would say by and large for a lot of these waivers, the 1915 (b)'s and (c)'s, a lot of them were probably approved in very close conformance with the original submissions. The 1115's, which are the more complex waivers, probably under your definition would be viewed as "partial" waivers. They're very complex and——

Mr. RYAN. Do you think there is, do you have, are you applying a consistent application of scrutiny to waivers coming in, regardless of the States.

Mr. CALLAHAN. Yes, absolutely.

Mr. RYAN. Mr. Chambers.

Mr. CHAMBERS. Unfortunately, the information that I have available to me here today does not include that breakout, so I'm going to have to get back to you for the record.

Mr. RYAN. OK.

Mr. BRAMUCCI. I don't think so. Generally we get a package of waiver requests, and to the extent that we would approve—that a State did 40 requests and we approve 35, if we find—that would be partial in terms of their package of requests. But what our practice has been, Mr. Chairman, is to take a look at the ones that are

borderline and negotiate that with the State, to say, "If you do this, we will be able to do this," or "If you change these words or that word, we will be able to do it." We don't believe that there is an issue on the part of our partners in the States in that regard.

And to the argument about whether or not we have ever denied a State a waiver where we had granted a similar waiver previously, the answer is yes, in one case. That involved the State of Florida. The then-Governor was Lawton Chiles, and we had an ongoing dispute with them on their JTPA review process, and we were not, because of the legal nature of the dispute, we were not capable of approving that request. That's the only request I know of where we have taken a similar request, granted it in one State and denied it in another.

Mr. RYAN. Well, let me ask the three of you gentlemen this, and then we'll close. Do you think that denials or the negotiations that are entered into to restructure waiver requests can serve or are serving as disincentives for other States to go under the same process? Or let's say three States give you a waiver for a program, they are denied, do you think, as the NGA testifies, that that is a disincentive to other States to go down the complicated, expensive and timely task of looking for a waiver?

Mr. CALLAHAN. I would say emphatically not.

Mr. RYAN. Why?

Mr. CALLAHAN. And the reason is 684 waivers that are approved over the last several years. That's a lot of waivers that are approved, and I think when our colleagues at the State level or at the local level want to do something innovative and constructive and they believe in it, they're going to pursue it.

So, for example, even in the case of Wisconsin where we did have differences, we kept working and working and working. And the ultimate result was that the kids, under the ultimate BadgerCare demonstration that was approved, were approved under the M–CHIP program for an enhanced match for services; and the families, the adults, were approved under the Medicaid program, the State Medicaid program.

Mr. RYAN. Yes.

Mr. CALLAHAN. So in the end, the people were served. So I would believe, my feeling is that for those waivers where there is strong State support for their waivers to serve their constituents and our common constituents, that they will pursue the waiver process.

Mr. RYAN. Well, for the record, in the end they were served 2 years after the legislation passed, but I appreciate your comment.

Let me ask just this quick question. We have talked about some different ideas, different ideas for streamlining the waiver process. What are your thoughts on these ideas? A statutory deadline, I think, Mr. Callahan, I got your impression on a statutory deadline for processing waiver requests. What about broad statutory flexibility to waive most statutory provisions, like the Ed Flex bill?

I don't know, given that that doesn't necessarily affect each of your agencies, you may not have a clear opinion on that one, but what about statutory provisions allowing State certification for financial requirements like maintenance of effort, matching funds, set-asides, cost caps, or a statutory requirement for quarterly publication of approvals and denials and a processing time for each, like

what HUD does with its waivers? What are your thoughts on reforms like that? We will start with Mr. Bramucci.

Mr. BRAMUCCI. Well, built into the Workforce Investment Act is a requirement that we turn around these requests in 90 days. We've done better than that most of the time. Our record with Welfare-to-Work, a highly—an extensive program, $3 billion over 2 years, we had 20 requests, we turned them around in weeks, for waivers. I don't see, and this isn't——

Mr. RYAN. So you like the statutory deadline, or——

Mr. BRAMUCCI. No. I think that—I think things in our Department are running fine. I think we're very attuned to the need to turn around decisions and to work closely with State and local partners. And the old philosophy, "If it ain't broke, don't fix it," ours ain't broke, and I'm confident that we're doing the right thing and we have excellent lines of communication with our partners.

Mr. RYAN. So you don't think there is anything we can do to further streamline the waiver process?

Mr. BRAMUCCI. I'm talking about the Labor Department, and in the Labor Department, with the change of legislation which is dramatic in that, it is an enormous transfer of authority and discretion to local and State governments. Therefore, the whole issue becomes moot in terms of how you treat us. Our rules are different, because our rules now are to approve the State's mechanism for taking clear title to this power and authority, so our relationship changes. Waivers are now less and less important. Maybe that's the answer.

Mr. RYAN. Very good point. Thank you.

Yes, Mr. Chambers.

Mr. CHAMBERS. Let me say that I really need to think more about the substance of your question, but I will say this much. After my review of this whole situation, I think—I have a couple thoughts.

One, I think we have adequate, if you will, direction within the statute and regulations, that we are required to conform to the 60-day standard that we apply, we meet in the majority of cases, except in a few cases where because of lack of information or the timely receipt of that information, deliberations may go on, negotiations may go on somewhat longer. But I think that our overall track record is one that would support the fact that the system is not broke, it is functioning.

If I would make any recommendation at all, and this is based on my work both at the State and county level as well as now at the Federal level, and being able to compare relationships across those three levels, I would say that the one thing that we could do that would help our overall administration of these programs, regardless of where you happen to sit, in which part of the king's court you happen to sit, would be if we could somehow dispel the notion that, one, the States are intimidated by the Federal agencies. My experience of 31 years is that there are very few elected or appointed people in State governments who are intimidated by Federal agencies. My experience over the last years is certainly anything less than that.

Second, I believe we need to encourage and support, as I think the committee is trying to do today, the negotiation, the ongoing dialog, and the collaboration between all levels of government, with

the understanding that we can achieve more working together than we will ever be able to achieve taking cheap shots at one another.

I think, unlike the testimony, at least my review of some of the testimony that's been given here by at least one individual, that the environment that we exist in is a much healthier one than some would suggest. There is ongoing dialog. Our agency continues to have dialog with multiple constituencies about our programs, including State representatives, people who are members of and participate with the American Public Human Services Association [APHSA], for example.

We will have staff at their national meeting this next week in Park City, UT, there not for the purpose of engaging in conflict but for the purpose of showing support for the States' efforts as regards the Food Stamp Program, which is our flagship program, but at the same time hopefully responding to some of the issues that the States have been discussing with us over the last year, particularly in the area of program integrity and access to program benefits, so on and so forth.

So I think there is in fact a healthy dialog that we need to support and reinforce and fuel wherever we possibly can.

Mr. RYAN. Mr. Callahan.

Mr. CALLAHAN. I would say in general four things. One, some of the time deadlines that are in some of the statutes and regulations are helpful. Second, I think the agreement that we have with the NGA is a helpful guideline to evaluating these waivers.

And then the last two things is, I think it is very important that we maintain fiscal stewardship along the lines of cost neutrality; and, second, that we basically uphold the congressional statutes that have been passed, especially vis-a-vis the entitlement status for the individuals under these programs, whether it's Medicaid or welfare or child welfare.

Mr. RYAN. It seems like each of you are more or less saying that statutory changes may be necessary as well. I think clearly, Mr. Bramucci, that is what you were saying. That is just an observation. I am not necessarily asking you a question.

Are there any other statutory requirements that you think would add to that, to addressing those needs that you just mentioned, Mr. Callahan?

Mr. CALLAHAN. I'm sorry. Vis-a-vis what, what statutory changes? Vis-a-vis the process, or——

Mr. RYAN. Yes.

Mr. CALLAHAN. Well, I just—I would respectfully say that I don't think the process is broken. I've maintained in my testimony, both the oral and the written testimony, that I believe what we have is a process of constructive engagement.

Now, maybe this chart is an oversimplification, and none of us likes complication, whether it's in our daily life or what have you. But you all know, both members and staff, that government is complicated. People come to this with a lot of different views.

And we at the Federal level have an obligation to uphold the Federal laws as they are passed, which you pass and we have to administer, and we have an obligation also to be prudent fiscal stewards in this regard. And I think the waiver process that we

have put into effect, which has approved these 685 waivers over these last several years, has tried to meet those two goals.

Mr. RYAN. Well, I think what I would like to have the three of you leave with is basically this, that there is another side to this story; that the Governors are frustrated, that the State legislatures are frustrated. The NGA, through their testimony, I would ask you to read their testimony, are frustrated; that they see other States getting waivers, they are coming up with similar waivers, and it still takes a heck of a long time, longer than the 120 days as called for in the Executive order.

So all I am asking is, please think it through a little bit. This legislation will continue to move down the tracks, and the intent here is not to undermine existing Federal legislation. The intent is to get good answers at good, reasonable pace of time, to better serve the very people we are trying to serve.

BadgerCare is a good example. We would like to have had BadgerCare in law in 1997 when we passed it and conceived of it in Wisconsin, but it is just now becoming implemented. Meanwhile, thousands of people were without health care in the low income part of the State.

So it is frustrating, and there is a lot of frustration out there from the other levels of government, specifically the Governors and the States. So I just ask you to take a look at that. We will submit everybody's questions and statements in the record.

With that, the hearing is adjourned, and I want to thank everybody for coming.

[Whereupon, at 4:25 p.m., the subcommittees were adjourned.]

[Additional information submitted for the hearing record follows:]

Letter to the Department of Agriculture; identical letter sent to 41 additional departments and agencies. Copies of all letters are retained with the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs.

Two summary charts of 12 departments and agencies follows. As indicated, the Department of Transportation refused to answer completely. The remaining 30 departments and agencies received no waiver requests from the States. Full responses are retained with the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs.

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INDEPENDENT

August 3, 1999

BY FACSIMILE

The Honorable Daniel R. Glickman
Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Secretary Glickman:

The Subcommittees on Government Management, Information, and Technology and National Economic Growth, Natural Resources and Regulatory Affairs are continuing their oversight of the management of Federal grant funds.

Pursuant to Article I of the Constitution and Rules X and XI of the United States House of Representatives, please provide the Subcommittees the following information for each of your grant programs: (a) the text of and citation for any statutory waiver provision; (b) the text of and citation for any regulatory waiver provision; (c) the number of waivers granted in Fiscal Years (FYs) 1997, 1998, and 1999 (as of the date of receipt of this letter); (d) the identification of any State which received a waiver in each of these FYs; (e) the identification of any State which was denied a waiver in each of these FYs; and (f) the identification of any State which was denied a waiver but whose waiver application was similar to another State which received a waiver under the same program in each of these FYs.

Your response should be delivered to the National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee office in B-377 Rayburn House Office Building not later than noon on Wednesday, August 25, 1999. If you have any questions about this request, please contact Professional Staff Member Barbara Kahlow at 225-4407.

Thank you for your attention to this matter.

Sincerely,

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Stephen Horn
The Honorable Dennis Kucinich
The Honorable Jim Turner

Major Agency Responses to State Waiver Requests: FY 1997- 8/3/99

States	USDA			ED			HHS			HUD			DOL				EPA		
	Y	N	S	Y	N	S	Y	N	S	Y	N	S	Y	N	S		Y	N	S
R Govs																			
AZ	9	3		3									14	1					
AR	16		1	3			4			2			12	5			1		
CO*[1]	4			1						1	1								
CT	4			1			1			1	2		12				1		
FL*[2]	11	2		3	1		3			2	1		8	7	2		2		
ID	5	4					10			1	1		1				1		
IL	13	1								3			9	2			28		
KS	5	3		2			1			2			11						
LA	14	2	1	2									11	4					
MA	2	0		3			1			1									
MI	17	10		1			3						15	13			28		
MS	4			2	2		1						11	4			1		
MT	4			2			1										4		
NE*[3]	10			4			1			1			7						
NV*[4]	5			1						1									
NJ	12			3			3			1			27	6			1		
NM	7			2			3												
NY	11	4		3			4						12	4			4		
ND	9			3						5			0	1					
OH	23	2	1				1			2			15	5			47		
OK	5	1		1						1			8	6					

[1] While Roy Romer (D) served as Governor, USDA granted 3 waivers Colorado, ED granted 1 waiver to Colorado and HUD granted 1 waiver and denied 1 waiver to Colorado.

[2] While Lawton Chiles served as Governor, USDA granted 10 waivers and denied 2 waivers to Florida, ED granted 3 waivers and denied 1 waiver to Florida, HHS granted 2 waivers to Florida, DOL granted 6 waivers, denied 7 waivers and denied 2 waivers with similar requests to Florida and EPA granted 1 waiver to Florida.

[3] While E. Benjamin Nelson (D) served as Governor, USDA granted 8 waivers to Nebraska, ED granted 3 waiver to Nebraska, HHS granted 1 waiver to Nebraska and DOL granted 7 waivers to Nebraska.

[4] While Bob Miller (D) served as Governor, USDA granted 3 waivers to NV, ED granted 1 waiver to Nevada and HUD granted 1 waiver to Nevada.

Notes: Y = waiver granted; N = waiver denied; S = similar waiver request denied; * = different party last term; ■ = incomplete or no data

Prepared for Representative David M. McIntosh

States	USDA			ED			HHS			HUD			DOL				EPA		
	Y	N	S	Y	N	S	Y	N	S	Y	N	S	Y	N	S		Y	N	S
PA	10	2					1			3			19	8			1		
RI	7			2			2						10	3			1		
SD	4			2						1			14	2					
TN	7			3			10						5	2					
TX	14	4		1			5			3			2	1			2		
UT	12			2									13	3					
VA	9	3		4									27	14			4	1	
WV	7			1			1	1					3				3		
WI	12	5		2			2			2			2				45		
WY	12	2		4			1						9	6					
Total	**305**	**54**	**3**	**64**	**2**	**0**	**47**	**1**	**0**	**38**	**5**	**0**	**316**	**143**	**0**		**179**	**1**	**0**

Notes: Y = waiver granted; N = waiver denied; S = similar waiver request denied; * = different party last term; ■ = incomplete or no data

Prepared for Representative David M. McIntosh

States	USDA			ED			HHS			HUD			DOL				EPA		
	Y	N	S	Y	N	S	Y	N	S	Y	N	S	Y	N	S		Y	N	S
D Govs																			
AL*[5]	8			2			3			1			13	1			1		
AK	3			3									20	6					
CA*[6]	10	1		6			2			1			11	1					
DE	6			2									1				1		
GA	8	1		3			1	1		10			12	2			1		
HI	3			2			1						5	1					
IN	21	2					1			3			17	6			7		
IA*[7]	8	8		2			1			2	1		14	14			1		
KY	18			4			2			3			11	5			2		
MD	9	2					2						13	10			5		
MO	14	1		3			1						11	2					
NH	8	1					1						1				2		
NC	2				2		2						4				2		
OR	12	2		3			3			1			11				1		
SC*[8]	5			3									11	1			2		
VT	8	1		1							1		6	2			2		
WA	17	1		1			2			2			21	2			1		
Total	**163**	**14**	**0**	**36**	**3**	**0**	**19**	**1**	**0**	**23**	**2**	**0**	**148**	**41**	**2**		**26**	**0**	**0**
I Gov																			
ME	24	1		2			3			2									
MN*[9]	27			6			3			5			5	4			40		
Total	**27**	**1**	**0**	**4**	**0**	**0**	**3**	**0**	**0**	**2**	**0**	**0**	**0**	**0**	**0**		**37**	**0**	**0**

[5] While Fob James, Jr. (R) served as Governor, USDA granted 6 waivers to Alabama, ED granted 1 waiver to Alabama, HHS granted 3 waivers to Alabama, DOL granted 12 waivers and denied 1 waiver to Alabama and EPA granted 1 waiver to Alabama.

[6] While Pete Wilson (R) served as Governor, USDA granted 8 waivers and denied 1 waiver to California, ED granted 3 waivers to California, HHS granted 2 waiver to California, HUD granted 1 waiver to California and DOL granted 1 waiver and denied 1 waiver to California.

[7] While Terry Branstad (R) served as Governor, USDA granted 5 waivers and denied 7 waivers to Iowa, ED granted 2 waivers to Iowa, HHS granted 1 waiver to Iowa, HUD granted 1 waiver and denied 1 waiver to Iowa, DOL granted 13 waivers and denied 14 waivers to Iowa and EPA granted 1 waiver to Iowa.

[8] While David M. Beasley (R) served as Governor, USDA granted 2 waiver to South Carolina, ED granted 1 waiver to South Carolina, DOL granted 11 waivers and denied 1 waiver to South Carolina and EPA granted 1 waiver to South Carolina.

[9] While Arne H. Carlson (R) served as Governor, USDA granted 24 waivers to Minnesota, ED granted 4 waivers to Minnesota, HHS granted 3 waivers to Minnesota, HUD granted 5 waivers to Minnesota, DOL granted 5 waivers and denied 4 waivers to Minnesota and EPA granted 3 waivers to Minnesota.

Notes: Y = waiver granted; N = waiver denied; S = similar waiver request denied; * = different party last term; ■ = incomplete or no data

Prepared for Representative David M. McIntosh

Minor Agency Responses to State Waiver Requests: FY 1997- 8/3/99

States	DOE			DOJ			TREASURY			ARC			CNS		
	Y	N	S	Y	N	S	Y	N	S	Y	N	S	Y	N	S
R Govs															
AZ															
AR															
CO*							5						1		
CT				1											
FL*[1]				2									1		
ID															
IL															
KS													1		
LA													1		
MA				1											
MI															
MS															
MT													1		
NE*															
NV*															
NJ															
NM				1									2		
NY													2		
ND				1											
OH	1														
OK				1									1		
PA										1			2		
RI				1											
SD															

[1]While Lawton Chiles (R) served as Governor, DOJ granted 2 waivers to Florida.

Notes: Y = waiver granted; N = waiver denied; S = similar waiver request denied; * = different party last term

Prepared for Representative David M. McIntosh

States	DOE			DOJ			TREASURY			ARC			CNS		
	Y	N	S	Y	N	S	Y	N	S	Y	N	S	Y	N	S
TN				1									1		
TX	2												2		
UT				4											
VA	1			1									2		
WV				1									2		
WI							5								
WY													1		
Total	**6**	**0**	**0**	**17**	**0**	**0**	**10**	**0**	**0**	**1**	**0**	**0**	**21**	**0**	**0**

Notes: Y = waiver granted; N = waiver denied; S = similar waiver request denied; * = different party last term

Prepared for Representative David M. McIntosh

States	DOE			DOJ			TREASURY			ARC			CNS		
	Y	N	S	Y	N	S	Y	N	S	Y	N	S			
D Govs															
AL*															
AK				1											
CA*[2]	2												1		
DE				1									1		
GA				1											
HI															
IN															
IA*[3]				1											
KY	1			1											
MD	1			1									2		
MO													3		
NH															
NC				1			5						1		
OR													1		
SC*[4]	1			4											
VT				4									3		
WA													1		
Total	**3**	**0**	**0**	**13**	**0**	**0**	**5**	**0**	**0**	**0**	**0**	**0**	**12**	**0**	**0**
I Gov															
ME				1									2		
MN*															
Total	**0**	**0**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**2**	**0**	**0**

[2] While Pete Wilson (R) served as Governor, DOE granted 1 waivers to California and CNS granted 1 waiver to California.
[3] While Terry Branstad (R) served as Governor, DOJ granted 1 waiver to Iowa.
[4] While David M. Beasley (R) served as Governor, DOE granted 1 waiver to South Carolina and DOJ granted 3 waivers to South Carolina..

Notes: Y = waiver granted; N = waiver denied; S = similar waiver request denied; * = different party last term

Prepared for Representative David M. McIntosh

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INDEPENDENT

October 7, 1999

BY FACSIMILE

The Honorable Samuel Chambers, Jr.
Administrator for Food and Nutrition Service
Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Mr. Chambers:

This letter follows up on my letter of August 3, 1999, and the joint September 30th hearing entitled "Grant Waivers: H.R. 2376 and Streamlining the Process." The Subcommittees on Government Management, Information, and Technology and National Economic Growth, Natural Resources and Regulatory Affairs request you to comment specifically on each of the following possible ways to streamline agency processes for waiver requests by the States under Federal grant programs. Please indicate whether you support or do not support each suggestion, providing the specific reasons for your agency's position.

1. Requiring quarterly publication by each Federal grantmaking agency of all waiver activity, including the action taken (i.e., approvals, partial approvals and disapprovals) and the processing time.
2. Establishing a standard deadline (e.g., 120 days as provided in Executive Order 13132) for a Federal agency's review of and action on a State's request for a waiver under a capped grant program.
3. Establishing a standard deadline for a Federal agency's review of and action on a State's request for a waiver under an open-ended entitlement program.
4. Synchronizing the time periods for approved waivers (e.g., approval for a 5-year period with 3-year renewal options).
5. Providing a governmentwide standard application form for States to request a waiver under a capped grant program.
6. Standardizing governmentwide agency processing procedures for capped grant programs
7. Standardizing governmentwide agency processing procedures for open-ended entitlement programs.
8. Allowing State certification of compliance with certain statutory requirements (e.g., maintenance of effort, matching funds, set-asides, earmarks, and cost caps) under a capped grant program.

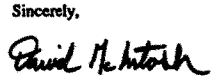
9. Requiring streamlined processing for a waiver request by a State if the request is similar to an already-approved waiver request from another State under a capped grant program.
10. Providing broad flexibility to waive many statutory requirements (such as in the Education Flexibility Partnership Act of 1999, P.L. 106-25) for all capped grant programs awarded to States.
11. Specifying standard provisions to ensure budget neutrality for the open-ended entitlement programs and other programs, including a multiple-year analysis of costs.

We would also appreciate your advice on specific language to accomplish suggestion 11 above.

Your response should be delivered to the National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Monday, October 18, 1999. If you have any questions about this request, please contact Professional Staff Member Barbara Kahlow at 226-3058.

Thank you for your attention to this matter.

Sincerely,



David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Stephen Horn
The Honorable Dennis Kucinich
The Honorable Jim Turner

United States Department of Agriculture

Food and Consumer Service

3101 Park Center Drive

Alexandria, VA 22302-1500

OCT 18 1999

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter is in response to your letter of October 7, 1999, requesting that the Food and Nutrition Service (FNS) provide comments on your suggestions of possible ways to streamline agency processes for waiver requests by the States under Federal grant programs.

FNS administers 15 domestic nutrition assistance programs that are targeted to populations with specific nutritional needs. The agency has authority to grant waivers in three areas of the Food Stamp Program (FSP), which is the largest nutrition assistance program the Agency administers. The other major programs that FNS administers—Child Nutrition, Food Distribution, and the Supplemental Food Program for Women, Infants and Children—have only limited waiver authority; thus the amount of waiver activity is minimal.

FNS uses it's waiver authority appropriately, giving prompt and careful consideration to each State's proposed changes in program requirements. Because the FSP and the other programs FNS administers comprise a nutritional safety net for millions of low-income families and are national in scope, each change in program rules has the potential to affect the health and well-being of millions of Americans. Recognizing this, the Agency approves hundreds of waivers each year, allowing States to experiment with changing program requirements in the interest of improving the effectiveness of program administration and service to our nation's families.

It is not necessary to standardize the waiver approval process across all Federal agencies since the types of waiver requests received across the Federal Government are too diverse to benefit from a standard processing procedure. Even within FNS, it

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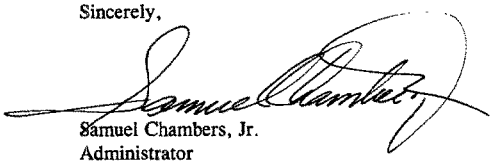
is difficult to envision a standard waiver approval process because of the nature of the programs and the types of waiver requests received from States. There needs to be flexibility in processing waivers to allow for an examination of each State's circumstances and a determination of how the waiver will impact the target population in that State.

The FNS waiver approval process is operating well within the guidelines outlined in Executive Order (E.O.) 13132 which requires agencies to streamline the waiver approval process and to the extent practicable and permitted by law to render a decision within 120 days of receipt of a request. It is FNS' policy to respond to State requests for waivers within the time frames required by statute and regulations. At present, in the overwhelming majority of cases, FNS provides a response within 60 days of a States request for a waiver. For demonstration project waivers, FNS is required by the statute to respond to States' requests within a 60 day timeframe. In the few cases where it takes longer than 60 days to provide a response, it is generally because the State is providing additional documentation to support its waiver request. FNS has also implemented measures to further streamline the approval process for administrative waivers by allowing Regional Offices to approve requests for other States when a waiver has been found to be generally effective, does not have a significant impact on quality control error rates or clients (e.g., potentially increase error rates, reduce benefits or limit Program access). In addition, waiver information is shared with all States.

While the waiver requests FNS receives from States may appear to be similar, each State's situation is unique. The current process works because the purpose of waivers is to determine each State's situation on a case-by-case basis. In giving each waiver request prompt and careful consideration, FNS must not only consider the requesting State's particular circumstances, but also whether the proposed change is already being tested and evaluated elsewhere, and under what circumstances. In this way, FNS is able to support State innovation while at the same time providing the necessary oversight to ensure that programmatic changes are effective and beneficial. When an approved waiver unexpectedly results in problems for a State or recipients, the impact is limited in scope and FNS and other States are able to learn from the "test case."

Thank you for the opportunity to comment on the suggestions for streamlining the waiver approval process. Please contact me if you have further questions or concerns about this matter.

Sincerely,



Samuel Chambers, Jr.
Administrator

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INDEPENDENT

October 25, 1999

BY FACSIMILE
The Honorable Samuel Chambers, Jr.
Administrator for Food and Nutrition Service
Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Mr. Chambers:

This letter follows up on my letter of October 7, 1999 and your response of October 18th, which I received today, about streamlining the process for waiver requests by the States under Federal grant programs. In my letter, I asked you to comment on 11 specific proposals to streamline agency processes. You failed to address each of the 11 individually; instead, you merely provided a general response about streamlining your agency's processes. This is unresponsive to my request and unacceptable.

Therefore, I am again requesting that you comment on each of the 11 specific proposals individually. Please deliver your response to the National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than close of business on Wednesday, October 27, 1999. If you have any questions about this request, please contact Professional Staff Member Barbara Kahlow at 226-3058.

Thank you for your attention to this time-sensitive request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Stephen Horn
The Honorable Dennis Kucinich
The Honorable Jim Turner

ited States
Department of
Agriculture

Food and
Consumer
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

NOV - 1 1999

Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter is in response to your letter of October 7, 1999 requesting that the Food and Nutrition Service (FNS) provide comments on your suggestions of possible ways to streamline agency processes for waiver requests by the States under Federal grant programs. FNS programs are primarily entitlements. Although we administer four discretionary grant programs, we have not received any waiver requests under these programs. One discretionary grant program, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), has limited waiver authority with regard to infant formula rebate competitive bidding requirements. To date, no waivers have ever been requested under the WIC authority. Therefore, because of our limited experience with waivers in capped grant programs, we are not addressing those questions (2, 5, 8, 9, and 10). We instead are focusing on our area of expertise and addressing the questions dealing with entitlement programs. Following are FNS' comments.

While we believe that a process for public notification is important, we think that a publication that identifies all waiver activity is not necessary because States already have access to this information for FNS programs. FNS headquarters maintains a database of Food Stamp Program waiver decisions and updates the database as actions on waiver requests are completed. This database is shared with all regional offices who in turn either routinely share the information with their States or provide waiver information upon the request of the State. There have been no complaints from States concerning the sharing of waiver information in this manner.

We believe that establishing a standard deadline for a Federal agency's review of and action on a State's request for waiver under an open-ended entitlement program is unnecessary. At present, in the overwhelming majority of cases FNS provides a response within 60 days of a States request for a waiver. In the few cases where it takes longer than 60 days to provide a response, it is generally because the State is providing additional documentation to support its waiver request. For demonstration project

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waivers, FNS is required by the statute to respond to States' requests within a 60 day timeframe. Therefore, FNS believes that the waiver process is already working effectively and that the standard deadline suggested above would extend the current 60 day response time.

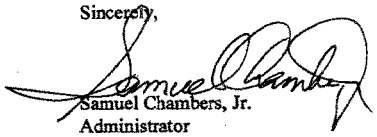
FNS does not support synchronizing the time periods for approved waivers as it is not practical. Since the type of waivers requested by States are varied and generally are tailored to meet the State's individual circumstances, it would reduce flexibility if the same time periods for approved waivers were applied to all States. States can request the amount of time that they would like a waiver to be in effect and can negotiate with Agency on a specific timeframe. Based on the success of the waiver it can be extended or if it is not successful, the waiver can be terminated before the expiration date. In order to allow States maximum flexibility and ensure that unsuccessful waivers do not continue and become a drain on the Federal budget, FNS suggests that time periods for approved waivers continue to be determined on a case-by-case basis.

FNS does not support standardizing processing procedures for waivers. The types of waiver requests received across the Federal Government are too diverse to benefit from a standard processing procedure. There needs to be flexibility in the processing of waivers to allow for an examination of each State's circumstances and a determination of how the waiver will impact the food stamp population in that State.

Lastly, we do not believe that an across-the-board multiple year analysis of costs is appropriate. A multi-year analysis can make sense if realistic estimates suggest that future year savings may offset present year costs. Few waiver requests reviewed by FNS meet this condition. A more typical request is to reduce present year costs by anticipated future year caseload reductions, an approach potentially inconsistent with the goal of ensuring that families and others receive the nutrition assistance to which they are entitled.

Thank you for the opportunity to comment on the suggestions for streamlining the waiver approval process. Please contact me if you have further questions or concerns about this matter.

Sincerely,



Samuel Chambers, Jr.
Administrator

Enclosures

cc: Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
377 Rayburn House Office Building
Washington, D.C. 20515-6143

The Honorable Dan Burton
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

The Honorable Stephen Horn
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
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The Honorable Dennis Kucinich
Ranking
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
377 Rayburn House Office Building
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The Honorable Jim Turner
Committee on Government Reform
U.S. House of Representatives
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BERNARD SANDERS, VERMONT,
INDEPENDENT

October 7, 1999

BY FACSIMILE

The Honorable John J. Callahan
Assistant Secretary and Chief Financial Officer
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Dr. Callahan:

This letter follows up on my letter of August 3, 1999, and the joint September 30th hearing entitled "Grant Waivers: H.R. 2376 and Streamlining the Process." The Subcommittees on Government Management, Information, and Technology and National Economic Growth, Natural Resources and Regulatory Affairs request you to comment specifically on each of the following possible ways to streamline agency processes for waiver requests by the States under Federal grant programs. Please indicate whether you support or do not support each suggestion, providing the specific reasons for your agency's position.

1. Requiring quarterly publication by each Federal grantmaking agency of all waiver activity, including the action taken (i.e., approvals, partial approvals and disapprovals) and the processing time.
2. Establishing a standard deadline (e.g., 120 days as provided in Executive Order 13132) for a Federal agency's review of and action on a State's request for a waiver under a capped grant program.
3. Establishing a standard deadline for a Federal agency's review of and action on a State's request for a waiver under an open-ended entitlement program.
4. Synchronizing the time periods for approved waivers (e.g., approval for a 5-year period with 3-year renewal options).
5. Providing a governmentwide standard application form for States to request a waiver under a capped grant program.
6. Standardizing governmentwide agency processing procedures for capped grant programs
7. Standardizing governmentwide agency processing procedures for open-ended entitlement programs.
8. Allowing State certification of compliance with certain statutory requirements (e.g., maintenance of effort, matching funds, set-asides, earmarks, and cost caps) under a capped grant program.

9. Requiring streamlined processing for a waiver request by a State if the request is similar to an already-approved waiver request from another State under a capped grant program.
10. Providing broad flexibility to waive many statutory requirements (such as in the Education Flexibility Partnership Act of 1999, P.L. 106-25) for all capped grant programs awarded to States.
11. Specifying standard provisions to ensure budget neutrality for the open-ended entitlement programs and other programs, including a multiple-year analysis of costs.

We would also appreciate your advice on specific language to accomplish suggestion 11 above.

Your response should be delivered to the National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee majority staff in B-377 Raybum House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Monday, October 18, 1999. If you have any questions about this request, please contact Professional Staff Member Barbara Kahlow at 226-3058.

Thank you for your attention to this matter.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Stephen Horn
The Honorable Dennis Kucinich
The Honorable Jim Turner

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

OCT 26 1999

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
B-377 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter dated October 7, 1999 asking for comments on suggestions for streamlining the waiver process. These suggestions address process standardization, treatment of similar waivers, broadening statutory authority to grant waivers, and budget neutrality. I will address these issue areas as they apply to relevant waiver programs in the Department of Health and Human Services (HHS).

Standardization of Applications, Waiver Process, Deadlines and Timeframes

The Secretary uses waiver authority to increase State flexibility and test innovative service delivery options, while ensuring that the needs of the children and families who rely on our programs will continue to be met. Given the range of possibilities in both the specifics of waiver proposals and the circumstances of different States, it is very important to assess each request individually, and highly difficult to make generalizations about existing waivers. Different types of demonstration projects require different statutory waivers, and test very different policies, often making coordination of timeframes across different programs infeasible.

For example, time limits on the review of Section 1115 demonstration waiver requests would limit our ability to maintain the fiscal and programmatic integrity of the Medicaid program by reducing the Secretary's and States' ability to negotiate the details of the waiver request. The broad authority to waive portions of the Social Security Act needs to be exercised in a long-term cooperative manner. Restrictive time limits could lead the Department to reject State waiver requests.

In instances where waiver authority is more narrow, time limits are already in place. These waiver requests comprise the majority of the waiver requests reviewed and approved by the Department. For example, approvals and renewals for Section 1915 (b) program waivers are time-limited. Section 1915(f) of the SSA specifies time limits for approving these waivers. This is possible because the authority to waive the Medicaid statute is limited to only a few provisions, such as the authority to waive freedom of choice of Medicaid providers. In general, the less complex the waiver request, the faster

the review. Currently, most ACF waivers meet the 120-day time limit that Executive Order #13132 says agencies should follow "to the extent practicable."

The President's Executive Order appropriately sets a goal for completion of action on waivers, but it does not set a deadline. The Executive Order therefore recognizes the uniqueness of each request and allows for the necessary time to fashion an approvable waiver agreement with States. This allows the Department to identify issues of concern and allows States to respond to these issues. Thus, mandating artificially strict timelines for completing action would significantly inhibit HHS and States from engaging in this constructive exchange.

Treatment of Similar Waivers

HHS has fiduciary and programmatic responsibilities to evaluate each waiver separately on its merits. This is important for three reasons. First, our paramount concern is to evaluate each waiver application separately to ensure the protection of the children and families we serve. Waivers that change benefits or make large programmatic changes must be carefully assessed to assure families and children are protected.

Second, Medicaid, child welfare services, and child support enforcement programs are different in each State. It is therefore often difficult to determine the effect that the same or similar policies would have in each State. For example, every State has different Medicaid eligibility standards. In one State, pregnant women and infants are eligible for coverage up to 133% of the Federal Poverty Level (FPL), whereas in another State, they are eligible up to 200% FPL. Therefore, a waiver of the same statutory provision in two different States could have very different effects in those two States, depending on their eligibility standards.

Finally, issues of budget neutrality or cost-effectiveness must be resolved separately for each State. In the example stated above, differences in eligibility from State to State may mean that a waiver program that is budget neutral or cost effective in one particular State may not be in another.

Broadening Statutory Authority to Grant Waivers

The Secretary already has broad flexibility to waive many statutory requirements in the Medicaid program (particularly the Section 1115 waiver authority), thereby permitting States to experiment and conduct research by demonstrating innovative programs or policies. The Secretary uses this broad waiver authority cautiously to ensure that waivers granted have policy merit, will be rigorously evaluated, and will protect vulnerable populations. The Secretary is committed to using waiver authority to test innovative programs; however, she is likewise committed to ensuring that service delivery to families is not compromised.

Budget Neutrality

The Department is operating in accordance with the 1994 agreement with the National Governors' Association that budget neutrality would be a key component in the consideration of section 1115 demonstration waiver requests. Budget neutrality is calculated on the basis of the duration of the demonstration, rather than on a one-year basis. In the case of the 1115 demonstration program waivers, which are generally approved for five years, the State has five years to ensure overall budget neutrality. This gives States the flexibility to spend more in the first few years of the demonstration when they are implementing the program, and to achieve cost savings once the program has been established, thereby, on average, meeting the budget neutrality cap over the five year period. Budget neutrality agreements in the 1115 demonstration programs protect the Federal Government from spending more in open-ended entitlement programs than the Government would otherwise spend in the absence of the waiver.

Thank you again for the opportunity to discuss the HHS's waiver review record and practices. Both the Clinton Administration in general, and HHS in particular, are committed to working with States to develop programs that work. The Department has policies and procedures in place to assure that waivers are granted efficiently while maintaining the fiscal and programmatic integrity of our programs. We are proud of our record in approving waivers, and look forward to working with States in the future on these innovative projects. Please contact me if further questions or concerns arise.

Sincerely,

John J. Callahan
Assistant Secretary for Management and Budget

cc: The Honorable Dan Burton
The Honorable Stephen Horn
The Honorable Dennis Kucinich
The Honorable Jim Turner

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INDEPENDENT

October 26, 1999

BY FACSIMILE

The Honorable John J. Callahan
Assistant Secretary and Chief Financial Officer
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Dr. Callahan:

This letter follows up on my letter of October 7, 1999 and your response of October 26th, concerning streamlining the process for waiver requests by the States under Federal grant programs. I asked you to comment on 11 specific proposals to streamline agency processes. While addressing some of these proposals, your response failed to individually address several others. Therefore, I am again requesting that you comment individually on proposals # 1, 5, 6, 7, 8, and 10 in my October 7th letter.

Please deliver your response to the National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than close of business on Thursday, October 28, 1999. If you have any questions about this request, please contact Professional Staff Member Barbara Kahlow at 226-3058.

Thank you for your attention to this time-sensitive request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Stephen Horn
The Honorable Dennis Kucinich
The Honorable Jim Turner

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

OCT 28 1999

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
B-377 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter of October 26, I would again emphasize that waiver requests address diverse federal programs in a myriad of ways. During this Administration, HHS has granted hundreds of waiver requests which allowed virtually every state to demonstrate new and effective methods through which to provide Medicaid, child support enforcement, foster care, welfare and many other critical services.

In testimony presented to your Subcommittee on September 30, 1999 and in my letter of October 25, I tried to outline the complicated, state-specific issues that must be addressed to satisfactorily settle upon an effective demonstration project. These factors make a one-size-fits-all review process infeasible. It is for these reasons that we do not believe that the suggestions outlined in your letter of October 7 are feasible additions to the waiver approval process. To be clear about the Department's views on the specific items mentioned in your latest later, I offer the following comments. We do agree that a process for public notification is important (#1). However, we do not believe that a government-wide standard application form for capped grant programs (#5), standardized government-wide agency processing procedures for capped grant programs (#6), or standardized government-wide agency processing procedures for open-ended entitlement programs (#7) are compatible with the unique requirements characteristic of each federal program. In addition, they are inconsistent with the executive fiduciary and oversight responsibilities with which we are entrusted.

As you know, the many federal capped entitlement programs have different statutory requirements, including varying provisions which govern state compliance certification. As a result, we cannot support a programmatic change in these statutory requirements as offered in suggestion 8. Similarly, we cannot support broad authority to waive the other statutory provisions in these many capped grant programs as provided under suggestion 10.

Through a process of constructive engagement with the states, this Administration has approved an unprecedented number of waiver requests. We look forward to continuing this cooperative waiver process with the states in order to help achieve our common program goals.

Because the proposals you have offered impact all federal programs and agencies, we suggest that you contact the Office of Management and Budget.

Sincerely,

John J. Callahan
Assistant Secretary for Management and Budget

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BERNARD SANDERS, VERMONT,
INDEPENDENT

October 7, 1999

BY FACSIMILE

The Honorable Raymond L. Bramucci
Assistant Secretary
Employment and Training Administration
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Bramucci:

This letter follows up on my letter of August 3, 1999, and the joint September 30th hearing entitled "Grant Waivers: H.R. 2376 and Streamlining the Process." The Subcommittees on Government Management, Information, and Technology and National Economic Growth, Natural Resources and Regulatory Affairs request you to comment specifically on each of the following possible ways to streamline agency processes for waiver requests by the States under Federal grant programs. Please indicate whether you support or do not support each suggestion, providing the specific reasons for your agency's position.

1. Requiring quarterly publication by each Federal grantmaking agency of all waiver activity, including the action taken (i.e., approvals, partial approvals and disapprovals) and the processing time.
2. Establishing a standard deadline (e.g., 120 days as provided in Executive Order 13132) for a Federal agency's review of and action on a State's request for a waiver under a capped grant program.
3. Establishing a standard deadline for a Federal agency's review of and action on a State's request for a waiver under an open-ended entitlement program.
4. Synchronizing the time periods for approved waivers (e.g., approval for a 5-year period with 3-year renewal options).
5. Providing a governmentwide standard application form for States to request a waiver under a capped grant program.
6. Standardizing governmentwide agency processing procedures for capped grant programs
7. Standardizing governmentwide agency processing procedures for open-ended entitlement programs.
8. Allowing State certification of compliance with certain statutory requirements (e.g., maintenance of effort, matching funds, set-asides, earmarks, and cost caps) under a

capped grant program.

9. Requiring streamlined processing for a waiver request by a State if the request is similar to an already-approved waiver request from another State under a capped grant program.
10. Providing broad flexibility to waive many statutory requirements (such as in the Education Flexibility Partnership Act of 1999, P.L. 106-25) for all capped grant programs awarded to States.
11. Specifying standard provisions to ensure budget neutrality for the open-ended entitlement programs and other programs, including a multiple-year analysis of costs.

We would also appreciate your advice on specific language to accomplish suggestion 11 above.

Your response should be delivered to the National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Monday, October 18, 1999. If you have any questions about this request, please contact Professional Staff Member Barbara Kahlow at 226-3058.

Thank you for your attention to this matter.

Sincerely,

David M. McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Stephen Horn
The Honorable Dennis Kucinich
The Honorable Jim Turner

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

October 25, 1999

The Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to respond to your letter of October 7, 1999, regarding an expedited waiver process for grants to states.

We agree that it is beneficial to provide the public with information about the waivers that we are considering. Therefore, we currently publish waiver requests and ETA's responses to such requests on a DOL website. We believe use of the DOL website to be an efficient, timely and user-friendly vehicle for States, localities and other interested parties. Publishing this information in the Federal Register would be administratively burdensome and time consuming and result in administrative and publication expenses. Moreover, since the vast majority of waiver requests are submitted to ETA at the beginning of the program year planning process, quarterly publication in the Federal Register is probably excessive.

In general, we have concerns about standardizing different aspects of the waiver process. The Department receives a wide variety of waiver requests that cover a wide array of issues and have significantly different impact on different states. We would oppose efforts that would constrain our flexibility in reviewing these waivers.

With regard to a standard deadline, we believe that there is no need for legislation in this area. First, the issue of Federal agency review and approval of State waiver requests is already addressed effectively by the President's August 4, 1999, Executive Order on Federalism (E.O. 13132). Second, this issue was addressed in the passage of the bipartisan Workforce Investment Act (WIA) which provides a specific time frame of 90 days after the original submission for the Department to review and take action on waiver requests. While the waiver provisions under WIA are essentially the same as those under the Job Training Partnership Act (JTPA), WIA is inherently much more flexible. We estimate that the vast majority of the waivers granted under the JTPA would not be necessary under WIA. For that reason, we expect to receive significantly fewer waiver requests under this new authority.

Similarly, because of the wide diversity of Federal grant-in-aid programs, the Department of Labor believes the time periods for waivers are best left to the discretion of the agencies responsible for administering them, working in conjunction with their State partners.

In addition, while there may be some common elements that could be considered for a standard government form, we believe that a government-wide standard application would not be able to address the differences in Federal/State programs. In fact, because of the variations in programs, creation of a standard application form could result in a requirement that States complete two applications; one government-wide and one agency specific. For example, both Work-Flex and general waivers under JTPA/WIA require applications to consist of a detailed "State Plan" which contains common elements that are specific to these program(s) and how they are being administered in a particular State. Thus, WIA does not lend itself to a standard application and, as such, would likely limit our flexibility and that of our partners to implement waivers that would affect service delivery and outcomes.

With respect to standardizing agency processing procedures for capped grant programs, the Department of Labor/ETA has reduced the volume of its regulations in recent years and particularly in light of the passage of WIA, does not believe that additional new regulations are necessary to govern its internal review of waiver requests. Also, we believe this approach could actually limit the flexibility of Federal agencies in managing their responsibilities and taking into account the needs of their partners.

Regarding the certification of compliance, under JTPA/WIA the approved State waiver applications for both Work-Flex and general waivers are part of the basic grant agreement which contains all of the necessary assurances and certifications for these programs. However, we do not believe such certifications substitute for or preclude the Department from carrying out appropriate oversight activities to ensure program accountability.

We appreciate the committee's interest in a streamlined process for waivers that are identical to previously granted waivers and the Department agrees in principle with this approach. However, in practice, this could be problematic because it could conflict with other responsibilities that the Department has. Under JTPA, as well as under WIA, the Secretary of Labor is responsible for ensuring that applicants for waivers or work-flex authority meet certain requirements, including the opportunity for public review and comment on proposed waivers. We must consider a waiver request package of each State in its totality, and it would be highly unlikely that the package of waivers requested by one State would be identical to another. Where the Department of Labor has experience in processing a waiver application based on a similar waiver request from another State, the review and approval process is often expedited.

The Department supports flexibility in administering these programs and supports the "Ed-Flex" concept which is embodied in the DOL counterpart to Ed-Flex -- "Work-Flex. During the development of WIA, the Department supported the expansion of Work-Flex to all States with approved plans and the WIA legislation now contains that provision. We are already using waiver

authority to the maximum extent consistent with sound policy and Congressional authority. It is important to note that Congress continues to express its concern that waivers not be used to eliminate statutory requirements altogether. For example, WIA tightens current authorizing language contained in the Department's Appropriations Act by adding several provisions to the list of requirements that are exempted from Work-Flex authority.

Finally, we would note that the Department of Labor does not administer any open-ended entitlement programs and therefore does not have any views on proposed changes that impact those programs.

I hope that this information is helpful to you.

Sincerely,

Raymond L. Bramucci

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