



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

July 18, 2012

The Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Thank you for your interest in the guidance we have released to states concerning the Temporary Assistance for Needy Families (TANF) program.

The 1996 welfare reform legislation established work requirements which have been critical to moving people off welfare and into jobs. The proposal we have outlined strengthens the law's purpose to move people off of welfare and into jobs by utilizing state-based innovation. Our goal is to accelerate job placement by moving more Americans from welfare to work, and no policy which undercuts that goal or waters down work requirements will be considered or approved by the Department.

For years, Republican and Democratic Governors have requested more flexibility in implementing welfare reform so they can meet their states' specific needs. In 2005, 29 Republican Governors requested "[i]ncreased waiver authority, allowable work activities, availability of partial work credit" so they might more "effectively serve low-income" Americans. Certain elements of the proposal endorsed by the 2005 Republican Governors were very far-reaching and would not be approved under the Department's proposed waivers. More recently, Utah and Nevada requested waiver opportunities. While it appears some of the policies enumerated in the letters would not be eligible for waivers under our policy, we look forward to receiving and being able to consider a formal application from these and other states. The Department is providing a very limited waiver opportunity for states that develop a plan to measurably increase the number of beneficiaries who find and hold down a job. Specifically, Governors must commit that their proposals will move at least 20% more people from welfare to work compared to the state's past performance. States must also demonstrate clear progress toward that goal no later than one year after their programs take effect. If they fail, their waiver will be rescinded. And if a Governor proposes a plan that undercuts the work requirements established in welfare reform, that plan will be rejected.

We will follow our initial guidance to states with further information detailing metrics and accountability measures. The policy we have outlined is designed to accelerate job placement rates for those on welfare, not address other aspects of their lives. No plan that undercuts the goal of moving people from welfare to work will be considered or approved. For example, the Department will not approve a waiver that changes the definition of work requirements to include any of the activities outlined in a 2005 GAO report on TANF such as personal care activities, massage, and journaling. We will continue to hold states accountable for moving people from welfare to work.

Strengthening Welfare Reform Through State-based Innovation

For states, welfare can too often be a maze of red tape and nonsensical rules. For example, states can get more credit for assigning people to do job search than for placing them into paying, private-sector jobs. The rules not only place an administrative burden on states, but make searching for a job and securing employment more difficult for families. The proposal we have outlined gives states flexibility to cut red tape and get people back to work.

As noted earlier, when Congress considered legislation reauthorizing the TANF program in 2005, Governors from across the country also expressed their support for more flexibility for states in the TANF program. In a letter to Congress, the following Governors specifically endorsed Senate legislation, which would have allowed many states to receive waivers far broader than we are allowing now—including, for example, waivers of the time limits in the 1996 welfare reform law. Governors signing this letter included:

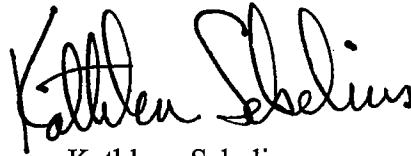
Bob Riley, Alabama	Tim Pawlenty, Minnesota
Frank H. Murkowski, Alaska	Haley Barbour, Mississippi
Mike Huckabee, Arkansas	Matt Blunt, Missouri
Arnold Schwarzenegger, California	Dave Heineman, Nebraska
Bill Owens, Colorado	George E. Pataki, New York
M. Jodi Rell, Connecticut	Kenny C. Guinn, Nevada
Jeb Bush, Florida	John Hoeven, North Dakota
Sonny Perdue, Georgia	Bob Taft, Ohio
Linda Lingle, Hawaii	Donald L. Carcieri, Rhode Island
Dirk Kempthorne, Idaho	Mark Sanford, South Carolina
Mitch Daniels, Indiana	M. Michael Rounds, South Dakota
Ernie Fletcher, Kentucky	Rick Perry, Texas
Robert L. Ehrlich, Jr., Maryland	Jon Huntsman, Jr., Utah
Mitt Romney, Massachusetts	James Douglas, Vermont

As also noted previously, we do not go as far as these Governors in supporting state flexibility. Within limits, however, we agree with their letter that states should have “the flexibility to manage their TANF programs and effectively serve low-income populations.” If a Governor commits to a plan to strengthen work requirements that moves more people from welfare to work, we welcome the opportunity to review that proposal. On the other hand, if a Governor is satisfied with the status quo, the state will not be required to submit a waiver request and can continue to operate under the current welfare system.

We do not have to choose between providing temporary assistance to families who fall on hard times and putting people back to work. We can do both by strengthening work requirements so more people move from welfare to work and giving states flexibility to tailor their welfare reforms to their specific needs. But while we continue to explore new ways to strengthen work requirements, we will not accept any changes that undercut employment-focused welfare reforms that were signed into law fifteen years ago.

As we have relayed to your staff, we would welcome the opportunity to brief them on the legal and programmatic issues related to this policy and to discuss the feedback we have received from states about the challenges that the current requirements present to creating jobs. Attached is a more detailed description of HHS' waiver authority under current law. I will also provide this response to Chairman Camp.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is written in a cursive, flowing style with a large initial "K".

Kathleen Sebelius

Enclosure

ATTACHMENT – Legal Basis for Utilizing Waiver Authority in TANF

The exercise of waiver authority contemplated in the July 12 Information Memorandum is clearly authorized by section 1115(a)(1) of the Social Security Act. Section 1115(a)(1) allows the Secretary to “waive compliance with any of the requirements of section ... 402 [of the Act] ... to the extent and for the period [s]he finds necessary to enable [a] State ... to carry out” an approved experimental, pilot, or demonstration project that will assist in promoting the objectives of the TANF program. 42 U.S.C. § 1315(a)(1). As the Information Memorandum explains, section 402 sets forth state plan requirements for the TANF program, including the requirement that a plan “[e]nsure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407.” *Id.* § 602(a)(1)(A)(iii). By authorizing the Secretary to “waive compliance with any of the requirements of section ... 402,” therefore, section 1115 permits the Secretary to waive the requirements of section 407 when she determines that a waiver would promote the objectives of the TANF program and satisfy the other prerequisites for a waiver.

Your letter maintains that the Secretary’s section 1115 waiver authority does not extend to the requirements described in the Information Memorandum because those requirements are set forth in section 407 rather than section 402. But, as explained above, the plain text of section 402 incorporates the requirements of section 407 by reference. Moreover, the Department has long interpreted its authority to waive state plan requirements under section 1115 to extend to requirements set forth in other statutory provisions that are referenced in the provisions governing state plans. This interpretation has been consistently applied throughout the history of section 1115, including in the context of the Medicaid, child support, and former Aid to Families with Dependent Children (AFDC) programs. For example, in Wisconsin’s well-known “Work Not Welfare” demonstration implemented in 1995, the state received a waiver of rules related to the distribution of child support. While section 1115 references the child support state plan provisions in section 454, the child support rules waived in the Wisconsin waiver are in section 457, but included by reference in the state plan in section 454(11). (Additional examples can be provided upon request.) If Congress had intended to restrict the Secretary’s waiver authority when it replaced the AFDC program with the TANF program in 1996, it could have deleted section 1115’s reference to section 402 or otherwise indicated its intent to depart from past practice. Congress did not do so and the Department is adhering to its longstanding interpretation that section 1115 waiver authority extends to requirements incorporated by reference into the state plan sections of programs, including Medicaid, child support, and TANF.

Your letter also claims that section 415(a)(2)(B) of the Act precludes the Secretary from waiving section 407’s requirements. But section 415(a)(2)(B) has no application here because it is a transitional provision applicable only to waivers under the former AFDC program, which was replaced by the TANF program in 1996. Indeed, the plain language of section 415(a)(2)(B) makes clear that it is limited to waivers that related to “a State program funded under this part (as in effect on September 30, 1996)”—that is, under the former AFDC program. 42 U.S.C. § 615(a)(2)(B) (emphasis added). That provision thus does nothing to restrict the Secretary’s waiver authority with respect to the current TANF program.