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NOTICES

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Means-Tested Public Benefit"

AGENCY: Office of the Secretary, HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period interprets the term "Federal means-tested public benefit[s]" as used in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193, to include only mandatory spending programs of the Federal Government in which eligibility for the programs' benefits, or the amount of such benefits, or both, are determined on the basis of income or resources of the eligibility unit seeking the benefit. At HHS, the benefit programs that fall within this definition (and are not explicitly excepted from the definition by Section 403(c)) are Medicaid and Temporary Assistance for Needy Families (TANF).

DATES: This notice is effective on August 26, 1997.

COMMENT PERIOD: Written comments will be considered if we receive them at the appropriate address, as provided in the **ADDRESSES** section below, no later than 5 p.m. on October 27, 1997.

ADDRESSES: Mail comments (1 original and 3 copies) to the following address: Division of Economic Support for Families, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 404E, 200 Independence Ave., SW, Washington, DC 20201, Attention: David Nielsen.

FOR FURTHER INFORMATION CONTACT:

[David Nielsen](#), (202) 690-7148.

Copies of comments may be inspected at the above address. Inquiries regarding how a particular program is affected by this notice should be submitted to DHHS program staff responsible for managing the program at either the appropriate Regional Office, or Headquarters in Washington, D.C. The above contact should be used only to submit general comments regarding the policy interpretation contained in this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of PRWORA contains several references to the term "Federal means-tested public benefit[s]." The most significant of these references are found in Sections 403 and 421. Section 403 denies "Federal means-tested public benefit[s]" to aliens who entered the United States with a qualified alien status "on or after the date of the enactment of this Act" for 5 years beginning on the date of the aliens' entry into the United States. Section 421 provides that new sponsor-to-alien deeming rules apply to "any Federal means-tested public benefits program." In the absence of a statutory definition of "Federal means-tested public benefit", HHS is interpreting the term to include only benefits provided by means-tested, mandatory spending programs.

Early versions of PRWORA contained a definition of "Federal means-tested public benefit" that could have encompassed benefits provided by both discretionary spending programs and mandatory spending programs. (These early versions provided that, with certain exceptions, "the term 'Federal means-tested public benefit' meant a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit." 142 Cong. Rec. S8481 (daily ed. July 22, 1996).) During debate over the bill in the Senate, a member of the Senate raised a point of order pursuant to the Byrd Rule, and the definition was struck. The Senate Parliamentarian upheld the Byrd Rule objection, the Senate did not appeal the ruling, and PRWORA was ultimately enacted without defining the term.

PRWORA was subject to Section 313 of the Congressional Budget Act of 1974, also known as the "Byrd Rule," because it was enacted as a budget reconciliation bill. Under the Byrd Rule, a Senator may raise a point of order to strike or prevent the incorporation of "extraneous" material. A provision in a reconciliation bill will be considered "extraneous" and subject to a point of order if, among other things, "it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision." 2 U.S.C. § 644(b)(1)(D). The legislative history of PRWORA indicates that the Senate understood the significance of the Byrd Rule objection in terms of limiting the scope of the definition of "Federal means-tested public benefit" to mandatory spending programs, while leaving discretionary programs unaffected. *See* 142 Cong. Rec. at S9403 (daily ed. August 1, 1996) (statement of Senator Chafee); 142 Cong. Rec. at S9400 (statements of Senators Graham, Kennedy and Exon). Therefore, to the extent the definition of "Federal means-tested public benefit" included benefits provided by discretionary spending programs, it was subject to a Byrd Rule objection.

II. Interpretation

In light of the statutory language and legislative history, HHS is defining "Federal means-tested public benefit" to apply only to benefits provided by Federal means-tested, mandatory spending programs, and not to any discretionary spending programs or to any mandatory spending programs that are not means-tested. For purposes of this **Federal Register** notice, a program is considered "means-tested" if eligibility for the program's benefits, or the amount of such

benefits, or both, are determined on the basis of income or resources of the eligibility unit seeking the benefit.

The following HHS programs are means-tested, mandatory spending programs: Medicaid, Temporary Assistance for Needy Families (TANF), Foster Care, Adoption Assistance, and part of the Child Care Development Block Grant. Foster Care and Adoption Assistance, however, are explicitly exempted from the term "Federal means-tested public benefit" under Section 403(c)(2)(F). The Child Care Development Block Grant program is unique in that it is funded from both mandatory and discretionary parts of the budget. Since the funds are operationally commingled at the state and local level, and since the mixed nature of the funding results in budgetary effects more closely akin to those of a discretionary spending program, we are treating Child Care as a discretionary spending program for purposes of interpreting "Federal means-tested public benefit." Therefore, the HHS programs that constitute "Federal means-tested public benefits" under PRWORA are Medicaid and TANF.

This interpretation pertains only to HHS and its benefit programs. Other Executive Branch agencies whose programs may be subject to PRWORA will make independent determinations about the scope of the term.

III. Comment Period and Effective Date

Although HHS is soliciting public comment on this interpretation, we believe that it is necessary to apply this interpretation to HHS programs immediately, prior to receipt and consideration of any comments.

PRWORA was enacted in August, 1996, and since that time HHS has received numerous inquiries regarding the application of the term "Federal means-tested public benefit." Additional delay will cause unnecessary or incorrect administrative actions by agencies or entities that administer our programs. We also believe it is possible that due to confusion about the application of the term "Federal means-tested public benefit" people may have been denied critical benefits and services who, according to the interpretation in this notice, are otherwise eligible. Without prompt issuance of this interpretation, state and local governments and other public and private benefit providers will remain confused over how to implement the requirements of Title IV of PRWORA. Finally, some states have indicated their intention to define the term "Federal means-tested public benefit" on their own if Federal guidance is not forthcoming soon. Independent interpretations by states will only compound the confusion on this issue since there is no certainty that each state will arrive at the same definition of the term. In sum, although we are providing a 60-day period for public comment, as indicated at the beginning of this notice, this interpretation is effective immediately.

IV. Economic Impact

The Department has analyzed the costs and benefits of this notice to determine whether it has a substantial economic effect on the economy as a whole, on states, or on small entities. The purpose of this analysis was to identify less burdensome or more beneficial alternatives and thereby to influence the requirements imposed by the notice.

PRWORA creates major economic effects, a large portion of which results from changes in the law relating to immigrants' eligibility for Federal benefits. We estimated the 1997-2002 Federal budget savings to Medicaid due to the immigrant restrictions would be \$5.1 billion. There were no Federal budget savings estimated for TANF because, as a block grant, its spending levels were fixed regardless of caseload size. These Medicaid budget effects are essentially due to the eligibility restrictions contained in the statute. This notice provides HHS' interpretation as to whether any other HHS programs are subject to the PRWORA requirements regarding immigrants' eligibility for "Federal means-tested" benefits, and thereby serves to prevent confusion among administering agencies, grantee agencies, benefit providers, and the public. This interpretation has no effect on overall spending levels for any discretionary-funded HHS programs. Nor does this interpretation create burdens or mandates on states or small entities.

As a result of the PRWORA eligibility restrictions, this notice is classified as economically "significant" under Executive Order 12866's criterion of an economic effect of more than \$100 million. For the same reason, it is classified as a "major rule" for purposes of Congressional review under 5 U.S.C. § 801 et. seq., Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121). And, for the same reasons noted in section III above, this notice is effective immediately under the exception procedures of § 808 of that statute because we have determined for good cause that delayed implementation is impractical and contrary to the public interest.

Dated: August 21, 1997.

Donna E. Shalala

Secretary.