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THE UNDER SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

November 22, 1976

MEMORANDUM FOR THE HONORABLE JOHN O. MARSH, JR.
COUNSELLOR TO THE PRESIDENT

Subject: HEW Transition Report

At your request, last Friday, we did not submit our Transition Report to Mr. Watson pending the designation of their Transition Coordinator for HEW.

However, since that time, President-elect Carter, has invited Secretary Mathews to meet with him today. Inasmuch as the Secretary plans to share the Transition Report with Mr. Carter, I am now forwarding a copy to you for your information and use.

A handwritten signature in cursive script that reads "Marjorie Lynch".

Marjorie Lynch
Under Secretary





THE UNDER SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

MEMORANDUM FOR MR. JACK WATSON

November 19, 1976

SUBJECT: HEW Transition

I have prepared an initial overview of some of the HEW issues which will be of interest to you during the Transition Period. I consider this report a first effort to highlight for you some of the major policy and program concerns pending in the Department. As soon as you have identified the HEW Transition Team members and we have had an opportunity to explore with them their specific information needs, we will be pleased to provide you further background and briefing materials.

The attached issue papers are organized by the various organizational components of the Department. Because of the wide range of issues, I have included a summary of the items I regard as the most significant, requiring attention either in the immediate future or over the longer term. In addition, there are a number of major reforms which the Secretary and I have initiated this past year which may be of particular interest to you. Some of these include:

1. Regulation Reform;
2. Opening the Department to greater citizen involvement;
3. Strengthening partnerships with State and local governments and their elected officials (through the New Coalition and other mechanisms);
4. Increasing HEW's capability to prevent and detect fraud and abuse; and
5. Reducing unwarranted Federal intrusion and enhancing the bonds of family and community.

I look forward to discussing these and other initiatives with your representatives and sharing the Secretary's and my views on some of the major problems and challenges related to HEW that will confront the new Administration.

Marjorie Lynch
Marjorie Lynch
Under Secretary

cc: John Marsh

Attachment



ISSUES FOR EARLY ATTENTION

- Short Term Social Security Financing (SSA)
- Organization and staffing of Inspector General Office (OS)
- Reform of Quality Control systems in AFDC and SSI programs (SRS and SSA)
- Audit and penalties related to State implementation of child support enforcement program (SRS)
- Medicaid Utilization Control Penalty Requirements (SRS)
- Fraud and Abuse in the Medicaid Program (SRS)
- State Implementation of Alternative Cost reimbursement systems for nursing homes and hospitals (SRS)
- Disclosure of Social Security Information (SSA)
- New York Medicaid Program (SRS)
- California Prepaid Health Plan (SRS)
- Retroactive Social Services Claims (SRS)
- Reorganization of Health Care Agencies (Response to the Talmadge Bill) (SRS, SSA, PHS)
- SSI Simplification (SSA)
- Recommendations to Congress on Federal Day Care Standards (SRS)
- Legislative Proposals to Transfer Food Stamp Program to HEW (SRS)
- Implementation of Regulations to Prevent Discrimination against the Handicapped (Section 504) Vocational Rehabilitation Act (OS)
- National Influenza Immunization Program (PHS)
- Implementation of New Legislation on Health Information, Health Promotion and the Prevention of Illness (PHS)
- Abortion Ruling (PHS)



Early Attention - Page two

- NIH Guidelines on DNA Research (PHS)
- Implementation of the Health Professions Educational Assistance Act of 1976 (PHS)
- New York City Civil Rights Investigation
- Implementation of Higher Education Act (OS and E)
- Implementation of the Education for the Handicapped Act (OS and E)
- Implementation of Vocational Education Act (OS and E)
- Implementation of Higher Education Report Consolidation Recommendations



LONGER TERM ISSUES

- Long Term Social Security Financing and Decoupling (SSA)
- Health Care Cost Containment (SSA, SRS, PHS)
- Structure of Social Security Disability Programs (SSA)
- SSA Advanced System Project (SSA)
- Equal Treatment for Men and Women in Social Security Programs (SSA)
- Universal Coverage under Social Security System (SSA)
- Future of AFDC/SSI Program (Welform Reform) (SRS & SSA)
- Medicaid Reform/Management Improvements (SRS)
- Long Term Care/Home Health Care (PHS, SSA, SRS)
- Integration of Eligibility Requirement for Medicaid, AFDC, Food Stamps (SRS)
- Future of Indochinese and Cuban Refugee Programs (SRS)
- Implementation of Consumer Representation and Citizen Participation Plans (OS)
- Maximum Allowable Cost Regulations (SRS)
- Departmental Organization (OS)
- Civil Rights -- Consolidation and Procedural Reform (OS)
- Health Maintenance Organizations Development (OS)
- Public Health Service Hospital System (PHS)
- Reform of Student Financial Assistance Programs (E)
- Reorganization of Education Division (E)
- Desegregation Assistance Policy, including the National Community and Education Committee (E)
- Implementation of Education Dissemination Strategy (E)
- Improvement of Basic Skills (E)
- Life Long Learning Policy (E)



Longer Term Issues - Page two

-- School Financing (E)

-- Indian Education (E)



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OFFICE OF THE SECRETARY





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

OFFICE OF THE SECRETARY

NOV 18 1975

NOTE FOR THE UNDER SECRETARY

THROUGH: ES TD 11/18

Subject: Issues for the Transition Group

In response to your request, attached is a list of issues, both before and subsequent to January 20, relative to transition planning. We have included those issues that my office is responsible for, plus some important ones that are the responsibility of others, and some that are not really assigned, but likely will arise from external sources.

I have marked those issues that I consider most important with an asterisk.

William A. Morrill
Assistant Secretary for
Planning and Evaluation

Attachment



ISSUESPrior to January 20Social Services/Human Development

*Strategy for preparing report to Congress on "Appropriateness of Day Care Standards" (in preparation)

Issuance of regulations on Interim Day Care Procedures (under review)

Issuance of revised regulations concerning operation of Title XX of the Social Security Act (under review)

January 20 - End CY 77

* Report to Congress on Appropriateness of Day Care Standards. Due June 30, 1977

Deinstitutionalization strategy: response to GAO report on deinstitutionalization of the mentally retarded as 1st item, February 1977 (in preparation); subsequently implementation of procedure outlined in that response.

Ceiling on Title XX: how to respond to pressures to move it upwards (FY 79 budget issue or perhaps FY 78).

Regulations on reporting requirements for Title XX of the Social Security Act. (In preparation)

Child and family policy issues: day care policy, child welfare services policy, and early childhood development policy and organizational issues. (Partial examination in preparation) (See Children's Initiative below.).

Impact of HEW programs on DOJ requirement for deinstitutionalization of status offenders. Late CY 77 and 78; possible FY 79 budget issue.

Amount of funds allocated from the Beneficiary Trust Fund to Vocational Rehabilitation program. (Study in progress.)



Prior to January 20

January 20 - End CY 77

Education

Amendments to Student Assistance provisions in Higher Education Act (to assist private colleges) (In progress)

* Regulations implementing the Higher Education Act. Timing and complexity problems, plus mandated reports to include organization issues (see organization item under cross-cutting) and policy concerning Life-Long Learning program.

Impact Aid reform amendments (Study in progress for the FY 78 legislative program.)

Impact Aid reform.

Regulations to implement the Education for the Handicapped Act (NPRM in preparation—expected completion is early December)

Regulations to implement the education for the Handicapped Act, including how to screen children for handicapping conditions and services for those with such conditions (October 1977) (NPRM expected to be published December 1976)

Regulations implementing the Telecommunications Demonstration program (NPRM in November)

Regulations to implement the Telecommunications Demonstration program (February 1977). (NPRM published in November 1976).

Desegregation Standards and Assistance Act

Desegregation assistance policy, including desegregation assistance through a National Community and Education Committee, impact of pending Supreme Court decision on mandated "enrichment" requirements

* Policy concerning Elementary and Secondary Education Act Renewal (April-June 1977)—Block grant legislation proposed. Will consider several mandatory reports; e.g., compensatory education, condition of bilingual education, use of poverty data in alternate formulas



Prior to January 20

(Education continued)

January 20 - End CY 1977

Regulations implementing the Vocational Education Act (regulations due May 1977/NOI published in November 1976, Final).

White House Conference on Education (report due to Congress December 1977).

Impact of (if any) Supreme Court pending decision on reverse discrimination in education admissions—Blake vs. California.

* Report of study group examining condition of the management of Student Aid program (February-June 1977).



Prior to January 20

Income Security

- * Short-term financing of Social Security Trust funds--decision on type and size of fund adjustment (study under way)

Public Assistance Programs:
Resolution of FY 78 legislative specifications required (decision memos prepared)

Puerto Rico, Guam, and Virgin Islands--Report of Under Secretary's Group pending (deals with levels of coverage for these areas under all departmental programs)

January 20 - End CY 77

- * Long-term financing of Social Security Trust funds including restructuring of benefits, adjustments to tax rates, and covered earnings (study under way); special problem with exhausting of Disability Trust fund in late FY 78. Additionally, decision on Composition and responsibilities of Social Security Advisory Council (to be appointed early in 1977).

Public Assistance Programs:
expanded and revised Emergency Assistance program; AFDC and SSI Quality Control (joint study with New Coalition)

- * Welfare Reform: long-range study of comprehensive welfare reform options, including consolidation of welfare programs like AFDC and Food Stamps and streamlined financing mechanisms, such as use of federal income tax system. Intermediate-range proposals such as employment for welfare recipients; national minimum standard payment; revised matching formula for Medicaid and AFDC; mandated unemployed parents' program; standardized work expenses; required monthly reporting by welfare recipients.

SSI Simplification: review of task force recommendations.

Prior to January 20

(Income Security continued)

January 20 - End CY 77

Universal coverage of Social Security (non-profit organizations, state and local governments, Federal Government).

Non-discrimination benefit structure for women under Social Security program
Financing, categorization, rehabilitation issues for programs for the disabled



Prior to January 20

January 20 - End CY 77

Health

Medicaid eligibility for migrants
(options paper in-progress) (December
1976)

Medicaid "match" for administration
activities (SRS preparing revised
proposal)

Implementation plan for Consumer
Health Information and Disease
prevention Act (In-preparation_

Implementation plan for Medical
Devices Act (in preparation)

Implementation plan for Health
Manpower legislation (in-preparation)

* Health Insurance Strategy
(options and cost papers
prepared)

* Proposed legislation for Long-
Term Care demonstrations

* Health Care Cost Control
strategy

Medicaid reform--management
improvements (work in-progress
with New Coalition)

Implementation of HEW responsi-
bilities under New Toxic Sub-
stance Act

Health Maintenance Organization
(HMO) development: relationship
of Medicare and Medicaid to HMO
development; reduction of exces-
sive delay in qualifying HMOs

* Policy and strategy for improving
immunization programs (conference
recently completed)

Clinical laboratory improvements--
possible congressional action
necessitates position/proposal

Malpractice: Federal responsi-
bility (conference held)

Implementation of Indian Health
Care Improvement Act (author-
izes expanded program)

Prior to January 20

(Health continued)

- * Additional revisions to the Health Planning and Resources Development Act (follow-up dialogue with New Coalition)

January 20 - End CY 77

- * Full implementation of maximum allowable cost (of drugs) program--court cases pending.

Child health strategy (see Children's Initiative in Cross-cutting section) and strategy for improvement/other in the Medicaid Early Periodic Screening, Diagnosis and Treatment program (February 1977)

Biomedical research strategy:
(a) review of intramural research,
(b) priority identification and determination, (c) strategy for technology assessments

Development of a Home Health Care policy (options paper in-progress)

Improved strategy for drug abuse research (Cabinet Committee report in-preparation) (February 1977)

Improved strategy for rural health services and other underserved areas

Review of strategy for review by FDA of new drugs (strategy in-preparation)

Policy on Public Health Service hospitals

Policy on HEW-supported health clinics (including mental health centers) with and without some form of national health insurance

Prior to January 20

(Health continued)

January 20 - End CY 77

Policy on physician reimbursement
under Medicare and Medicaid
(option paper in-preparation)

Policy on HEW involvement in
environmental health

Policy on Medicare and Medicaid
reimbursement for ambulatory
care services

Prior to January 20

January 20 - End CY 77

Cross-cutting

* Citizen participation policies

Children's "initiative," including policy on early childhood education and related development, and child welfare services (examination in-progress)

* Regulation to prevent discrimination against the handicapped (Section 504 of the Vocational Rehabilitation Act)

Possible funding/loans to assist in compliance with regulations to prevent discrimination against the handicapped

Coverage of illegal aliens

Actions to improve inter-governmental partnerships and processes: (a) intergovernmental personnel exchange program (procedures developed), (b) procedures to waive certain requirements in regulations (NPRM in November), (c) capacity building/partnership policy (published as NOI in November)

* Departmental organizational/structural issues (background/options papers in-preparation): (a) Department overall, (b) Education Division; (c) civil rights functions and Office for Civil Rights, (d) intergovernmental activities, (e) locus of Life-Long Learning program, (f) Social Security Administration systems

Prior to January 20

(Cross-Cutting continued)

January 20 - End CY 77

and procedures simplification and modernization, (g) health financing structure

Employment and manpower policies to include redesign of work incentive program, linkages among welfare and employment programs, and with vocational education activities

Further policies concerning planning requirements in human service programs, linkages among planning and management requirements in block grants, ways to improve human service program management (various studies and proposals in-progress)

Policy concerning uneven economic development/demographic shifts among geographic areas, including efforts of, or changes in, formulas for allocation of program funds among states (study in-development)

Revisions in policy concerning "official" definition of measure of poverty

* Policy concerning consolidated civil rights bill—streamlining, consolidation of existing civil rights legislation, etc. (study in-progress)

Modification in civil rights practices: (a) authority to issue cease and desist orders, (b) consolidated procedural regulations, (c) state responsibility, (d) elimination of backlog of civil rights cases (examination in-progress)

Prior to January 20

(Cross-cutting continued)

January 20 - End CY 77

Refugee program--phasing down
in Cuban and Southeast Asian
programs (FY 79 budget issue)

Energy-related policies, e.g.,
emergency assistance, aid to
impacted areas, consumer
protection, etc. (papers in-
preparation)

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY

TO : The Under Secretary
Through: ES _____

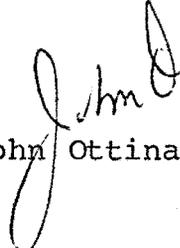
DATE: NOV 18 1976

FROM : Assistant Secretary for
Administration and Management

SUBJECT: Action Items to be Completed
After January 20, 1977

Listed below are action items which should be completed after January 20, 1977:

1. Organization and staffing of Inspector General (I.G.) Office.
2. Approval of final action to comply with P.L. 94-519, transferring the personal property portion of the Federal Property Assistance Program to the General Services Administration.
3. SSA Advanced Planning System.
4. Guaranteed Student Loan Program successor system and decisions on escrow.


John Ottina



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D. C. 20201

November 18, 1976

MEMORANDUM

TO: EXECUTIVE SECRETARY TO THE
DEPARTMENT

FROM: DIRECTOR *Virginia Krauer*
OFFICE OF CONSUMER AFFAIRS

SUBJECT: Items for Consideration by Transition
Team

The following information is provided pursuant to an informal request by Dan Lau of your staff. We believe that, while there are a number of significant program issues that should be considered by the new Administration, the following three are sufficiently sensitive that they would merit consideration by the Transition Team:

I. Organizational Location of the Office of Consumer Affairs

The Office of Consumer Affairs was established on February 24, 1971 by Executive Order #11583 to: (1) advise and represent the President on matters of consumer interests; (2) analyze and coordinate implementation of all Federal activities in the field of consumer protection; (3) help establish priorities and resolve conflicts; and (4) to recommend ways in which governmental consumer programs can be made more effective. While OCA was organizationally assigned to HEW in January 1973 by Executive Order #11702, the basic multi-agency responsibility continues-- thus, some 80 per cent of OCA's functions are government-wide in nature, support the Special Assistant to the President for Consumer Affairs, and do not relate directly to HEW activities. As no other Federal agency currently performs these roles, action on the mission of OCA could be essential to adequate coordination and oversight of consumer activities.

II. Consumer Representation Plans

The September 28, 1976 Federal Register contained a 114-page set of plans for 17 Departments and Agencies, including HEW, to improve



consumer participation in the Federal decision-making process. By virtue of President Ford's directive, these Departments and Agencies are moving forward to implement their extensive plans. Consideration should be given by the Transition Team to determine if all or individual plans should be modified for consistency with new consumer regulatory and legislative intentions of the Administration-elect.

III. Consolidation of HEW's Office of Consumer Affairs with GSA's Consumer Information Center

Executive Order #11566 of October 20, 1970 established a unit in GSA which reviews and disseminates Federal consumer information. This Order provides for continuing policy guidance by the Office of Consumer Affairs. For this reason, and because of a daily close working relationship, in the September 28 Federal Register President Ford directed that action be taken to accommodate the consolidation of staff, resources and functions with OCA. Action to implement this directive has been deferred intentionally pending clarification of the organizational responsibilities in the new Administration for the conduct of consumer activities. Resolution of this issue could improve efficiency and demonstrate commitment to the consumer perspective in Federal activities.

Attachments

Presidential Documents

Title 3—The President

EXECUTIVE ORDER 11583

Office of Consumer Affairs

Consumer protection fosters a market place in which our competitive economic system flourishes best. It is good for businessmen because it gives the consumer greater confidence in the goods and services provided by business. It is good for consumers because it reinforces the concept of buyers' rights:

- the right to make an intelligent choice among products and services;
- the right to accurate information on which to make a free choice;
- the right to expect that the health and safety of the buyer is taken into account by those who seek his patronage;
- the right to register dissatisfaction, and have a complaint heard and weighed, when a buyer's interests are badly served.

The Special Assistant to the President for Consumer Affairs is performing an important role in representing consumer interests in the Federal Government. It is important that the role of the office of the Special Assistant be reinforced by increasing its responsibilities and reemphasizing its importance.

There is need for a consumer office within the Executive Office of the President, which not only advises and represents the President on matters of consumer interest, but also analyzes and coordinates the implementation of all Federal activities in the field of consumer protection, helping to establish priorities and resolve conflicts, and recommending ways in which governmental consumer programs can be made more effective.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Office of Consumer Affairs.* The Office of Consumer Affairs (hereinafter referred to as the "Office") is hereby established in the Executive Office of the President. The Office shall be headed by a Director who shall be appointed by the President, and there shall be in the Office a Deputy Director who shall also be appointed by the President. The Deputy Director shall perform such duties as the Director may designate, and in case of a vacancy in the office of Director or during the absence or incapacity of the Director, the Deputy Director shall act as Director. The Director and Deputy Director shall receive compensation at such rates as the President, consonant with law, may hereafter determine.

SEC. 2. *Powers and duties of the Director.* (a) The Director shall be responsible for the exercise of the powers and the discharge of the duties of the Office, and shall have the authority to direct and supervise all personnel and activities thereof. The Director shall take all actions as may be necessary to organize the Office so as to carry out the functions and to achieve the purposes set forth in this order.

(b) In addition to any other authority conferred upon him by this order, the Director is authorized, in carrying out his functions hereunder, to—

(1) appoint one or more advisory committees composed of such private citizens and officials of the Federal, State, and local governments as he deems desirable to advise him with respect to his functions. Members of such committees (including the Consumer Advisory Council established in section 5 of this order) other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Director, shall be entitled to receive compensation and travel expenses as authorized by law for persons serving intermittently;

(2) promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him or in the Office, and delegate authority for the performance of any function to any officer or employee under his direction and supervision;

(3) utilize, with their consent, the services, personnel, and facilities of other Federal, State, local and private agencies and instrumentalities with or without reimbursement thereof except as reimbursement may be required by law; and

(c) The Director shall report periodically to the President on significant developments affecting the interests of consumers together with such recommendations including legislative recommendations as he deems appropriate.

SEC. 3. *Functions.* (a) The Office shall advise the President as to all matters affecting the interest of consumers.

(b) The Office shall—

(1) with respect to consumer interests in Federal policies and programs, encourage and assist in development and implementation of consumer programs; coordinate and review policies and programs; seek resolution of conflicts; advise and make recommendations to Federal agencies with respect to policy matters, the effectiveness of their programs and operations, and the elimination of duplications;

(2) assure that the interests of consumers are presented and considered in a timely manner by the appropriate levels of the Federal Government in the formulation of policies and in the operation of programs that affect the consumer interest;

(3) conduct investigations, conferences, and surveys concerning the needs, interests and problems of consumers, except that it shall, where feasible, avoid duplicating activities conducted by other Federal agencies;

(4) submit recommendations to the President on how Federal programs and activities affecting consumers can be improved;

(5) take action with respect to consumer complaints to the extent authorized by section 4 of this order;

(6) perform the functions assigned to the President's Committee on Consumer Interests in Executive Order No. 11566 of October 26, 1970;

(7) encourage and coordinate the development of information of interest to consumers by Federal agencies and the publication and distribution of materials which will inform consumers of matters of interest to them in language which is readily understandable by the layman;

(8) encourage and coordinate research conducted by Federal agencies leading to improved consumer products, services, and consumer information;

(9) encourage, initiate, coordinate, evaluate, and participate in consumer education programs and consumer counseling programs;

(10) encourage, cooperate with, and assist State and local governments in the promotion and protection of consumer interests; and

(11) cooperate with and encourage private enterprise in the promotion and protection of consumer interests.

SEC. 4. Consumer complaints. (a) Whenever the Office receives from any source complaints or other information disclosing a possible violation of (1) any law of the United States or (2) any rule or order of any Federal agency concerning consumer interests, the Office shall promptly transmit such complaint or other information to the Federal agency charged with the duty of enforcing such law, rule, or order, for appropriate action.

(b) Whenever the Office receives complaints or other information disclosing any commercial or trade practice which it deems detrimental to the general interests of consumers within the United States, and which is not included within the category specified in subsection (a) of this section, the Office may transmit such complaint or other information promptly to the Federal, State, or local agency whose regulatory or other authority provides the most effective means to act upon them; the Office may in its discretion also refer such complaint or other information to the private persons or industry against whom the complaint is made.

SEC. 5. Consumer Advisory Council. (a) There is hereby established in the Office a Consumer Advisory Council to be composed of not more than 12 members appointed by the President. Members shall be appointed on the basis of their knowledge and experience in areas of interest to consumers and their demonstrated ability to exercise independent, informed, and critical judgment.

(b) (1) Members shall be appointed for two-year terms. Members of the Consumer Advisory Council, established pursuant to Executive Order No. 11136 of January 3, 1964, as amended, shall continue in office in accordance with the terms of their original appointments.

(2) Any member chosen to fill a vacancy shall be appointed for the unexpired term of the member he succeeds.

(3) A vacancy in the Council shall not affect its authority to act, and a majority of the members thereof shall constitute a quorum.

(c) The President shall designate the Chairman from among the members composing the Council. The Council shall meet at the call of the Director. The Director shall be an ex-officio member of the Council and its Executive Secretary.

(d) The Council shall advise the Director with respect to—

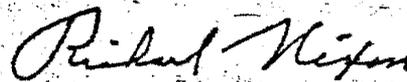
- (1) policy matters relating to consumer interests; and
- (2) the effectiveness of Federal programs and operations, which affect the interests of consumers; and
- (3) problems of primary importance to consumers, and ways in which unmet consumer needs can appropriately be met through Federal Government action.

SEC. 6. Consideration of the consumer interest in Federal agency determinations. Every Federal agency in taking any action of a nature which can reasonably be construed as substantially affecting the interests of consumers of products and services, including, but not limited to, (1) the promulgation of rules, regulations, or guidelines, (2) the formulation of written policy decisions, or (3) the issuance of orders, decrees, or standards, shall, in taking such action, give due consideration to the valid interests of consumers.

SEC. 7. Abolition of Committee and Council. Except as otherwise provided herein, the President's Committee on Consumer Interests and the Consumer Advisory Council established under Executive Order No. 11136 of January 3, 1964, as amended by Executive Order No. 11349 of May 1, 1967, are abolished.

SEC. 8. Construction. Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any Federal agency or the head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

SEC. 9. Orders superseded. Executive Order No. 11136 of January 3, 1964, and Executive Order No. 11349 of May 1, 1967, are hereby superseded.



THE WHITE HOUSE,

February 24, 1971.

[FR Doc. 71-2715 Filed 2-24-71; 1:30 pm]

JANUARY 30, 1973

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

No. 11702

FILE COPY

RELATIVE TO THE EXECUTIVE OFFICE
OF THE PRESIDENT

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States of America, it is hereby ordered as follows:

Section 1. The Office of Consumer Affairs, established by Executive Order No. 11583 of February 24, 1971, as amended by Executive Order No. 11595 of May 26, 1971, together with its functions, is hereby transferred from the Executive Office of the President to the Department of Health, Education, and Welfare. The Director of the Office of Consumer Affairs shall continue as the Special Assistant to the President for Consumer Affairs.

Sec. 2. In view of the establishment of the Council on Economic Policy, the Cabinet Committee on Economic Policy, together with its functions, is hereby abolished and Executive Order No. 11453 of January 24, 1969, is hereby revoked.

RICHARD NIXON

THE WHITE HOUSE,

January 25, 1973

#

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

11566

CONSUMER PRODUCT INFORMATION

Numerous agencies of the Federal government purchase from private industry a wide variety of consumer products for government use. The making of such purchases requires the development of extensive documents, reports, and other information for evaluating the products purchased.

The Federal government has an opportunity to help the consuming public by sharing the knowledge which the government has accumulated in the process of purchasing items for government use with tax dollars.

Investigation by an interagency committee representing the significant procurement agencies indicates that certain product information thus acquired is currently available from various government agencies but lack of awareness greatly restricts the use of such information by the consuming public and by other government agencies. Some of that information would be useful to consumers in its present form, but other such information would benefit private consumers only if translated from technical procurement documents into information designed for consumer education.

Such product information is acquired in the public interest, and it should be made available to the public and to other government agencies in a manner that is useful to consumers, fair to producers and vendors, and protective of government procurement processes.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

Section 1. Consumer Product Information Coordinating Center.

(a) The General Services Administration shall establish a Consumer Product Information Coordinating Center (hereinafter referred to as the Center). The Center shall:

(1) Promote the development, production, and public dissemination of government documents containing product information of possible use to consumers, including other government agencies, and the release of which may be accomplished in a manner that is both fair to producers and vendors and protective of government procurement processes.

(2) Review regularly the documents, reports, and other information of all Federal agencies which may contain product information useful to consumers.

more

(3) Make publicly available, after notice to interested agencies, the selected product information through the Federal Information Centers of the General Services Administration and other local and regional government offices, as appropriate.

(4) Coordinate the Federal effort to eliminate duplicative consumer product information from government publications.

(b) In carrying out its responsibilities the Center may convene meetings of affected Federal agencies, make recommendations to such agencies for accomplishing the objectives set forth herein, and utilize the resources of voluntary and other private organizations. In the course of its work the Center shall also seek to identify those government-procured commodities which have a major impact on family budgets, and to give priority to the development and release of information regarding such commodities.

Sec. 2. Cooperation by Federal agencies. (a) Each Federal agency shall:

(1) Furnish the Center with copies of all documents which may contain useful consumer product information and which the Center desires to review for possible distribution as provided in this order.

(2) Cooperate with the Center in effectively identifying and distributing the product information deemed to be most useful to the public.

(3) Consider the impact on family budgets, particularly as may be identified by the Center, in determining the commodities selected for specifications review, documentation, translation, or other information improvement.

(b) Nothing contained in this order shall be construed to require the release by any agency to the Center, or the release to the public by the Center, of any matter which falls within one or more of the exemptions in 5 U. S. C. 552(b) or which is otherwise protected by law from disclosure to the public. Nothing contained in this order shall be deemed to permit the release of information which would disclose trade secrets, formulas, processes, costs, methods of doing business, names of customers, or other competitive information not otherwise available to the general public.

Sec. 3. Pilot program on consumer product information. (a) The U. S. Army Natick Laboratories, Department of Defense, shall undertake a pilot program to develop methods and procedures for translating selected technical documents and materials (including research and development reports), acquired by Federal agencies during the procurement specifications and standards development process, into information useful to public consumers. Upon completion of the pilot program, but not later than nine months from the date of this order, the Department of Defense shall submit a final report to the President's Committee on Consumer Interests (provided for in Executive Order No. 11136 of January 3, 1964, as amended). That report shall set forth the methods and results of the pilot project and shall include information as to the cost and feasibility of adopting such a program for all Federal agencies on a continuing basis.

more

(b) Each Federal agency shall cooperate with the Department of Defense in completing the pilot project described in subsection (a).

Sec. 4. Functions of the President's Committee on Consumer Interests. The President's Committee on Consumer Interests shall:

- (1) Advise and assist the Center, and provide continuing policy guidance on the implementation of the activities provided for in this order.
- (2) Review the effectiveness of government programs established for the release of useful consumer product information.
- (3) Develop a program by which private media might be more effectively used to publicize available information.
- (4) Initiate conferences designed to explore how individual companies, trade associations, ~~standards organizations~~, consumer groups, and others may improve the product information to be supplied to consumers.
- (5) Submit a report to the President describing the implementation of the programs outlined herein on each anniversary of the date of this order.

Sec. 5. Definition. As used in this order, the term "consumer product" means a type of article of personal property customarily sold for family or household use, consumption, or enjoyment, and the term "product information" means information relating to consumer products.

Sec. 6. Agency documents. Each government agency shall furnish to the President's Committee on Consumer Interests, within three months from the date of this order, copies of regulations, orders, or other documents issued to provide for the implementation of this order.

Sec. 7. Construction. Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any Federal agency or the head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

RICHARD NIXON

THE WHITE HOUSE,

October 26, 1970.

SOCIAL SECURITY ADMINISTRATION

SSA

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

TO : The Under Secretary
Through: ES 11/19

DATE: NOV 18 1976

REFER TO:

FROM : Commissioner of Social Security

SUBJECT: Transition Issues and Activities--INFORMATION

This memorandum is intended to list and briefly describe those social security issues which we recommend be brought to the attention of the transition staff. The list is divided, first, into those which we believe will need early attention and quick resolution. The second category is other items that represent continuing issues that more than likely will only be resolvable over the long range but which are of sufficient public interest or concern that they are likely to be called to the attention of the new Administration by Members of Congress and/or public interest groups.

Issues for Early Attention

1. Social Security Financing and Decoupling

The transition staff should be alerted to estimates that show the disability insurance trust fund exhausted in 1979 and the OASI trust fund exhausted in the early 1980's. It should also be pointed out that the OASDI program faces an actuarial deficit over the 75-year projection period averaging nearly 8 percent of taxable payroll. The transition staff should be made aware that the new Administration will be faced as soon as they take office with difficult choices with respect to social security financing. For the short range, they will need to make a specific proposal to the Congress involving a tax rate or a taxable earnings base increase or some combination of the two.

Immediate action will also be required to establish the new Administration's position on proposals to stabilize replacement rates through so-called decoupling plans that have the effect of reducing the long-range actuarial deficit by approximately one-half. The question of how to deal with the deficit remaining after decoupling will

also need to be dealt with early. One obvious possibility is to ask the next statutory Advisory Council on Social Security to focus on long-range financing.

2. Appointment of the Next Statutory Advisory Council on Social Security

The transition team should be made aware of the fact that the appointment of the next Advisory Council becomes legally possible less than 2 weeks after the inauguration and is required by statute before the end of 1977. Such councils have traditionally taken a broad evaluative look at the social insurance programs, including such aspects as coverage, benefit levels, soundness of financing, and equal application of the programs to men and women.

3. SSI Federal Fiscal Liability Policy in Relation to AFDC Sanctions

The problems of settlement with States for FY '74 and '75 and Federal fiscal liability for past and future periods should be highlighted as issues the States are undoubtedly going to be bringing to the attention of the new Administration.

4. Disclosure of Information

Policies that have been in effect since the 1930's forbidding the disclosure of information about individuals contained in social security records will be modified significantly in early March as the Sunshine Act becomes effective. Most of the current pressures we are receiving from State and local officials and other Federal agencies are in the direction of greater disclosure of information in our data banks. As this becomes more apparent, traditional guardians of privacy, such as organized labor and legal advocacy groups, are likely to resist some of these pressures. This should be brought to the attention of the transition staff as a potentially highly controversial issue. SSA and HEW are inviting broad public comment on these matters through publication of a Notice of Intent to Regulate as well as three public hearings to be held across the country.

5. Medicare Cost Containment and the Rising Costs of Health Care Generally

The worldwide phenomenon of rising health care costs and its effects on Government health program costs and the



out-of-pocket costs of the individual health care user will be the source of continuing and possibly increasing pressure on the new Administration to come up with proposals or strategies to contain costs at all levels. SSA's view is that these efforts will require attention at the top level of the Executive Branch engaging the participation of other third-party payers as well as Federal Government health-care reimbursement programs. Concurrently, however, the new Administration must be prepared to reexamine the benefit packages and the reimbursement mechanisms of the Medicare and the Medicaid programs from the viewpoint of how to revamp them to assist in constraining health-care cost increases. At a minimum, the Administration should be prepared to respond to the Talmadge bill, which suggests a variety of changes in methods of reimbursement, or else pose specific alternatives to that bill.

6. More Frequent State Deposits of Social Security Taxes

This is another area that may be brought to the attention of the transition staff by State representatives. Although States are required by law to follow the same reporting and deposit practices, as private employers, they have been permitted by practice and SSA's regulations to follow more delayed time schedules on these matters. As a consequence, States and localities have benefited from the cash "float" while they still hold these funds. Critical questions concerning short- and long-term OASDI financing problems heighten the desirability of having States deposit funds on a more timely basis. Adoption of more frequent deposits would mean a one-time \$2 billion increase in Federal collections in the year in which it is accomplished. By law, we must wait 18 months between the publication of such a regulation and its implementation. The transition staff should become quickly familiar with Federal views on the subject.

Longer Term Issues

1. The Disability Insurance Program

While the short-term financing issue presents an immediate problem for the new Administration, broader questions about program structure and administration have surfaced and need attention. Rapidly rising program costs; backlogs in the disability hearings and appeals process; delays in initial

determinations; incentives to rehabilitation and return to work; uniformity or lack of uniformity across the nation in applying criteria to determine degree of disability and ability to engage in substantial gainful activity; level of replacement rates of benefits compared with earnings especially for young disabled workers and their families; and relatively high administrative costs compared with the OASI program all require attention. Many of these issues will be brought into sharp focus by Representative Burke's bill which was introduced into the past session of Congress and will likely be reintroduced in modified form into the next session. Further public concern is being expressed around SSA's efforts to publish new regulations dealing with vocational factors affecting decisions of whether an individual is able to engage in work.

2. Health Care Financing Agencies and Other Reorganization Proposals

Part of the Talmadge bill confronts the new Administration with a specific plan for organizing the health-care reimbursement and related programs of HEW into a new Health Financing Administration. In light of the President-elect's frequent statements about his plan for Government reorganization, early attention should be given to this proposal and/or alternatives to it. If such a proposal were to be effectuated, major questions of continuing linkage and relationships with the Social Security Administration would remain. For example, how would receipt and processing of applications now done in SSA's district offices be handled? What kinds of computer system support now provided by SSA's Bureau of Data Processing would be continued or replaced by new systems?

Other reorganization questions also include full implementation of the recently authorized HEW Office of the Inspector-General, the role of SSA in administering income maintenance programs in the context of possible comprehensive welfare-reform proposals, and the stance of the new Administration on such bills as the one introduced by Senator Church with 50 cosponsors which proposed an independent Social Security Administration under a reconstituted Social Security Board.

3. SSI Legislative Simplification

The recommendations of the Rutledge SSI study group for simplifying eligibility requirements, such as the elimination of the one-third reduction requirement, are likely to receive continuing attention in the next session of Congress. The transition staff will want to be familiar with the pressures for such changes, their effects on recipients and on administrative efficiency and accuracy, and of course their costs.

4. Computer Utilization and the Advanced Systems Project

GAO and the Ways and Means Oversight Committee, among others, are sure to continue to raise questions about the utilization of SSA's computer resources. The transition staff should become familiar with the questions being raised, SSA's efforts to study and respond to such questions, and the potential risks involved in providing SSA with inadequate computer resources. We would also like the new Administration to be aware of our concentrated efforts to modernize our total approach to data processing and the eventual overall improvements in operating efficiency that we expect to see from these efforts.

5. National Health Insurance Planning

Because of the new Administration's public commitment to propose some form of national health insurance, the transition staff should be informed about the research, legislative analysis, and administrative planning experience related to Medicare that SSA can make available to them. As an example, SSA in the past has done considerable analytical and planning work in anticipation of an outpatient prescription drug insurance program under Medicare that may have applicability to administration of a drug provision under NHI.

6. Equal Treatment for Men and Women Under the OASDI Program

The Supreme Court's current involvement in the OASDI equal treatment area, the development of current Administration proposals in this area, and the prospects for continued pressure for change should all be brought to the attention of the transition team. Questions concerning the overt sex discrimination in the Social Security Act as well as complaints of unfair treatment from married working women are likely to come under increasingly intense scrutiny in the next year or so.

7. OASDHI Coverage Problems (including State and local termination issues)

The already noticeable pressure from cities on the new Administration concerning the financial plight of local governments highlights the need to provide the transition staff with full information about State and local coverage termination issues. At the same time, it would be useful to explain the "windfall benefits" issue (situations in which a person can get full benefits under both a public employee's pension system and the social security system) and its relationship to the need for universal coverage.

Work has already been done or is in progress on most of the issues listed here. What needs to be established is how much information the transition staff wishes to have on each subject and in what format. I am setting up a small temporary transition staff in my immediate office to serve in a liaison and coordination capacity; in the meantime I will be happy to work with you as arrangements and procedures for further transition work are established.

Finally I might also mention that we have developed a preliminary list of operational/administrative matters that we will be working on and that may need eventual attention by the transition staff. The list includes for the moment such matters as: SSI systems, training, and other operational needs; disability caseload management; hearings and appeals caseload management; redetermination caseload management; SSI payment efficiency and quality control; and intermediary and carrier selection process.



James B. Cardwell

Prepared by: IPP-12, Trout, 11/18/76, 130x42510
SSA Contact: IPP-1, Smith, 130x48982

SOCIAL AND REHABILITATION SERVICES

SRS

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
Office of the Administrator

TO : The Under Secretary
THROUGH: ES _____

DATE: NOV 18 1976

FROM : Administrator

SUBJECT: Transition Issues

As you requested, we have prepared a summary (see attached) of pending problems and issues which will face the new Administration early in 1977. We have identified the problem or issue area and given some highlight information about it.

We will be glad to provide additional details on any of these items. In this regard, we will have available in a few days detailed "fact sheets" on each of the issues discussed in the attached summary.



Robert Fulton

Attachment

A. AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM

1. Future of Program

The big issue in AFDC is what to do about improvements to the program pending resolution of broader "welfare reform" directions. Some of the policy issues which exist are:

- Federal-State matching rates
- Minimum benefit levels
- Cost of living adjustments
- Coverage of intact families
- Coverage of childless couples
- Work requirements/incentives

Considerable staff work has been done by SRS in recent weeks on possible legislative initiatives which could make the AFDC program substantially better than it now is. Early decisions will be needed on whether to have an "intermediate range" reform strategy for AFDC.

2. Quality Control

The future of the AFDC Quality Control program will need to be addressed very early in the new Administration. This effort has been a major contributor to a dramatic reduction in ineligibility, overpayments and underpayments in AFDC. Average dollar loss from ineligibility and overpayments in 1973 was about 16%. It is now about 10%. As a result of a Federal court decision, SRS can no longer use the tolerances of three percent ineligibility and five percent overpayments as criteria for judging State performance and imposing disallowance on states which fail to meet the tolerances. HEW has attempted to negotiate new tolerances for AFDC Quality Control with the New Coalition of State and Local Officials. The discussions with the New Coalition are near completion and HEW must shortly advise the Congress of our future plans for the Quality Control effort.

3. Rising State Administrative Costs

State AFDC administrative costs have been increasing at a rate of over 20% per year. SRS is engaged in an analysis of the causes of this. Decisions will be needed early in 1977 on approaches that can be used to assure that the cost increases are justified and are in fact resulting in improved administration.

4. AFDC Benefits to Strikers

The issue of whether strikers should be able to receive welfare benefits is to be heard by the Supreme Court. Currently, the States themselves decide whether strikers will receive benefits (they do in a majority of the 28 States which cover families headed by unemployed fathers in their AFDC programs).

5. State Implementation of Child Support Enforcement Program (Title IV-D)

For most States, the implementation of the new IV-D program has required major organization, staffing, and program changes. Problems have arisen of serious enough nature that some States may have grave difficulty meeting the requirement for full implementation by January 1, 1977. Such States would then be liable to loss of 5% of Federal AFDC reimbursement. Continued close monitoring of the IV-D program will be required at the Departmental level.

B. MEDICAID PROGRAM

1. Cost Escalation

The Medicaid program has grown at a 15% to 20% rate per year. This is posing increasing financial strains on many States as well as Federal budgetary problems. (The Federal Government pays approximately 57% of Medicaid costs; States and in some cases local governments pick up the difference. The Federal matching varies according to average per capita income in the States.) Numerous States are trying to develop new approaches to cost control in their Medicaid programs. SRS has been encouraging this and plans to launch some additional pilot efforts with several States. These efforts bring counter pressures from hospital associations, medical societies, and other types of health care providers. The new Administration's approach to the problem of growing costs in Medicaid will be awaited with some trepidation by States as well as health care providers.

Based on an evaluation of recent estimates of the States' projected FY 77 expenditures (which the Federal government is legally required to match), we expect Federal FY 77 expenditures of \$10,209,318,000. It appears that these costs will exceed the amounts included in the recently-enacted appropriations bill by nearly \$1 billion. The Agency alerted the House and Senate Appropriations Committees of this requirement as part of a quarterly report dated October 15, 1976. This anticipated increase in costs will be reflected in the budget estimates for FY 77 submitted to the Congress as part of President Ford's FY 78 budget.

2. Utilization Control

The present Federal law requires that States have effective programs for controlling utilization of health care services paid for by Medicaid. The law also requires HEW to conduct compliance reviews to determine whether the States are in fact carrying out the Federal requirements and to impose financial disallowances when deficiencies in State performance are found. SRS has attempted to give the States reasonable time to get to full compliance with the Federal requirements. Under pressure from Congressional committees and the General Accounting Office, however, we have had to step up our penalty activity. A number of States are currently about to be penalized for FY 75. FY 76 reviews have not been completed. HEW has proposed a legislative amendment which would make the penalties less severe. This proposal has not yet moved in the Congress.

3. Fraud and Abuse

In recent weeks there have been almost daily news media or Congressional committee revelations of various types of fraud and abuse in State Medicaid programs. Neither the States or the Federal government have done an adequate job in the past of preventing fraud and abuse in the Medicaid program. SRS has underway a number of "program integrity" efforts intended to improve controls in the Medicaid program. The problem, fundamentally, is the weakness

of the basic management systems established within the States. A legislative proposal which would increase Federal match for incremental improvements in Medicaid administration to 90% (from the present 50%) has been endorsed by Secretary Mathews. We have not yet been advised by the Office of Management and Budget on whether it will be included in President Ford's Budget or State of the Union messages.

SRS has recruited a "fraud and abuse field review" staff of over 50 people, divided into three teams. Reviews of a sample of Medicaid providers have been completed in Massachusetts and Ohio and are now underway in Georgia. Over the next year, we expect to do these types of reviews in 12 to 15 States. The results will be used to help States improve their own fraud and abuse prevention, detection, and prosecution activities.

SRS work in the fraud and abuse area is being carried forth in close conjunction with the HEW Office of Investigations which will function as a part of the newly-created HEW Inspector General's Office. The U.S. Department of Justice has become much more involved recently in Medicaid fraud matters. One pending legislative item which would strengthen the Federal government's hand in this area is a proposal to make Medicaid fraud a Federal felony instead of a misdemeanor.

4. Early and Periodic Screening, Diagnosis and Treatment (EPSDT)

Federal law requires that States carry out EPSDT activities as components of their Medicaid program. These efforts are intended to improve the health care to children and youth (under 21) in low income families. The States are required to offer health screening, detailed diagnosis where problems are detected, and follow-up treatment to deal with problems. Congressional committees have been very unhappy with the progress HEW and the States have made in implementing this effort. In FY 76, approximately 2 million of the 13 million eligible children were actually screened. The law provides penalties against States for failure to implement effective EPSDT programs. SRS is now in the process of imposing penalties against a number of States for performance deficiencies in FY 75. HEW has endorsed a legislative change which would enable forgiveness of the penalty if the States can demonstrate that they promptly corrected the deficiencies identified in their program. Until the law is changed, this will remain a major problem in Federal/State relationships in the Medicaid program.

5. Alternative Cost Reimbursement Plans

SRS and many of the States will be working closely together in coming months on development of various approaches for establishing Medicaid reimbursement levels for nursing homes and hospitals. Up to now, many States have set arbitrary limits on what they will pay to nursing homes. A Federal law, now being implemented, requires that the reimbursements for nursing homes be on a cost-related basis. SRS has issued regulations which will take effect fully at the end of 1977. Many States, however, are working right now to

develop approaches which will comply with the Federal law and the new regulations. Each of these alternative reimbursement plans will require approval by the Regional Offices of SRS. SRS actions on these plans will be extremely sensitive, since the approaches that States use will greatly affect the amount of payments made to nursing homes for care for Medicaid patients.

In the hospital field, States may also utilize either the Medicare "cost pass-through" approach or may establish other reimbursement approaches which are reasonably cost-related. Four States now have approved alternative approaches. These plans have given rise to major controversies in each case, with law suits in all four States charging violations of Federal requirements. Several other States are now developing alternative plans for consideration for SRS.

6. Medicaid Eligibility

Present Federal law and regulations create a very serious morass relative to eligibility for Medicaid benefits. Serious consideration needs to be given to simplification in this respect. Also, a major legal problem exists relative to Medicaid eligibility for children and youth under 21. The original Federal Medicaid law provided for a phase-in period of ten years for expansion of coverage for Medicaid. That ten years has now run, but many States still provide only spotty coverage for children and youth under 21. HEW attorneys are now studying the question of whether we must require State expansion of Medicaid eligibility for the under 21 age group. This legal problem may provide an opportunity to raise the entire Medicaid eligibility issue with the Congress.

7. Recodification of Regulations

With the help of personnel detailed from the Federal Register, HEW is doing a comprehensive revision of the Medicaid regulations. The intent is to develop a complete rewrite which makes the regulations simpler and more usable at the State, local and health care provider levels. This is an effort which has been underway for several months and will last several months more. It will require decisions within the next several months on how to proceed with public review of the revised regulations, as well as on numerous policy issues that are being identified as part of the recodification work.

8. New York Medicaid Management Problems

New York State's Medicaid program involves the most complex and serious management problems which exist in Medicaid anywhere in the country. The costs are huge (over \$3 billion -- about 20% of total national Medicaid costs). The management systems are notoriously weak, particularly in New York City. Fraud is being uncovered regularly.

HEW is currently pressing the State to expedite its decisions on:

- (a) contracting with a private "fiscal agent" for operation of a major portion of the New York City program, and
- (b) installing a Medicaid management information system statewide.

The new HEW leadership will have no choice but to devote major attention to the New York Medicaid picture.

9. Long Term Care/Home Health

Approximately 40% of Federal-State Medicaid expenditures currently are paid to nursing homes (nearly \$7 billion in FY 77). Conversely, less than 1% of Medicaid expenditures go for home health care, despite the fact that home health is one of the Federally-mandated services under Medicaid. The Department is proposing legislation which would authorize a major demonstration program designed to promote better trade offs between home health and nursing home care. In the meantime, SRS faces major problems relative to:

- (a) compliance of States with the home health mandate in the Federal law.
- (b) the rising costs of nursing home care
- (c) the interaction between Medicaid-covered home health care and homemaker and chore services financed under Title XX (Social Services).

10. Implementation of Maximum Allowable Cost (MAC) under Medicaid

HEW has established a program setting upper limits on payment for prescribed drugs under Medicaid, Medicare, and the Public Health Service programs. The Maximum Allowable Cost (MAC) program is designed to save public funds through increased use of lower cost drugs that yield the same clinical results as their more costly counterparts. The MAC program under Medicaid became effective August 26, 1976. Most States began implementing at that time. However, considerable controversy still surrounds the program, especially the method of payment for drug ingredient costs (Estimated Acquisition Cost). Two major suits brought by the pharmaceutical industry are now pending. Decisions may have to be made about changing the current program.

11. Probable Congressional Hearings Related to Medicaid.

(a) Fraud and Abuse in the Medicaid Program

- o Health and Environment Subcommittee, House Interstate and Foreign Commerce Committee
- o Health Subcommittee, Senate Finance Committee
- o Subcommittee on Long-Term Care, Senate Special Committee on Aging.

Hearings will be held in both the House and Senate and are expected to focus on legislation designed to combat fraud and abuse as well as to highlight the existence of fraud in the program (e.g., the "Medicaid mills" highlighted by Senator Moss during the 94th Congress).

(b) Medicare/Medicaid Administrative and Reimbursement Reform (Talmadge Bill)

- o Health and Environment Subcommittee, House Interstate and Foreign Commerce Committee
- o Health Subcommittee, Senate Finance Committee

A bill to reform Medicare and Medicaid administration and reimbursement was introduced in the 94th Congress by Senator Talmadge. Major provisions of the bill call for combining Medicare, Medicaid, the Office of Long-Term Care, and the Bureau of Quality Assurance under a single HEW Administration for Health Care Financing; establishing performance standards for administration of Medicaid; and adopting an incentive reimbursement system for Medicaid and Medicare. Senate hearings were held in late July and it is expected that the bill will be reintroduced and considered early in the new Congress.

(c) Pre-Paid Health Plans

- o Senate Permanent Subcommittee on Investigations

In March, the Subcommittee held hearings focusing on abuse in California Pre-Paid Health Plans, which are a form of health maintenance organization. Further hearings are expected.

(d) MMIS

- o Senate Permanent Subcommittee on Investigations

Near the end of the 94th Congress, the Subcommittee held three days of hearings on the Medicaid Management Information System (MMIS). The Subcommittee inquired into an alleged conflict of interest on the part of one SRS employee regarding contractual relationships. Further hearings may be held to pursue the investigation and examine MMIS contracts awarded by the States with SRS approval.

(e) Unnecessary Surgery Under Medicare and Medicaid

- o Oversight Committee, House Interstate and Foreign Commerce Committee

During the 94th Congress, Congressman John Moss directed special emphasis on whether Medicaid has been implementing the utilization control program required by Section 1903(g) of the law. One particular concern was the alleged unnecessary surgery being carried out by doctors participating in the program. Future hearings on utilization control and on unnecessary surgery are expected.

(f) The Early and Periodic Screening, Diagnosis, and Treatment Program

- o Oversight Subcommittee, House Interstate and Foreign Commerce Committee

Congressman John Moss raised concerns in the 94th Congress about the implementation of the EPSDT program in the States. He will inquire further into the program during the next session.

C. SOCIAL SERVICES PROGRAM

1. Pending State Claims for Retroactive Social Service Reimbursements

During the next year, HEW must, pursuant to Federal Court order, re-examine claims from over 20 States for retroactive reimbursement of social services expenditures incurred in the 1970-74 period. These claims amount to over \$1.8 billion. In addition, there are another \$1 billion in claims which involve similar issues but in which the money has already been paid to the States. The issue in these claims is whether HEW should recover the money. Decisions on these matters involve considerable sensitivity with the States and the Congress. Decisions will be made on a State-by-State basis as reviews are completed, rather than all at one time.

2. Title XX Evaluation

A major one-time report is due to the Congress by July 1, 1977 on State administration of Title XX of the Social Security Act, which was enacted in January, 1975. Several special Federally-staffed and contractor-conducted studies are now underway. The new SRS leadership will need very quickly to examine the present evaluation activities and review the preliminary outlines of the report to Congress.

3. Child Day Care Standards

SRS is now initiating, pursuant to Federal law, a monitoring and enforcement strategy relative to out-of-home child day care services. A sample of facilities will be monitored in each State and there will likely be some which are not meeting the Federal requirements. The law requires a disallowance of Federal money if facilities are not meeting Federal standards. Should the need to disallow Federal funds arise, it is very likely that this could result in numerous inquiries and strong reactions from the State agencies, State Governors, Congressmen and Senators. The tentative target date for the monitoring effort to be initiated is March, 1977.

4. Indian Tribes' Demands for Direct Federal Allotments Under Title XX

SRS is receiving increasing demand from Indian tribes for direct Federal allotments under Title XX for social services on reservations. Legislative proposals are pending in the Congress. SRS is now considering possible regulatory changes that might respond at least partially to the Indians' concerns. Decisions on these changes and the HEW position on pending legislation will need to be addressed early in 1977.

D. CHILD WELFARE SERVICES/FOSTER CARE

1. Foster Care Problems

There are a growing number of reports that Federal programs are participating in payment for foster care that: (1) is provided in facilities that do not meet standards, (2) results from the lack of preventive services to children and families, (3) is unduly costly; and (4) involves undue disruption of the lives of children and insufficient efforts to return them to their natural parents.

SRS is now developing a strategy for maintaining a closer watch on State and local administration of foster care. The new leadership will need to decide the priority to be given to this effort.

2. Revision of Program Regulations

New regulations are under development for the \$56 million (annual appropriation) Child Welfare Services Program operated under Title IV-B of the Social Security Act. The development and publication of proposed regulations will reopen debates about Federal responsibilities in this area. Title IV-B funding represents a small part of the total Federal-State-local funding for children's services, but the regulations may well be the lightning rod for a much broader (and much-needed!) examination of Federal, State, local and private agency roles.

E. CROSS-CUTTING PROGRAM ISSUES

1. Time Period for Claiming Expenditures

Under present Federal legislation, a State can submit on its quarterly statement of expenditures for the public assistance programs a claim for expenditures made in any prior period which has not been claimed on a previously submitted expenditure report. Some States are submitting claims for expenditures two and three or more years back. This creates problems in establishing expenditure trends and in making budget estimates. It also increases the Regional workload to review the claims and determine allowability. SRS has developed a legislative proposal which would require any State claims to be submitted within one year of the quarter in which expenditures are made. This proposal would also establish a limit of four years for HEW audits and disallowances of claims submitted by the States.

2. Regulation of State Contracting

SRS and the States are experiencing increasing problems in carrying out existing provisions on SRS reviews of State contracts under SRS-assisted programs. SRS has begun work on a consolidated and simplified regulation which will clarify the requirements which States must meet, as well as the Federal review and approval procedures. Delegations of authority within SRS must also be revised.

3. Integration of Eligibility Requirements

There is an urgent need for increased efforts to make the eligibility requirements for AFDC, Medicaid, Social Services, and food stamps more uniform, so that these programs will fit together better in responding to human needs. Greater rationality in eligibility rules could lead to the use of application forms covering all of these programs, lessened overall burden on workers, and fewer eligibility errors. Much of the basic preparation work has been done, but the new HEW-SRS leadership must decide the future priority for these efforts.

4. Standardization of Federal Matching for Management Systems

State programs funded by SRS are both complex and closely inter-related. Numerous States have tried to build integrated management systems functioning across program lines, to achieve more efficient operations.

Variations in Federal matching rates for various management improvement initiatives create serious difficulties in assuring consistency and integrity in Management Systems development and operation. States can receive 75% Federal match for operation of Medicaid management systems, for example, but only 50% for operation of such systems for other SRS programs. Legislative modifications will be required to achieve the needed advances in this area.

5. Transfer of Food Stamp Program to HEW

Legislation was introduced in the past two sessions of Congress to transfer the Food Stamp Program from the Department of Agriculture to HEW. The purpose of such a transfer would be to facilitate policy consistency and uniform administration by making the same agency responsible for food stamps, public assistance, Medicaid and social services. Similar proposals will doubtless be introduced in Congress again this year. The new administration may wish to consider this as one of its early reorganization initiatives.

6. Litigation

Over 125 cases involving various aspects of SRS programs and in which the Federal Government is a party or is participating on an "amicus" basis, are currently pending in Federal courts. The amount of litigation has increased steadily in recent years. When court decisions are rendered, SRS must consult immediately with the Office of General Counsel and reach decisions on regulatory changes, appeals of lower court decisions, and/or legislative proposals. In addition to the cases in which the Federal Government is a direct party, there are an even larger number of cases pending in which States are parties and which have potentials for impact on SRS programs.

7. Expiration of Indochina Migration and Refugee Assistance Act

The Indochina Migration and Refugee Assistance Act of 1975 expires on October 1, 1977. Several issues will need to be addressed prior to that time; including especially the adequacy of other programs to meet the needs of the nearly 150,000 refugees. There will be considerable pressure to extend the program - particularly from California.

8. Cuban Refugee Program

Decisions must be reached early in 1977 on the Federal strategy for dealing with the \$80 million (annual level) Cuban Refugee Program which has been operational since the early 1960s. Attempts have been made by the present Administration to phase out the program and transfer the support of Cuban refugees to existing public assistance, Medicaid, and social services programs. These efforts have been resisted, particularly by Florida and its Congressional delegation, on grounds that the refugees were brought to this country as a part of national government policy, and the Federal government should continue to pay 100% of the cost of sustaining them. Recently, SRS established a special review team which made a series of recommendations on the Cuban Refugee Program, particularly that it be phased out within five years through carefully negotiated arrangements with Florida and other States that are concerned about the funding for the services it covers. These recommendations are now under review. The new Administration will be pressed early in 1977 for its position on the future of the program.

9. State and Local Training

SRS is now developing a single, integrated regulation which would provide guidance to the States on use of resources for staff development and training. There are a number of sensitive policy issues involved in the development of this regulation. It will probably not be ready for final decisions until February or March.

10. Fair Hearings

A variety of requirements presently exist in SRS programs for States to provide "fair hearings" to persons denied benefits or terminated from benefits once they have been in the programs. SRS is attempting to develop a single, unified set of procedures outlining fair hearings obligations of the States. This effort involves some complexities because the legal requirements in the different programs are not the same. Nevertheless, the effort is well along, and a considerable amount of public input will be available by late January. It will then be necessary to decide the next step.



F. INTERNAL MANAGEMENT

1. Inadequate staff for critical functions

The Department has requested supplemental FY 1977 funding for 375 additional Federal personnel for two critical functions which are not now adequately staffed: Medicaid fraud and abuse prevention and audits of State child support activities. OMB has not yet acted on this request.

2. Filling of vacancies

SRS now has approximately 250 vacancies within its ceiling of 2147 positions. The on board strength has increased steadily in recent months. It now appears that growth to full ceiling may not be possible in FY 1977 because of money limitations.

3. Improved use of existing staff resources

SRS began last summer and now has well underway a comprehensive work planning and work measurement effort. This involves development and review of FY 1977 work plans for all components of the agency and reallocation of resources to highest priority needs. An early decision by the new leadership on the future of these efforts will be needed.

4. Reclassification of positions

SRS Central Office has just completed a 100% classification review. This resulted in down-grading of over 30 positions. Numerous reassignments were effected to avoid actual loss of grade for individual employees. These actions caused morale problems, slow downs in recruiting, and some overall slippage in performance. While the Central Office problems are largely now behind us, a number of SRS Regional Offices are still struggling with disruption caused by HEW or Civil Service Commission classification reviews.

5. Limitations on travel funds

A combination of a \$200,000 congressional reduction in the SRS FY 1977 travel budget plus higher than anticipated travel requirements (for fraud and abuse review teams and social services evaluations) is posing a severe problem for SRS. Decisions will be needed soon on whether to seek additional money and/or severely restrict travel.

6. Union Contract Negotiations

A Labor Management contract was negotiated between SRS and Local 41, American Federation of Government Employees in January 1973 for a one-year period. In late 1973 and early 1974 we attempted to reach a new agreement. We were unable to do so and went to impasse in August 1974. The Federal Service Impasses Panel ruled that the original contract would be binding on both parties until a new contract was negotiated. The current contract imposes serious constraints on management and is not altogether satisfactory to the Union either. Negotiation of a new contract in early 1977 is anticipated.

