

ENDING WELFARE AS WE KNOW IT: WELFARE REFORM AND  
CHILD SUPPORT ENFORCEMENT AND ASSURANCE

Further Explanation for Carefully Developing Proposals to  
End Welfare as We Know it Via Welfare Reform and Child  
Support Enforcement and Assurance.

Child Support Enforcement briefing paper

"Welfare to Work", Putting People First: How We Can All  
Change America, Governor Bill Clinton & Senator Al Gore,  
pp. 164-168

Summary of the Report of the Interstate Commission on Child  
Support

Outline of the Downey-Hyde Child Support Enforcement and  
Assurance proposal

FURTHER EXPLANATION FOR CAREFULLY DEVELOPING PROPOSALS  
TO END WELFARE AS WE KNOW IT VIA WELFARE REFORM  
AND CHILD SUPPORT ENFORCEMENT AND ASSURANCE

The purpose of this memorandum is to urge you to move slowly and carefully as you help specify the details of the Clinton welfare and work proposal. Because the proposal is too complex to be considered in the first 100 days of the Clinton Administration, you should plan to work on it in 1993 and to enact it in 1994. Also, we urge you to include child support assurance in the overall proposal. We believe child support assurance is critical to achieving the highest possible effectiveness in the enforcement of child support.

We believe President-elect Clinton's proposal cannot succeed by focusing only on time-limiting Aid to Families with Dependent Children (AFDC) and community service. It also should contain the other elements, such as universal health insurance, indexing the minimum wage, increasing the Earned Income Tax Credit (EITC), and toughening child support enforcement. All of these elements are important. The lack of any one element, such as universal health insurance, could lead to failure of the proposal.

During the Presidential election campaign, President-elect Clinton promised to "End welfare as we know it." The details were left to be worked out later. Initially, campaign advisors seemed to interpret this promise to mean limiting the receipt of Aid to Families with Dependent Children (AFDC) to two years and requiring community service work of those receiving AFDC benefits for longer than two years. Perhaps this narrow interpretation occurred because "End Welfare As We Know It" was the title of a subsection discussing only these elements (along with universal health insurance and medical leave), in the campaign book, Putting People First. However, a closer reading of the "Welfare and Work" chapter suggests a more ambitious agenda.

In Putting People First, President-elect Clinton said the following:

It's time to honor and reward people who work hard and play by the rules. That means ending welfare as we know it -- not by punishing the poor or preaching to them, but by empowering Americans to take care of their children and improve their lives. No one who works full-time and has children at home should be poor anymore. No one who can work should be able to stay on welfare forever.

After setting forth the principles, the book explained how this would be accomplished:

- o End welfare as we know it by providing education, training, and child care AFDC recipients need for up to two years; after two years, require those who can work to work; promote state models that work; guarantee health care to every American; and sign into law the Family and Medical Leave Act.
- o Guarantee a working wage by expanding the EITC; increase the minimum wage; create a national apprenticeship-style program; and require every employer to spend 1.5 percent of payroll for continuing education and training;
- o Help low-income Americans build savings.
- o Stimulate investment in inner city and rural areas.
- o Educate our children.
- o Cracking down on deadbeat parents by reporting them to credit agencies; using the IRS to help collect child support; starting a national databank on deadbeat parents; and making it a felony to cross state lines to avoid paying child support.

Until recently, the most glaring omission from the policy discussions of the welfare and work proposal has been child support enforcement. This was corrected in the December 11, 1992 memorandum to Al From and Bruce Reed, which not only set forth some of the less controversial proposals of the Interstate Commission on Child Support, but also raised the issue of whether to assure child support payments. We were pleased that the memorandum recognized that many experts believe "...that time-limited welfare and child support assurance are critically linked..." and that in his book, Poor Support, David Ellwood endorsed time-limited welfare only when it was accompanied by child support assurance.

We believe that time-limited AFDC and community service must be presented to Congress along with the other elements in the welfare and work proposal, and that this must be integrated with a child support assurance proposal. Without child support assurance, many mothers will continue to resist paternity and child support order establishment. Enhanced paternity establishment programs, such as proposed by the Interstate Commission on Child Support will continue to resist paternity establishment. For example, in the successful in-hospital

program in the State of Washington about 3 out of five mothers did not have paternity established by the program.

Mothers do not cooperate with paternity and child support order establishment in part because AFDC provides them little incentive to cooperate. Under current law, they can receive up to only \$50 per month if the child support payment is less than the AFDC grant. Any monthly payment exceeding \$50 reimburses the government for AFDC costs. In contrast, mothers with child support orders would be able to keep all the child support payments under a child support assurance plan. In the State of New York, this has led to a significant increase in child support orders, which if expanded and phased in nationally, could increase child support collections, improve the lives of children, and reduce AFDC costs.

We understand that Putting People First did not mention child support assurance. However, it appears as if time-limiting welfare was taken out of context from David Ellwood's book. Today, he, and many other experts, believe child support assurance must be linked to time-limited welfare. We agree. Unless the ultimate welfare and work proposal includes child support assurance and the other elements set forth in the campaign book, this effort could fail.

It is crucial that the mission of the child support enforcement program under the Clinton administration be clearly defined. Child support enforcement is one of the more complicated social programs because it involves human service agencies, judicial agencies and the court at the Federal, State and local level.

Many different policy options have been proposed, ranging from incremental changes to the existing program, to major reform involving federalization, child support assurance and opening JOBS to noncustodial parents. The data by which to thoroughly evaluate these different options and the proposal to time-limit AFDC simply do not exist. A major effort must be undertaken to develop policy options and the requisite data for the Secretary so that an informed decision can be made.

## *CHILD SUPPORT ENFORCEMENT*

Despite major reforms in child support enforcement enacted in 1984 and 1988, the system still fails to establish and enforce child support payments in the majority of cases. Government has a daunting task in the face of widespread divorce, separation, non-marital births, and non-payment of court-ordered child support. Changes have been proposed, however, which could improve the system substantially.

### The Scope of the Problem

In 1989, of the 10 million women who had custody of children under 21 years old whose father was absent, only 5.7 million women had a child support order. Moreover, only half of the women who were supposed to receive child support payments, or 2.5 million women, received their full payment.

Failure to establish paternity is a major impediment to establishing child support orders. In 1989, 27 percent of all births were to unmarried women, but paternity was established in only 31 percent of non-marital births. Although many fathers in paternity cases have no incomes or very low incomes at the time the paternity case is considered, research shows that their incomes increase significantly over time and that they can support their children eventually.

Once paternity is determined, a child support order must be established. Some analysts have estimated that more than half of children born in recent years will be eligible for child support some time before they reach 18 years of age. Many of these children will be living in single-parent families which are likely to be poor or on welfare at some time during their childhoods. For example, the poverty rate for female-headed families was 50 percent in 1990. Child support orders are paramount to the economic security of these children.

Not only do children need child support orders, but the orders must be adequate and up-to-date. A recent Urban Institute study concluded: "If all custodial families had awards set according to the current major standards and all absent fathers complied fully with these awards, the amount of money privately transferred to women and children would roughly quadruple."

But, even if the system establishes paternity and child support orders, enforcement is often blocked by barriers between States. Interstate cases account for about one-third of the child support cases, but they yield only 7 percent of all collections made by public child support enforcement agencies.

## The Child Enforcement Program:

The Child Support Enforcement program was enacted as part D of title IV of the Social Security Act in 1975 (P.L. 93-647). The States operate their own programs within Federal law and regulations and the Federal government pays for 66 percent of the administrative costs. States are responsible for establishing paternity, locating absent parents, establishing child support orders, and enforcing child support. The Federal role includes monitoring and evaluating State programs, providing technical assistance, and in certain instances, helping States locate absent parents and collect child support payments.

In 1978, States collected about \$2 billion (1989 dollars) in child support. During the next 12 years, collections rose at an average annual rate of 9.4 percent to \$6.2 billion (1989 dollars) in 1991. At the same time, the number of paternities established climbed from 111,000 to 462,000 between 1978 and 1991, an average annual growth rate of 11.9 percent, and the number of support obligations established grew from 315,000 to 1,018,000 (1990), an average annual growth rate of 10.7 percent between 1978 and 1990.

Despite these impressive growth figures, there is widespread skepticism about the program's increasing effectiveness. Some analysts argue that the program is not increasing total collections, but instead is merely capturing collections that would have been made privately anyway. The relatively small increase of 26 percent from 1978 to 1989 in total child support collections reported by mothers to the Bureau of the Census conflicts with the large increase of 165 percent in collections reported by the program.

The most recent attempt by Congress to reform the child support enforcement program was enacted under the Family Support Act of 1988. Some main elements were: (1) requiring State and local officials to use the child support guidelines established under the 1984 amendments; (2) requiring all parties to take genetic tests in a contested paternity case if requested by one of the parties and providing 90 percent Federal matching for the cost of paternity tests; (3) requiring States to implement automated tracking and monitoring systems with 90 percent Federal matching by October 1995; and (4) requiring States to implement wage withholding against non-custodial parents under certain circumstances. By the beginning of fiscal year 1996, all of these changes will have gone into effect.

## Areas That Could Be Improved:

There are many areas in the child support enforcement system that could be improved. The August 1992 report of the Interstate Child Support Commission, which was established by the Family Support

Act of 1988, addressed many of these areas. In addition, Members of Congress and academic experts have proposed reforms that would better assure collection of support and guarantee payments.

### Locating Absent Parents

The Family Support Act of 1988 required each State to implement an automated case tracking and monitoring system by October 1995, and it provided 90 percent Federal matching until the system is required to be in place. The automated computer system in each State would access location information, income data, a child support order registry, and new hire information based on revised W-4 forms, dramatically enhancing the ability of the program to locate absent parents and enforce orders.

The Interstate Child Support Commission has recommended an automated system to provide quick access to location and income information. The network would access 15 State data bases in each State, such as division of motor vehicles data, new-hire information from employer W-4 reporting, and data from each State child support order registry. Another approach would be to establish a Federal system accessing the same information.

### Establishing Parentage

Recent policy changes in many States have demonstrated the increased effectiveness of early, voluntary parentage determination for non-marital children, as well as uniform rules in contested parentage cases. States could improve their programs significantly if they received more Federal support to implement rules and procedures for parentage establishment which build upon successful, hospital-based parentage acknowledgment programs operating in several States today. A simple, nonadversarial administrative process to establish parentage outside the hospital setting has also shown to be effective.

### Establishing Child Support

Under the Family Support Act of 1988, each State not only is required to have child support guidelines, but it also must use them in determining child support orders. Although this can work well in intrastate cases, it can lead to forum shopping, multiple support orders, inequities, jurisdictional conflicts, and substantial confusion in the enforcement of support. One way to correct this problem is to enact a Federal child support guideline. States would establish the orders under a national guideline, but the Federal government would be responsible for the review and modification of orders thereafter. An alternative

proposal would provide for one State controlling a case and clear methods for processing interstate cases, but no national guideline.

### Enforcing Support

The difficulty of collecting child support across State lines and the ineffectiveness of existing State child support enforcement programs led many to call for substantial reforms. The Interstate Child Support Commission recommended direct State to employer wage withholding across State lines.

Another approach recognizes the difficulty of requiring States to enact uniform laws by proposing Federal laws instead. Under this approach, the collection and disbursement of awards would be federalized. Support obligations would be enforced through the Internal Revenue Service (IRS) to the same degree as income taxes due to the Federal government, and would take precedence over Federal tax liabilities. The Federal government would collect arrearages via the Federal income tax form and, if necessary, other IRS enforcement tools. An individual who failed to pay child support would be prosecuted to the same extent as an individual who failed to pay income taxes, and could be required to participate in work-related activities.

### Assuring Support

Under the existing programs, children have no assurance that they will receive child support payments. If non-custodial parents do not pay child support, the children survive on their custodial parents' income. If this is insufficient, they might receive welfare payments. When they go on welfare, they can become trapped. Although they can receive \$50 each month if the non-custodial parent pays child support to the State, the remaining child support goes to the State to reimburse it for the cost of welfare. As long as the non-custodial parent pays less than the welfare grant, the family is trapped on welfare, unless the custodial parent can earn her way off through work. However, work disincentives are so severe in the current welfare system that this is very difficult, particularly for low-wage custodial parents.

One approach to confronting this problem is an assured benefit program. It would provide an assured benefit in cases where a child support order has been established, yet all the means of collecting support had failed to prevent the custodial parent and child from ending up dependent on AFDC. The custodial parent could work and receive additional support in the amount of a child support award calculated according to Federal guidelines.



This assured benefit would be provided only if all other efforts to collect current support were exhausted. Unlike AFDC, the custodial parent would receive the full assured benefit, and it would not be reduced by earnings. As a result, the custodial parent would have a stronger incentive to work.

### Health Insurance

Under program regulations, State agencies must obtain basic medical support information and provide this information to the State Medicaid agency. If the custodial parent does not have satisfactory health insurance coverage, the agency must petition for authority to include medical support in the child support order. Then the State agency is required to take steps to enforce medical support that has been ordered under State law. Despite further changes in these regulations, however, only 46 percent of support orders established in fiscal year 1991 included health insurance and only 35 percent of the orders enforced or modified in fiscal year 1991 included health insurance.

The Interstate Child Support Commission recommended:

(1) amending the Employee Retirement Income Security Act (ERISA) so that States could regulate self-insured employer health plans in which the employer bears the risk of loss; (2) mandating that States require health insurers to provide out-of-State coverage through interlocking agreements with out-of-State insurers; (3) Medicaid coverage for children of separated parents who cannot afford private insurance, but do not qualify for Medicaid; and (4) Loss of the tax deduction for employer health plans that discriminate against children on the basis of the marital status of their parents or geographic proximity of the children to the health insurer.

One also could obligate parents and their employers to comply with uniform rules to provide medical support as part of the noncustodial parent's child support responsibilities. Employers who refused to comply could lose their tax deduction for health benefits.

### Promoting Employment

Current welfare policy imposes work and training requirements on custodial parents who receive AFDC, but little attention has been given to the non-custodial parents. One approach to addressing this problem would entitle States to receive a total of \$4 billion per year to provide 300,000 public service jobs to unemployed, non-custodial parents, regardless of whether their children were receiving AFDC. This would provide many non-custodial parents, who take seriously their child

support obligations but fail to pay because they have little or no income, an opportunity to increase their income potential and fulfill their child support obligations through substantial participation in employment-related activities.

## *Welfare and Work*

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FOR TWELVE YEARS the Republicans in Washington have praised the virtue of hard work, but they have hurt hard-working Americans. They have talked about "family values," but their policies show they don't really value families. They have pledged to reform welfare, but they have no plan to put people back to work. They have put their elections first—and people last.

Millions of Americans have paid the price. Wages are flat, good jobs are scarce, and poverty has exploded. Today almost one of every five people who works full-time doesn't earn enough to keep his or her family above the poverty level. Almost one of every five children lives in poverty—a million more than ten years ago. And because of deadbeat spouses, more than one of every five single parents doesn't get adequate child support.

It's time to honor and reward people who work hard and play by the rules. That means ending welfare as we know it—not by punishing the poor or preaching to them, but by empowering Americans to take care of their children and improve their lives. No one who works full-time and has children at home should be poor anymore. No one who can work should be able to stay on welfare forever.

We can provide opportunity, demand responsibility,

and end welfare as we know it. We can give every American hope for the future.

Here's how:

### *End Welfare as We Know It*

- *Empower people* with the education, training, and child care they need for up to two years, so they can break the cycle of dependency; expand programs to help people learn to read, get their high school diplomas or equivalency degrees, and acquire specific job skills; and ensure that their children are cared for while they learn.
- *After two years, require those who can work to go to work*, either in the private sector or in community service; provide placement assistance to help everyone find a job, and give the people who can't find one a dignified and meaningful community service job.
- *Actively promote state models that work*, like Arkansas's Project Success.
- *Guarantee affordable, quality health care to every American*—so nobody is forced to stay on welfare because going back to work would mean losing medical insurance.
- *Sign into law the Family and Medical Leave Act*, which President Bush has vetoed, to give workers the right to take twelve weeks of unpaid leave per year to care for a newborn or a sick family member—a right enjoyed by workers in every other advanced industrial nation.

### *Guarantee a Working Wage*

- *Expand the Earned Income Tax Credit* so that no one with a family who works full-time has to raise his or

her children in poverty; make up the difference between a family's earnings and the poverty level.

- Increase the minimum wage to keep pace with inflation and enforce the prevailing wage protections contained in the Davis-Bacon Act.

- Create a *national apprenticeship-style program* by bringing business, labor, and education leaders together to offer non-college-bound students valuable skills training, with the promise of good jobs when they graduate.

- Require every employer to spend 1.5 percent of payroll for *continuing education and training* and provide training to all workers, not just executives.

### *Help Low-Income Americans Build Savings*

- Enable low-income Americans to set up *Individual Development Accounts* to save for specific purposes such as post-secondary education, home ownership, retirement, and small business startups.

- *Eliminate foolish regulations* that discourage people receiving income maintenance from saving. It's a travesty that people on welfare who want to do right by themselves and their families can't because the government won't let them.

### *Stimulate Investment in Inner City and Rural Areas*

- Establish a *nationwide network of community development banks*, modeled on the successful South Shore Bank in Chicago and Southern Development Bancorporation in Arkansas, to provide loans to low-income entre-

preneurs and homeowners in the inner cities. These banks will also provide advice and assistance to entrepreneurs, invest in affordable housing, and help mobilize private lenders.

- Create *urban enterprise zones* in stagnant inner cities, but only for companies willing to take responsibility. Minimize business taxes and federal regulations to provide incentives to set up shop. In return, require companies to make jobs for local residents a top priority.

- *Ease the credit crunch in our inner cities* by passing a more progressive Community Reinvestment Act to prevent redlining, and by requiring financial institutions to invest in their communities.

### *Educate Our Children*

- Expand innovative parenting programs like Arkansas's Home Instructional Program for Pre-school Youngsters (HIPPY), which helps disadvantaged parents work with their children to *build an ethic of learning at home* that benefits both.

- *Fully fund Head Start, WIC, and other initiatives* recommended by the National Commission on Children that will help send our children to school ready to learn—programs that save the government several dollars for every one it spends.

- *Make educational opportunity a reality* by increasing Chapter One funding for schools in disadvantaged neighborhoods, setting tough standards, and helping communities open youth opportunity centers for dropouts who need a second chance.

- *Give every American the right to borrow money for*

*college* by maintaining the Pell grant program, scrapping the existing student loan program, and establishing a National Service Trust Fund. Those who borrow from the fund will be able to choose how to repay the balance: either as a small percentage of their earnings over time, or by serving their communities doing work their country needs.

### ***Crack Down on Deadbeat Parents***

- Report them to credit agencies, so they can't borrow money for themselves when they're not taking care of their children.
- Use the Internal Revenue Service to help collect child support.
- Start a national deadbeat databank to enable law enforcement officers to track down negligent parents more easily.
- Make it a felony to cross state lines to avoid paying child support.

## REPORT OF INTERSTATE COMMISSION ON CHILD SUPPORT

The Commission was not convinced that the Federal government could do a better job than the states in establishing and enforcing support. The Commission members were concerned about: (1) loss of creativity at the state and local level; (2) Federalization of one aspect of family law that often arises in the context of other family law issues; (3) existing backlog in Federal courts; (4) lack of an effective Federal administrative model; (5) improper identification and distribution of payments; (6) cost of creating a system that already exists at the State level; and (7) taking such a major step before evaluating the effects of State automated systems which are not due to be implemented until 1995.

### HIGHLIGHTS OF INTERSTATE CHILD SUPPORT COMMISSION RECOMMENDATIONS

- (1) Create an automated network linking all States to provide access to location and income information.
- (2) Require use of income withholding across State lines from employer to obligee in another State.
- (3) Require enactment of identical Uniform Interstate Family Support Acts (UIFSA), the improved replacement for the model Uniform Reciprocal Enforcement of Support Act (URESAs). UIFSA provides for one State controlling a case and efficient method for interstate case processing.
- (4) Require a commitment to early, voluntary paternity establishment, as well as uniform evidentiary rules for contested parentage cases.
- (5) Require universal access to health care insurance for all children of separated parents.
- (6) Increase trained staff and resources.
- (7) Review funding for the child support program to ensure that funding induces action on cases most in need of attention.
- (8) Urge vigorous leadership at the National level by the Federal government to ensure that the State-based system has common direction and focus.

The theme of Congressional reform has been to provide States with the best state-of-the-art methods that ensure obligors' compliance with support duties. The Commission is asking Congress to again provide States with innovative tools, this time in the area of interstate child support reform.



# The Downey/Hyde Child Support Enforcement and Assurance Proposal

## *Outline*

1. The Child Support Enforcement and Assurance Proposal would provide every State with Federal support to implement a set of laws and practices designed to ensure that as many paternities as possible are established, regardless of the income or welfare status of the parents.
2. The Child Support Enforcement and Assurance Proposal would require States to use Federal guidelines to establish child support awards, ensuring that fair and adequate child support orders are established for all children who do not reside with both natural parents, and provide for regular, Federal review and modification of award amounts in order to ensure their continuing adequacy.
3. The Child Support Enforcement and Assurance Proposal would federalize the collection and enforcement of child support awards, with a new mechanism for the routine withholding of child support obligations from wages, and the implementation of stiffer penalties for nonpayment – including requirements for work. The changes would increase the number, size and timeliness of payments, and educate the public that child support obligations are a national priority. In addition, all child support orders must ensure that the health insurance needs of the child are covered. There would be increased enforcement of medical support and expanded Medicaid coverage.
4. The Child Support Enforcement and Assurance Proposal would create a minimum "assured child support benefit," available to any child whose noncustodial parent fails to pay a legal child support obligation. The assured benefit would place greatly increased emphasis on the enforcement of child support obligations and the responsibility of noncustodial parents to support their children, in line with the other child support reforms. At the same time, it would help low- and middle-income families with children avoid sudden declines in income or even poverty, and the stigma and severe work disincentives associated with the welfare program.
5. The Child Support Enforcement and Assurance Proposal would provide many noncustodial parents who take seriously their child support obligations, but fail to pay because they have little or no income, an opportunity to increase their income potential and fulfill their child support obligations through substantial participation in employment-related activities. Under the proposal, States would be entitled to receive a total of \$4 billion per year to administer the JOBS program for noncustodial parents and to provide 300,000 public service employment jobs.

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May 19, 1993

THE BOREN AMENDMENT -- The Need for Reform

The Boren Amendment to the Medicaid law was passed in the early 1980s to give states greater flexibility in establishing reimbursement rates for hospitals and nursing homes and to encourage health care cost containment. It has instead led to havoc in the administration of Medicaid programs. Court decisions have interpreted the Boren Amendment to embody an ever more restrictive, unrealistic and frequently bizarre set of requirements in setting reimbursement rates, and have in effect given judges the power to establish reimbursement rate levels and criteria. There is so little consistency in the decisions that it has become impossible for a state to know what it must do to ensure that its reimbursement system will hold up in court. Even those courts that have ultimately sustained state reimbursement systems have done so only after lengthy, expensive and debilitating litigation. The differences in judicial approach, and the inability of the courts to develop a coherent, consistent and sensible construction of the Boren Amendment, have left states frustrated in their efforts to rationalize their Medicaid programs, and thwarted in their attempts to realize the purposes of the Amendment.

The frustration resulting from divergent interpretations of a vaguely worded statute is not justified by any program purpose. Reimbursement rates for hospitals and

nursing homes are not too low. To the contrary, they have risen much faster than the rate of inflation in the economy as a whole, and are one cause of the out-of-control increases in health care costs that threaten to undermine all efforts at economic recovery and deficit reduction.

Reform of the law on Medicaid provider reimbursement should be one of the highest priorities on the domestic agenda. Medicaid will clearly be with us for a considerable time whatever may be the course of health care reform generally. Unless states are permitted to deal rationally with the reimbursement issue, Medicaid costs will continue to spiral out of control, and threaten the nation's fiscal stability.

A bipartisan coalition of states has developed a proposal to deal effectively with this issue. The proposal would replace the current vague standard for judging the legality of reimbursement rates with a set of specific criteria, based on appropriate factors such as what hospitals charge other payors, the rates for comparable services paid by the Medicare program, the amount of available capacity in nursing homes and home- and community-based care in the state, a standard level of facility costs, and inflation in the general economy. These criteria would serve as "safe harbors," so that reimbursement rates that met one or more of the criteria could not be challenged. Rates not within one of the "safe harbors" would be subject to review, at the request

of providers, by the Health Care Financing Administration (HCFA) or any successor agency. HCFA would be encouraged to assist the parties in resolving the issue informally, but if that is not possible, HCFA would decide if the particular rate was sufficient to assure the continued availability of quality care. Either side would be entitled to judicial review of the HCFA decision, and the courts would apply an arbitrary and capricious standard of review, as is done in judicial review of other administrative actions.

The procedural requirements of the Boren Amendment, which have been so extended and distorted by the courts, would be replaced by a simple requirement that providers be given an opportunity to participate in the process leading to establishment of a reimbursement rate.

Adoption of the proposal of the state coalition would replace the current undefinable, unworkable and confusing federal standard with specific criteria that will allow a state to know in advance what it must do to satisfy federal law. Gone would be the constant threat of epic litigation wars that can tie up a state for years. Judges would no longer be in a position to dictate reimbursement levels and methodologies. States would not be forced to undertake elaborate studies and production of paper trails in a futile effort to keep up with the latest notion of the "findings" that must have been made to justify rates, and no longer would plaintiffs be able to parlay stray documents or

off-hand comments by anyone in state government into a judicial determination that a state's reimbursement rates are invalid because they were predicated on improper purposes.

Preliminary estimates indicate that relieving states from the strictures of the Boren Amendment, as it is construed by the courts, could result in savings of some \$2 billion over five years in unnecessary reimbursement. This figure includes savings in excessive rates now being paid as a result of Boren Amendment litigation plus the extra payments that states now make as "insurance" against such litigation. There would also be savings in the exorbitant administrative and litigation fees that could be avoided under a more rational system.

At the same time, the proposed system will be fair to providers. It gives them an opportunity to influence rate setting before a state acts, and it gives them a forum to challenge a rate that does not meet the safe harbor criteria. Most important, the safe harbors are designed to insure that efficient providers, as now, will not be underpaid for their services to Medicaid patients.

Above all else, the proposal returns the function of establishing reimbursement rates to the state officials with responsibility for managing the Medicaid program, and removes from the courts a responsibility that they are peculiarly unqualified to discharge.

The coalition states urge the Congress to take up their proposal immediately and to enact it this year. There

is no more important single step that can be taken to bring the Medicaid program under control.