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[HEW's Proposed Settlement of Outstanding Disputed State Claims for Social Services]. HRD-78-78; HRD-78-80; B-164031(3). March 6, 1978. 7 pp. + 3 enclosures (4 pp.).

Report to Rep. Al Ullman, Chairman, House Committee on the Judiciary; Rep. Peter W. Rodino, Jr., Chairman, House Committee on Ways and Means; Sen. Russell B. Long, Chairman, Senate Committee on Finance; by Gregory J. Ahart, Director, Human Resources Div.

Issue Area: Federally Sponsored or Assisted Income Security Programs: Payment Processes, Procedures, and Systems (1309).

Contact: Human Resources Div.

Budget Function: Income Security: Public Assistance and Other Income Supplements (604).

Organization Concerned: Department of Health, Education, and Welfare.

Congressional Relevance: House Committee on the Judiciary; House Committee on Ways and Means; Senate Committee on Finance. Rep. Al Ullman; Rep. Peter W. Rodino, Jr.; Sen. Russell B. Long.

Authority: S. 2360 (95th Cong.). Social Security Act.

Proposed legislation would settle State claims for reimbursement of social services costs whether or not the claims are currently in dispute. As of June 1977, the Department of Health, Education, and Welfare's (HEW's) records showed that there were 141 claims totaling \$3.988 billion for social services costs that were deferred or disallowed by HEW and were outstanding. Most of the disputed claims occurred when HEW disallowed them, either before or after they were paid, and the States requested reconsideration of the disallowances. According to HEW, because of limited staff, not all States' claims are reviewed in detail when they are submitted. The following were noted in connection with HEW's proposed settlement: the disputed claims covered will be settled without regard to their validity; the Office of Management and Budget would probably make about \$543 million available to settle the unpaid claims; the formula to be used for the settlement of unpaid claims is a modification by the States of an HEW proposal; the States would be paid or would keep from 50% to 100% of their total paid and unpaid claims; and both paid and unpaid claims were disallowed by HEW for the same reasons. Seven New York claims account for \$1.404 billion of the \$2.390 billion involved in the settlement. According to HEW, the purpose of the proposed legislation is to "wipe the slate clean" of all social services claims for expenditures made by States before October 1, 1975. (PRS)

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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

MAR 06 1978

B-164031(3)

The Honorable Russell B. Long
Chairman, Committee on Finance
United States Senate

Dear Mr. Chairman:

On January 25, 1978, we briefed your Committee staff on our on-going review of the Department of Health, Education, and Welfare's (HEW) system for settling certain disputed State claims. Following the briefings we were asked to provide information for use in considering S. 2360, to supplement the information provided your Committee by HEW. This bill would authorize an appropriation to reimburse certain expenditures for social services provided by the States before October 1, 1975.

According to HEW, if enacted, this bill would settle States' claims for reimbursement of social services costs, whether or not the claims are currently in dispute. Until October 1, 1975, these costs were incurred under titles I, IV, VI, X, XIV, and XVI of the Social Security Act. Since then, social services costs have been incurred under title XX of the act, which established a new social services program.

In addition to the information provided by HEW on the proposed settlement, we are providing information about

- the total claims outstanding as of June 1977,
- the nature of the claims being settled,
- the unique aspects of New York's large claims,
- the claims for costs incurred after October 1, 1975, which will remain outstanding after the settlement, and
- the effect of the settlement on undisputed paid claims.

TOTAL CLAIMS OUTSTANDING

HEW's records showed that there were 141 claims totaling about \$3.988 billion for social services costs that were deferred or disallowed by HEW and were outstanding as of June 1977. These claims are comprised of

- 74 disputed claims by 28 States totaling about \$2.576 billion reported by HEW as the claims being settled;
- 7 claims by New York totaling about \$1.021 billion which, according to HEW, will be written off with no monetary effect to the Federal Government; and
- 60 disputed claims by 24 States totaling about \$391 million for costs incurred after October 1, 1975, which will remain outstanding after the settlement.

NATURE OF DISPUTED
CLAIMS BEING SETTLED

Most of the disputed claims being settled occurred when HEW disallowed them, either before or after they were paid, and the States requested HEW to reconsider the disallowances. HEW disallows a claim based on its review of a State's claim when it is submitted or on an audit or review made after the claim has been paid. If, based on a State's request, HEW reconsiders and upholds the disallowance, States can appeal to the Federal courts. HEW's reconsideration process and litigation in the courts are the formal processes for settling disputed claims. Some of New York's disputed claims involve the approvability of State plan amendments rather than HEW disallowances based on a review of expenditures. (See p. 5.)

Faced with a large number and dollar amount of disputed claims outstanding, some of which have been in dispute since the early 1970's, HEW in March 1977 decided to negotiate a settlement with 23 States which had claims outstanding for costs incurred before October 1975. An HEW official said that it was decided to negotiate a settlement with the States because otherwise several years and numerous and expensive court proceedings would be required to resolve these disputes. From August 1975 to mid-January 1978, HEW settled only seven disputed social services claims totaling about \$2 million.

HEW's Office of the Undersecretary negotiated the settlement with the 28 States. According to HEW, in negotiating the

settlement, no attempt was made to determine the validity of the claims or to assess the merits of either HEW's or any State's position on any disputed claim. However, as part of the settlement, HEW is requiring the States to certify that the amounts claimed were actually spent.

HEW's financial records showed that as of September 13, 1977, the disputed claims for the 28 States totaled about \$2.576 billion for social services expenditures made from 1969 until October 1, 1975. This amount includes \$1.738 billion which HEW had not paid the States and \$838 million which it had paid. HEW gave the States a listing showing the amounts on its records for each State's outstanding claims, and asked them if the amounts were correct.

Through negotiations, HEW's listing was revised to show what each State considered to be the correct amount of its claims to be settled. The revised listing showed a total of \$2.390 billion (\$1.560 billion unpaid and \$830 million paid) compared to HEW's total of \$2.576 billion. HEW accepted the revised amounts as the basis for negotiating the settlement, with the difference of \$186 million on its records (\$2.576 billion - \$2.390 billion) to be written off. According to an HEW official, each of the 28 States will be required to submit a certification of its claims signed by the State Governor.

On October 5, 1977, HEW announced that it had reached an agreement with the 28 States to resolve the \$2.390 billion in disputed claims. As reported by HEW, under the terms of the agreement, 19 States with unpaid claims of \$1.560 billion would receive \$532 million distributed on a formula basis. Of the 19 States, 13 also had paid claims and would retain their portion of the \$830 million they had already received. The remaining nine States had only paid claims and likewise would retain their portion of the \$830 million. Enclosure I shows the amounts and percentages of the total disputed claims (paid and unpaid) each State would be paid or would keep.

An HEW official told us that HEW agreed to allow the States to keep the \$830 million because at the time of payment HEW believed the claims were valid. We determined, however, that the claims included in the \$830 million were not reviewed in detail by HEW to determine their validity before they were paid. One paid New York claim for about \$359 million has never been reviewed in detail. This claim is discussed on page 5.

According to HEW, because of limited staff, not all States' claims are reviewed in detail when they are submitted. Claims paid without detailed review are paid subject to post-audit or follow-up review. The paid claims included in the proposed settlement were not disallowed at the time they were submitted. HEW disallowed most of these claims based on audits or reviews made after they were paid. The States then asked for reconsideration of the disallowances. Conversely, HEW reviewed and disallowed most of the unpaid claims when they were submitted and the States then asked for reconsideration of the disallowances. The exceptions to these procedures are New York's claims which are discussed on page 5.

Regarding HEW's proposed settlement, we noted the following:

- The disputed claims covered will be settled without regard to their validity.
- The Office of Management and Budget advised HEW that about \$543 million could probably be obtained to settle the unpaid claims.
- The formula to be used for the settlement of unpaid claims is a modification by the States of an HEW proposal and will result in States receiving from 23 to 58 percent of their unpaid claims.
- The States would be paid or would keep from 50 to 100 percent of their total paid and unpaid claims. (See enc. I.)
- Both paid and unpaid claims were disallowed by HEW for the same reasons, such as expenditures for services not covered by approved State plans. The total benefit to each State under the proposed settlement depends solely on whether its claims are paid or unpaid. For example, Illinois had paid claims totaling about \$188 million and Massachusetts had unpaid claims totaling about \$142 million which were all disallowed because reimbursement would have resulted in supplanting rather than supplementing State expenditures. Under the agreement, Illinois would keep the \$188 million and Massachusetts would receive \$75 million of the \$142 million.
- If HEW applied the formula to both the paid and unpaid claims the 28 States in total would repay \$85.7 million.

Enclosure II shows the amount each State would keep or receive under HEW's agreement compared to the amount each would receive or pay if the formula were applied to all claims.

UNIQUE ASPECTS OF
NEW YORK'S LARGE CLAIMS

Seven New York claims account for \$1.404 billion of the \$2.390 billion involved in the settlement negotiated with the 28 States. According to HEW, in addition to the \$1.404 billion, seven other New York claims totaling \$1.021 billion would be settled if the proposed legislation were enacted. An HEW official said these claims would be settled because they are for costs incurred before October 1, 1975, and the effect of the legislation is to settle all such claims. The following table shows the total number and amount of New York's claims being settled.

	<u>Number</u>	<u>Amount</u> (billions)
Included in the \$2.390 billion negotiated settlement	7	\$ 1.404
Claims for costs which exceeded the State's social services allotment ceiling during 1973-75 (note a)	<u>7</u>	<u>1.021</u>
Total	<u>14</u>	<u>\$ 2.425</u>

a/New York claimed the amounts that exceeded its social services allotment ceilings as contingent claims to offset any future disallowances of amounts claimed to reach its annual ceiling.

All claims by States other than New York included in the \$2.390 billion were in HEW's formal reconsideration process. However, of New York's \$1.404 billion in claims, only about \$233 million was in this process. According to HEW, the remaining \$1.171 billion was not reviewed in detail because it was claimed under State plan amendments submitted in December 1971 and was not allowable because the amendments were never approved. In July 1972, however, HEW paid New York about \$359 million for the initial claim of the \$1.171 billion in anticipation that the amendments would be approved. The

\$359 million is included in the \$830 million that HEW is allowing the States to keep in the proposed settlement. The remaining \$812 million of the \$1.171 billion was not paid by HEW and is part of the \$1.560 billion in unpaid claims to be settled. New York will be paid about 23 percent of this \$812 million.

Most of the \$1.021 billion for amounts that exceeded the ceiling is also for costs claimed under the State's unapproved plan amendments. According to HEW, however, these claims would not have been payable even if the amendments had been approved. Therefore, these claims are to be written off with no monetary effect to the Federal Government, whether or not the proposed legislation is enacted.

From October 1972 to March 1977 HEW and New York made numerous attempts to resolve the dispute over the unapproved plan amendments. At one point HEW had an administrative law judge review the amendments, but he never made a decision on their approvability. Since March 1977 activity related to resolving this dispute has been suspended pending the outcome of the proposed settlement. Enclosure III shows the chronology of events relating to New York's unapproved social services plan amendments.

CLAIMS TO REMAIN OUTSTANDING
AFTER THE SETTLEMENT

If the proposed legislation is enacted and claims are settled as proposed by HEW, some disputed claims for costs incurred after October 1, 1975, would remain outstanding. The following table summarizes the effect of the settlement.

	<u>Number</u>	<u>Amount</u> (billions)
Total claims outstanding	141	\$ 3.988
Less total claims to be settled	<u>81</u>	<u>a/ 3.597</u>
Total claims to remain outstanding	<u>60</u>	<u>\$.391</u>

a/ Comprised of \$2.576 on HEW's records involved in the negotiated settlement, plus \$1.021 billion of New York claims to be written off.

We also identified 269 disputed claims totaling \$355 million for costs other than social services claimed primarily under the Medicaid and Aid to Families with Dependent Children (AFDC) programs. We are reviewing HEW's procedures for settling claims under the social services, Medicaid, AFDC, and certain other programs and plan to issue a report to the Congress on the results.

EFFECT OF SETTLEMENT
ON UNDISPUTED PAID CLAIMS

According to HEW, the purpose of the proposed legislation is to "wipe the slate clean" of all social services claims for expenditures made by States before October 1, 1975, whether or not the claims are currently in dispute.

In addition to the claims totaling \$3.597 billion to be settled, the States were paid about \$6.601 billion for undisputed claims from July 1971 through September 1975. According to HEW, the \$6.601 billion in claims would no longer be subject to audit or review if the proposed legislation is enacted and any on-going audits or reviews of these claims would be terminated.


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We did not obtain written comments on this report from HEW; however, we discussed its contents with HEW officials.

We are sending this same report to the Chairman of the House Ways and Means and Judiciary Committees because the same legislation was referred to them for consideration. Also, as arranged with your staff, we are sending copies to the Acting Director, Office of Management and Budget; the Secretary of HEW; and will send copies to other interested parties upon request.

We trust the information in this report will be helpful to your Committee in considering the proposed legislation.

Sincerely yours,


Gregory W. Ahart
Director

Enclosures - 3

AMOUNTS AND PERCENTAGES OF TOTAL DISPUTED CLAIMS

EACH STATE WOULD BE PAID OR WOULD KEEP

State	(1) State claims unpaid by HEW	(2) State claims paid by HEW- State keeps money	(3) Total paid and unpaid claims (1) + (2) (millions)	(4) Proposed payment of unpaid claims to State under formula (note a)	(5) Total State would be paid or would keep (2) + (4)	(6) Percentage of total claims State would be paid or would keep (5) ÷ (3)
Alabama	-	\$ 1.0	\$ 1.0	-	\$ 1.0	100
Alaska	-	.7	.7	-	.7	100
Arizona	-	5.2	5.2	-	5.2	100
Arkansas b/	\$ 3.8	-	3.8	\$ 2.2	2.2	58
California	-	1.5	1.5	-	1.5	100
Connecticut b/	38.0	6.0	44.0	22.0	28.0	64
Florida	28.7	29.1	57.8	11.0	40.1	69
Georgia	.7	6.0	6.7	.3	6.3	94
Idaho b/	1.1	-	1.1	.6	.6	55
Illinois	87.3	188.4	275.7	32.1	220.5	80
Kentucky	-	2.4	2.4	-	2.4	100
Louisiana	-	16.7	16.7	-	16.7	100
Maine b/	2.2	-	2.2	1.3	1.3	59
Maryland b/	24.7	-	24.7	14.3	14.3	58
Massachusetts b/	142.0	-	142.0	75.0	75.0	53
Michigan b/	57.1	8.4	65.5	32.6	41.0	63
Minnesota b/	49.4	4.0	53.4	28.6	32.6	61
Missouri	-	.2	.2	-	.2	100
New Jersey b/	1.3	-	1.3	.7	.7	54
New York	914.0	490.0	1,404.0	214.4	704.4	50
Ohio	15.1	5.0	20.1	5.7	10.7	53
Oklahoma	-	13.8	13.8	-	13.8	100
Pennsylvania	4.2	2.8	7.0	1.6	4.4	63
Rhode Island	-	1.2	1.2	-	1.2	100
Tennessee	(note c)	.5	.5	-	.5	100
Texas	92.7	34.7	127.4	34.0	68.7	54
Washington b/	32.8	5.6	38.4	19.0	24.6	64
Wisconsin b/	65.0	6.3	71.3	36.5	42.8	60
Total	\$ 1,560.7	\$ 829.5	\$ 2,389.6	\$ 531.9	\$ 1,361.4	57

a/If the unpaid claims are 65 percent or more of the total amount in dispute (paid and unpaid claims), the formula is:

58 percent of the first \$50 million
50 percent of the next \$100 million
21 percent of the remainder

If the unpaid claims are less than 65 percent of the total amount in dispute, the formula is:

38 percent of the first \$50 million
35 percent of the next \$100 million
21 percent of the remainder

b/The States to which the higher formula in note a applies.

c/Tennessee has unpaid claims of only \$4,000.

HEW'S PROPOSAL VERSUSAPPLYING THE FORMULA TO ALL CLAIMS

<u>State</u>	<u>HEW proposal</u>		<u>Effect of applying same formula to all claims</u>	
	<u>Proposed payment of unpaid claims to State under formula</u>	<u>State claims paid by HEW - State keeps money</u>	<u>HEW pays State</u>	<u>State pays HEW</u>
		(millions)		
Alabama	-	\$ 1.0	-	\$.6
Alaska	-	.7	-	.4
Arizona	-	5.2	-	3.2
Arkansas	\$ 2.2	-	\$ 2.2	-
California	-	1.5	-	.9
Connecticut	22.0	6.0	19.5	-
Florida	11.0	29.1	-	7.1
Georgia	.3	6.0	-	3.5
Idaho	.6	-	.6	-
Illinois	32.1	188.4	-	108.0
Kentucky	-	2.4	-	1.5
Louisiana	-	16.7	-	10.4
Maine	1.3	-	1.3	-
Maryland	14.3	-	14.3	-
Massachusetts	75.0	-	75.0	-
Michigan	32.6	8.4	28.4	-
Minnesota	28.6	4.0	26.7	-
Missouri	-	.2	-	.1
New Jersey	.7	-	.7	-
New York	214.4	490.0	-	172.7
Ohio	5.7	5.0	2.6	-
Oklahoma	-	13.8	-	8.6
Pennsylvania	1.6	2.8	-	.1
Rhode Island	-	1.2	-	.7
Tennessee	(note a)	.5	-	.3
Texas	34.0	34.7	11.4	-
Washington	19.0	5.6	16.7	-
Wisconsin	36.5	6.3	33.3	-
Total	\$ 531.9	\$ 829.5	\$ 232.7	\$ 318.4

a/Tennessee has unpaid claims of only \$4,000 and would be paid only \$1,500.

Net amount States would pay HLW if formula were applied to all claims (\$318.4 - \$232.7)	<u>\$ 85.7</u>
Under HEW's proposal States would receive	\$531.9
If formula were applied to all claims, States would pay	<u>85.7</u>
Total benefit to HEW if formula were applied to all claims	<u>\$617.6</u>

CHRONOLOGY OF EVENTS SURROUNDING NEW YORK'S
DECEMBER 1971 SOCIAL SERVICES STATE PLAN AMENDMENTS

- December 1971 - State submitted plan amendments to HEW Region II.
- January 1972 - Regional Commissioner acknowledged receipt of the State's plan amendments.
- June 1972 - Claim totaling about \$359 million submitted against the as yet unapproved plan amendments. This claim was routinely paid.
- October 1972 - HEW began questioning approvability of the amendments. The State continued to submit claims which were not paid.
- April 1973 - State hired a Certified Public Accounting firm to reconstruct its records on the claims.
- May 1973 - HEW Region II wanted to review the method used to reconstruct the State's records on the claims, but the State refused. State later (in the fall of 1973) submitted a summary of the reconstructed records to the region.
- September 1973 - HEW Regional Commissioner recommended disapproval of the plan amendments.
- December 1973 - Governor Rockefeller requested the assistance of the Secretary of HEW in resolving the problems associated with the State's plan amendments.
- December 1973 thru March 1974 - Numerous HEW-State meetings held to review the amendments.
- January 1974 - The Secretary of HEW sent a letter to Governor Wilson stating that HEW expected to make a determination on the approvability of the amendments upon final resolution of the legal issues by the HEW General Counsel.

- March 1974 - The Secretary of HEW sent a letter to Governor Wilson stating that the review of the plan amendments would be completed by the end of March.
- March 1974 - HEW headquarters' staff reviewed the amendments and prepared a summary on its analysis. The staff recommended that certain sections of the amendments be disapproved and other sections be approved only if the State submitted appropriate explanations, deletions, or limitations.
- Mid- 1974 - The case was turned over to an administrative law judge, who was to make a recommendation to HEW as to the approvability of the plan amendments. No decision was ever made.
- July 1974 - HEW sent a letter to the State informing it of HEW's decision to disapprove the plan amendments.
- March 1976 - HEW decided to conduct a limited review of the State's claims. HEW and the State entered into a written agreement to exclude the claims from HEW's formal review and disallowance process.
- March 1977 - HEW began discussions on the possibility of a settlement for all social services claims at issue before October 1, 1975. Therefore, activity relating to the State's plan amendments was suspended.