

**NLWJC - Kagan**

**DPC - Box 058 - Folder-024**

**Welfare - Bucket Issue**

Wp2 - bucket issue

▶ **Diana Fortuna**  
07/24/97 01:08:56 PM  
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Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

cc:

Subject: Medicaid bucket

HHS may want to raise the bucket as part of the technicals discussion Ron wants to have. Here's the story: for many months, HHS could only see their way clear to a partial fix of the bucket. Just as we were about to give up on this, Clay Shaw wrote a letter saying congressional intent was a 100% fix of the bucket. This caused HHS to go back to the drawing board (for months). They now see a way to do a 100% fix, but their legal theory conflicts with OMB counsel's theory, and for the moment it's stuck there.

So HHS wants to throw into the technical mix the possibility that Congress could clarify this issue, and they may raise it at our conference call tomorrow. OMB doesn't disagree. I don't see any downside, other than if we have to use a chit for it. But Haskins is on our side here, so it may not use a chit.

*Haskins is  
Trust do it.*

W2-bucket issue



Cynthia A. Rice

05/05/97 08:52:19 PM

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Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Diana Fortuna/OPD/EOP


Subject: Correction re: bucket

This morning I said we'd no longer need the bucket if the budget agreement becomes law. Not exactly so. Even with the budget agreement, some legal immigrants -- the elderly non-disabled -- who were in the U.S. before the welfare law was enacted will not get Medicaid coverage. States who wish to cover them without vastly expanding their Medicaid programs could do so if the bucket were enacted.

WR - bucket issue

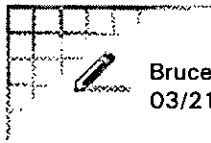
Diana Fortuna 03/24/97 01:03:45 PM

Record Type: Record


To: Bruce N. Reed/OPD/EOP  
cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP  
bcc:  
Subject: Re: Resolution of the Medicaid bucket? 

Ken is saying we can't do the bucket by 4/1, because CBO is reestimating the baseline in early/mid April and we don't want it out before then. We are pressing him on his logic, since the cost of the bucket is already in the budget as a legislative proposal.

Bruce N. Reed

 Bruce N. Reed  
03/21/97 12:08:28 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP  
cc:  
Subject: Re: Resolution of the Medicaid bucket? 

Can we do by April 1?

WR - bucket issue

 Diana Fortuna  03/25/97 07:29:54 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

cc:

Subject: Oops; this is the email i meant to attach on implementation of the bucket and OMB

----- Forwarded by Diana Fortuna/OPD/EOP on 03/25/97 07:29 PM -----



**Kenneth S. Apfel**  
03/25/97 11:53:00 AM

Record Type: Record

To: Diana Fortuna

cc:

Subject: Follow-up on Medicaid "bucket" meeting

Message Creation Date was at 25-MAR-1997 11:53:00

Please treat as close hold. Thanks

----- Forwarded by Kenneth S. Apfel/OMB/EOP on 03/25/97 11:53 AM -----

Nicolette Highsmith  
03/25/97 10:40:55 AM  
Record Type: Record

To: Franklin D. Raines/OMB/EOP, Jacob J. Lew/OMB/EOP, Kenneth S. Apfel/OMB/EOP

cc: See the distribution list at the bottom of this message

Subject: Follow-up on Medicaid "bucket" meeting

This e-mail 1) notifies you that the Health Division communicated your guidance to HCFA on the three Medicaid "welfare reform" issues and 2) outlines HCFA's response to your guidance.

1) SSI One-Month Gap -- We communicated to HCFA that the one-month gap policy should be made administratively through an All States Letter to the Medicaid Directors as well. HCFA will send over the All States Letter for OMB clearance later this week.

2) Medically-Needy -- We communicated to HCFA that the medically needy policy should be made administratively through an All States Letter to the Medicaid Directors as opposed to promulgating a regulation. HCFA said that they would

discuss this option with their Office of General Counsel and notify us if they had any legal concerns. If not, HCFA will send over the All States Letter for OMB clearance. HCFA mentioned that they would like to distribute one All States Letter that would include both the medically needy policy and the delay regulation.

3) Delay Regulation -- We communicated to HCFA that you approved of announcing HCFA's intention to promulgate this regulation, since the NPRM process could delay the impact of qualified aliens losing SSI. HCFA wants to send out an All States Letter to the Medicaid Directors announcing this policy and to advise that States could retain Medicaid coverage for SSI recipients in the meantime.

First, we will schedule a meeting early next week with HCFA, OIRA, and the Health Division to discuss this regulation. Second, HCFA will send over the All States Letter for OMB clearance. This letter will include both the medically needy policy and the announcement of HCFA's intention to promulgate the delay regulation.

We also noted to HCFA that these policies should be handled administratively with little publicity. HCFA agreed. To ensure a consolidated process, OMB policy officials need to coordinate with other EXOP officials in order to convey that these policies should be handled with minimal publicity.

Message Copied To:

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Barry T. Clendenin/OMB/EOP  
Mark E. Miller/OMB/EOP  
Keith J. Fontenot/OMB/EOP  
Daniel J. Chenok/OMB/EOP  
Jill M. Blickstein/OMB/EOP

WP-bucket issue

Diana Fortuna 03/04/97 01:24:29  
PIM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Christopher C. Jennings/OPD/EOP, Cynthia A. Rice/OPD/EOP, Stephen C. Warnath/OPD/EOP

Subject: bucket

Latest status: We, especially OMB, are considering whether to do HHS's administrative fix to the bucket. It is not the advocates' full fix, but a 2-part regulatory fix HHS devised: a temporary delay for everyone, which will help all states with a bucket problem; and a new policy on how states define "medically needy" Medicaid programs, which will permanently help some states with a bucket problem. Between the 2 parts, it will fix a decent portion of the bucket, but not all. (I will try to get a sense of how much.)

Nancy-Ann's first take is that Raines needs to decide whether HCFA must come up with an offset to the \$1.9 billion cost. Ken and I have pointed out that we fixed a lot of the bucket in our welfare legislative fix package, in our proposal to exempt the disabled from SSI/Medicaid cuts. So theoretically we have already paid for a lot of this, and we're just transferring it from a legislative fix to an administrative fix. OMB is trying to scope out the overlap and numbers as they write a memo to Raines.

I am assuming we would agree with HHS's approach. I think we exhausted the advocates' approach. And it will do good things for people and it's fully or largely paid for. I should note that it could take a bit of the steam out of our legal immigrant fix package, since the most compelling cases of legal immigrants in nursing homes would then be temporarily addressed. I think the only exception to that would be in states that affirmatively decide not to extend Medicaid to legals, and I'm not sure there are any such states at this time.



FORTUNA D @ A1  
01/22/97 06:42:00 PM

Record Type: Record

To: Elena Kagan

cc:

Subject: Status of bucket

Here's a quick rundown:

- Option of total administrative fix off the table, unless OLC sees something new.
- Budget's welfare legislative fix package includes partial fix for the bucket: exempt disabled legal immigrants from SSI cuts. This leaves out the elderly.
- HHS's best admin fix thinking had 2 parts:
  - across the board 1 year delay; and
  - "medically needy" reg that will help some states.

Neither of these last 2 are in the budget so, if we want to go ahead with them, we can't talk about them till the budget's been out for a while. But we could theoretically tell the groups when the budget is released that we continue to ponder the question of admin fixes.

*They've been brought in?*

*File: welfare - bucket issue*



WR bucket issue

Diana Fortuna 03/21/97 12:13:02 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP  
cc: Bruce N. Reed/OPD/EOP  
Subject: Resolution of the Medicaid bucket?

The OMB director has apparently at last opined on the "bucket" issue -- i.e., whether there is an administrative way to allow more people losing SSI to keep Medicaid.

Raines endorsed HHS's partial fix, which we've also been pushing. (HHS rejected on legal grounds the advocates' argument that we could do a total fix, where no one would lose Medicaid as a result of losing SSI.) This partial fix would create a temporary "bucket" for everyone losing SSI (for a year, I think). And it would beef up what is included in a "medically needy" program in a way that would help a group of states.

The effect of this will be to convert part of our fix package from legislative to administrative. It also means health providers will be less interested in our package.

OMB doesn't think we should announce anything in the next week or two, because CBO is doing some baseline reestimate.

While we have never been certain that this confusing issue could be packaged into some kind of announcement or event, OMB would apparently oppose making a big deal about this publicly. They are nervous that we'll be criticized. Not sure this makes sense.

This should **NOT** be announced or alluded to in our legal immigration briefing tomorrow.

Diana - write a FF  
for weekly.  
Let's talk