

Congress of the United States
Washington, DC 20515

July 12, 2012

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Sebelius,

We are writing to express our deep concern with the “Information Memorandum” issued today by your Department that undermines Temporary Assistance for Needy Families (TANF) work requirements, a key component of welfare reform since 1996. This “guidance” states that HHS believes it has authority to waive work requirements in the TANF program, an authority not asserted by any other Secretary in the 16 years since the TANF program began.

We do not believe this guidance is supported by either the TANF or other relevant titles of the Social Security Act. For example, Section 1115 of the Social Security Act (which governs waiver rules for multiple programs) provides the Secretary with authority to waive certain requirements contained in section 402 of the TANF program — as HHS acknowledges in the guidance. Section 402 requires that a State provide a written document, called a State plan, that simply describes how the State will do a number of things, such as serve individuals in all parts of the State. The State plan is simply an administrative provision, and the actual work requirements affecting TANF recipients fall elsewhere – in section 407 of the program. Despite this, according to your guidance, the Secretary can somehow waive the work requirement in section 407 for the first time in the program’s history. In fact, no other Administration – whether Republican or Democrat – has ever arrived at the conclusion that TANF work requirements can be waived.

Other provisions in the TANF program provide further support for the view that work requirements may not be waived under current law. For example, section 415 addresses waivers begun after the creation of TANF in 1996. At that time, States were informed that existing waivers could continue, and that new waivers would be approved for a limited period of time. However, the law specified that waivers granted subsequent to TANF’s passage could not affect the applicability of work requirements to States. Section 415(a)(2)(B) very plainly says “A waiver granted under section 1115...shall not affect the applicability of section 407 to the State.” In sum, it seems clear there was no intention to waive work requirements

for States in future years, which has been born out in the actual experience of the TANF program in the over 5,000 days it has been in operation – until today.

Simply put, if Congress had intended to allow waivers of TANF work requirements, it would have said so in the statute. Instead, Congress did the opposite and explicitly prohibited waivers to section 407 work requirements, among other sections of the Social Security Act. In fact, under the same rationale that prevails in your guidance, it appears that HHS could also waive requirements that States operate a child support enforcement or foster care program, or enforce standards and procedures to ensure against fraud and abuse – clearly also provisions that Congress never intended to allow States to waive. The point is demonstrated in fact by the need for Congress to extend new waiver authority for child welfare programs in the recently enacted “Child and Family Services Improvement and Innovation Act,” (P.L. 112-34). Under this law, waiver authority was extended under Section 1130 of the Social Security Act. Prior to enactment of P.L. 112-34, it had been acknowledged by HHS that the agency did not have the authority to grant new child welfare waivers.

We request that you provide a detailed explanation of your Department’s legal reasoning behind the guidance released today, as we believe it is deeply flawed and specifically contradicted by TANF and related statutory language. We request a response by the close of business on Monday, July 16, 2012. In this way, we may review your legal arguments and determine the appropriate next steps to ensure that the intent of the TANF program is carried out, including that work requirements continue to apply to welfare recipients as they have since the 1996 reforms. Those reforms promoted higher work and earnings and lower poverty and welfare dependence, and we will actively resist efforts to undermine the progress made since then.

Sincerely,



Dave Camp
Chairman
House Committee
on Ways and Means



Orrin G. Hatch
Ranking Member
Senate Finance Committee