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SENATE

{ REPORT  
{ No. 95-456

## EXTENSION AND WAIVER PROVISIONS RELATED TO SOCIAL SERVICES, MEDICAID, AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAMS

SEPTEMBER 29 (legislative day, SEPTEMBER 22), 1977.—Ordered to be printed

Mr. LONG, from the Committee on Finance,  
submitted the following

### REPORT

[To accompany H.R. 3387]

The Committee on Finance, to which was referred the bill (H.R. 3387) to continue until the close of June 30, 1980, the existing suspension of duties on synthetic rutile, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

#### I. SUMMARY OF PROVISIONS

The bill as passed by the House of Representatives provided for a suspension of tariff duties on synthetic rutile. A similar suspension has already been incorporated by the committee as an amendment to H.R. 2850. The committee amendment strikes the text of the House bill after the enacting clause and substitutes new language relating to certain extensions and waivers of Social Security Act provisions.

The Committee on Finance has under consideration or has reported legislation making several changes in the medicare, social services, and aid to families with dependent children (AFDC) programs. The committee anticipates that this legislation will be considered by the Senate in the near future. There are, however, a few issues related to these programs which require particularly expeditious action in order to prevent program disruptions or the imposition of sanctions. The committee believes that timely action in these areas can best be achieved if these few issues are dealt with separately rather than in the context of broader legislation. The extensions and waivers recommended in this bill are, in every instance, no more extensive than similar provisions which have already been approved by the House of Representa-

tives in other legislation. In addition, the committee bill clarifies the unemployment compensation status of certain State employees who are employed to provide specialized services for schools.

*Social services.*—The committee bill would extend to February 1, 1978 certain provisions relating to the title XX social services program which would otherwise expire September 30, 1977. The expiring provisions under present law are:

1. *Additional Child Care Funding.*—\$200 million in added social services funding for child care was provided at a 100-percent matching rate for fiscal year 1977.

2. *Use of Added Funding for Employment of Welfare Recipients.*—States were authorized to use part of the added \$200 million in child care funding for fiscal year 1977 to directly subsidize the employment of welfare recipients in child care jobs.

3. *Welfare Recipients Tax Credit.*—A credit against income taxes of up to \$1,000 (20 percent of wages paid) is available under present law for employers who hire welfare recipients for child care jobs.

4. *Child Care Staffing Standards.*—Federal staffing standards for preschool age children are currently in suspense so long as States continue to meet September 1975 standards. In addition, present law allows waiver of Federal staffing standards for child care facilities which serve only a few children whose care is funded under the title XX program. Present law also allows family day care mothers to not count their own school age children in determining whether they meet the Federal standards for such facilities.

5. *Addicts and Alcoholics.*—Provisions adopted in the 94th Congress permit certain aspects of treatment of addicts and alcoholics to be funded under the title XX social services program even though they do not fully meet restrictions in that program. The same legislation also requires the observance of certain special confidentiality provisions when addicts and alcoholics receive services under title XX.

The above provisions were extended to October 1, 1978 under H.R. 7200 as passed by the House.

*Protective and Vendor Payments.*—In addition, the committee bill includes a provision in H.R. 7200, as passed by the House, relating to protective and vendor payments under the program of Aid to Families with Dependent Children.

First, in cases in which the State agency made a determination of inability to manage funds, payments could be made in the form of joint checks as a kind of vendor payment. Second, the limit on the number of recipients with respect to whom a State could make such protective or vendor payments would be increased to 20 percent. Third, in addition to the protective and vendor payments which the State or local agency could make subject to the new 20 percent limitation, States would be allowed to make payments to cover the cost of utility services or living accommodations in the form of checks drawn jointly to the order of the recipient and the person furnishing the services or accommodations. The amount of the monthly payment which could be made in the form of joint checks would be limited to 50 percent. There would be no limit on the number of recipients with respect to whom joint checks to pay for housing or utilities could be written. This third provision for joint checks would be limited to 2 years, from October 1, 1977 to October 1, 1979.

In addition to authorizing increased numbers and forms of protective and vendor payments, the bill would provide that Federal matching funds could not be denied to any State for the period between January 1, 1968 and April 1, 1977 (1) because the State exceeded the 10-percent limitation on these payments; (2) because it provided assistance in the form of joint checks; or (3) because it did not comply with other specified conditions.

*Nursing Home Patient Evaluation Under Medicaid.*—The Department of Health, Education, and Welfare plans to reduce Medicaid payment to 20 States by a total of \$250 million in the October–December 1977 quarter because of noncompliance with statutory requirements for independent medical review of Medicaid patients. The committee amendment would prevent any reduction in Federal matching payments to States until February 1, 1978 because of any prior non-compliance. This will allow time to act on substantive legislative changes now pending.

*Unemployment Compensation for Certain School Personnel.*—Public Law 94-566 provided for the coverage under State unemployment compensation program of State and local government employees. Special provisions were included for school employees to assure that they would not ordinarily be eligible for benefits during regular vacation periods. The statute was so drawn, however, that school employees who are employed by a central State agency to provide specialized services to schools—such as music teachers who travel from school to school—would apparently be eligible for unemployment benefits during vacation periods. The committee amendment would correct this situation and provide comparable treatment for such employees with the treatment afforded to those actually employed by individual schools.

## II. GENERAL PROVISIONS OF THE BILL

### SOCIAL SERVICES—CHILD CARE

#### (Sections 1 (a), (b), (d), and (e) of the Bill)

*Present law.*—Among other requirements mandated by the social service program—title XX of the Social Security Act—for child care funded under the Social Security Act are certain minimum staffing standards. The standards are shown in the table below.

#### *Child care center staffing requirements under law and HEW regulation*

<i>Age of child</i>	<i>Maximum number of children per staff member</i>
Under 6 weeks.....	1 required by regulation.
6 weeks to 3 years.....	4 required by regulation. <sup>1</sup>
3 to 4 years.....	5 required by law. <sup>1</sup>
4 to 6 years.....	7 required by law. <sup>1</sup>
6 to 9 years.....	15 maximum number allowed by law (though Secretary of HEW may lower the maximum number of children per staff member, thus increasing the staff required),
10 to 14 years.....	20 maximum number allowed by law (though Secretary of HEW may lower the maximum number of children per staff member, thus increasing the staff required).

<sup>1</sup> Public Law 94-401 provides that no penalty for noncompliance may be invoked prior to Oct. 1, 1977.

The above standards were to have become effective as of October 1, 1975, the date when the title XX program went into operation. However, because the imposition of these staffing standards would have increased the cost of operation of the program and because of disagreement as to the appropriateness of these standards, the 94th Congress enacted legislation postponing their implementation on a mandatory basis until October 1, 1977, by which time a major study of their appropriateness was to have been completed by the Department of Health, Education, and Welfare.

Legislation enacted earlier this year—Public Law 95-59—has deferred until April 1, 1978 the date by which the Department must make its report on the appropriateness of the child care staffing standards in permanent law. The Department had requested this deferral in order to permit it to take into account the results of certain studies which would not have been completed in time to be used under the prior deadline of July 1, 1977.

The 94th Congress legislation, in addition to suspending the implementation of the title XX staffing standards for child care, also provided for a temporary increase in the limit on Federal funding under the title XX program. The amount made available was \$40 million for the period prior to fiscal year 1977 and \$200 million for fiscal year 1977. The additional funding was allocated among the States in the same way as the permanent \$2.5 billion limit, that is on a population basis. The \$200 million for fiscal year 1977 was available on a 100-percent Federal basis and could not exceed the amount of State expenditures for child care. The law requires States, to the extent they determine feasible, to use the added Federal funding in a way which would increase employment of welfare recipients and other low income persons in child care jobs. The law also permits States, without regard to the usual title XX requirements, to use the added Federal funding to make grants to child care providers to cover the cost of employing welfare recipients. These grants are limited to \$4,000 a year per employee in the case of proprietary providers. For public and non-profit providers, which are ineligible for tax credits, the limit on grants is \$5,000. Grants can be made under this authority only if at least 20 percent of the children served by the child care provider have their care paid for through the title XX program.

*Committee provision.*—The committee bill would provide for temporary extension of the present law provisions to February 1, 1978, by which time the Congress will have had time to consider permanent legislation. The House, as part of H. R. 7200, has approved extension of the provisions to October 1, 1978, with the exception of a funding provision which would provide for a new \$2.7 billion ceiling on social services on a permanent basis.

Under the committee bill, the new funding for child care which was authorized under Public Law 94-401 would be extended for the 4-month period October 1977 through January 1978. Thus each State would be entitled to its share of \$66.6 million for that period. As under present law, the new funds would be provided for child care services on a 100-percent Federal funding basis. In addition, under the committee bill the child care standards which have been suspended to October 1, 1977, would be suspended to February 1, 1978.

The committee bill would extend for 4 months the provision due to expire October 1, 1977 to permit State welfare agencies to waive the

Federal staffing requirements in the care of child care centers and group day care homes which meet State standards if the children receiving federally funded care represent no more than 20 percent of the total number of children served—or in the case of a center, there are no more than 5 such children—provided that it is infeasible to place the children in a facility which does meet the Federal requirements. The committee provision would also extend for 4 months the current temporary provision under which, in counting the number of children who may be cared for in a family day care home, the family day care mother's own children are not counted unless they are under age 6.

The legislation enacted in 1976 also included temporary provisions designed to encourage the employment of welfare recipients in child care jobs. The welfare recipient employment incentive tax credit which provides a 20-percent credit for the expenses incurred by employers in hiring welfare recipients was made effective to September 30, 1977, in the case of child care jobs. States were also authorized to use a part of the additional funds available under the social service program to reimburse employers for the costs of hiring welfare recipients to the extent that the costs were not met through the tax credit. The committee bill would extend these two provisions to February 1, 1978. The Committee expects to modify the tax credit provisions when it reports permanent legislation.

#### ADDICTS AND ALCOHOLICS

##### (Section 1(c) of the bill)

*Present law.*—The 94th Congress enacted a temporary amendment to title XX, due to expire September 30, 1977, to require that special confidentiality requirements of the Comprehensive Alcohol Abuse Act be observed with regard to addicts and alcoholics, clarify that the entire rehabilitative process must be considered in determining whether medical services provided to addicts and alcoholics can be funded as an integral part of a State social services program, and provide for funding of a 7-day detoxification period even though social services funding is generally not available for persons in institutions.

*Committee provision.*—These temporary provisions have proven to be beneficial to the program and the committee amendment would extend them to February 1, 1978; pending permanent legislation.

#### UNEMPLOYMENT COMPENSATION PROVISION

##### (Section 2 of the Bill)

Public Law 94-566 required States to cover virtually all State and local government employees under their unemployment compensation programs. Because of the special work patterns of school employees, this legislation required that benefits not be paid during regular vacation periods to teachers who have a reasonable expectation of reemployment at the end of the vacation. Nonprofessional school employees could, at State option, be excluded from benefits during vacation periods on the same basis.

As the statute was drawn, however, these exclusions apply only to individuals who are actually employed by educational institutions. In a number of States there are separate State agencies set up to

provide specialized services to many schools. For example, such agencies may provide driver education and audiovisual services to all schools in the State and employees of these agencies may travel from school to school providing these services. Since such employees are in every respect the equivalent of school personnel and follow the same work and vacation patterns, it seems appropriate to apply the same benefit exclusions during vacation periods to these employees as are applied to persons who are directly employed by schools.

The committee bill would extend to such individuals the provisions under which professional employees must be denied benefits during vacation periods (and nonprofessional employees may be denied such benefits) where there is reasonable expectation of reemployment at the end of the vacation.

#### PROTECTIVE AND VENDOR PAYMENTS

##### (Section 3 of the Bill)

*Present Law.*—Under existing law States are allowed to make protective or vendor payments, instead of direct cash payments, with respect to recipients of aid to families with dependent children. The number of recipients with respect to whom such payments may be made in any State may not exceed 10 percent of the number of other AFDC recipients, and the payments may be made only under specified conditions. State plans for such payments must include provisions for: (1) determination by the State agency that the relative of the child with respect to whom the payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child; (2) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family; and (3) periodic review by the State agency of the determination to make protective or vendor payments to ascertain whether conditions justifying the determination still exist, with provision for termination of the payments if they do not, and for seeking judicial appointment of a guardian or other legal representative if it appears that the need for protective or vendor payments is continuing or is likely to continue beyond a specified period.

*Committee provision.*—During its hearings on H.R. 7200 the Committee heard persuasive testimony that the provisions of present law frequently act as a barrier to an AFDC family in obtaining adequate housing. It was maintained that by raising the limit on the number of protective and vendor payments which could be made and adding new provisions for joint checks in certain circumstances, recipients would be more likely than at present to get the housing and utility services which they need. The committee bill thus includes several provisions relating to protective and vendor payments. These provisions are identical to provisions of H.R. 7200, as passed by the House. First, in cases in which the State agency made a determination of inability to manage funds, payments could be made in the form of joint checks as a kind of vendor payment. Such joint checks could be made at the discretion of either the State or local agency administering the State plan. A statement of the specific reasons for making the payments in that manner would have to be placed in the case file. Second, the limit

on the number of recipients with respect to whom a State could make protective or vendor payments would be increased to 20 percent. Third, in addition to the protective and vendor payments which the State or local agency could make subject to the new 20-percent limitation. States would be allowed to make payments to cover the cost of utility services or living accommodations in the form of checks drawn jointly to the order of the recipient and the person furnishing the services or accommodations. Such joint checks would have to be requested by the recipient in writing, and the request would be effective until revoked by the recipient. The amount of the monthly payment which could be made in the form of joint checks would be limited to 50 percent. These joint checks could be made at the discretion of either the State or local agency administering the State plan, and there would be no limit on the number of recipients with respect to whom joint checks to pay for housing or utilities could be written.

Because of the concern for potential abuse, the committee has limited Federal matching for voluntary, two-party vendor payments to a period of 2 years, or until October 1, 1979. The committee expects the Secretary of HEW to carefully monitor the implementation of this section and to obtain from the States such information as he may need to report to the committee on the experience of the States with the voluntary, two-party vendor arrangement allowed under this section. This report should be made available in time for the information to be used by the committee in considering any legislative action that might be taken prior to the expiration date of these provisions.

In addition to authorizing increased numbers and forms of protective and vendor payments, the committee bill would provide that Federal matching funds could not be denied to any State for the period between January 1, 1968, and April 1, 1977: (1) because the State exceeded the 10-percent limitation on these payments; (2) because it provided assistance in the form of joint checks; or (3) because it did not comply with the State plan provisions described above which limit the conditions under which protective or vendor payments may be made. Testimony was presented at the hearings that without this "forgiveness" provision, New York City might be penalized about two-thirds of \$1 billion over an 8½-year period.

#### MEDICAID UTILIZATION CONTROL

##### (Section 1(f) of the Bill)

*Present law.*—Present law requires that States conduct regular independent professional evaluation of Medicaid patients in skilled nursing and intermediate care facilities and in mental hospitals. Under the 1972 Social Security Amendments, Federal matching payments are to be automatically reduced by one-third for patients who are in skilled nursing homes or intermediate care facilities for more than 60 days. The reduced matching does not occur where a State demonstrates that it is satisfactorily undertaking the required regular independent review of all patients in all facilities.

*Committee provision.*—The Department of Health, Education, and Welfare plans to reduce Medicaid payments to 20 States by a total of \$250 million in the October-December 1977 quarter because of noncompliance with statutory requirements for independent medical

review of medicaid patients. The committee is encouraged that the Department has begun to aggressively implement the congressional mandate. However, in view of past inaction on the part of HEW, it feels that the sudden reduction in Federal funds for past years activities could have a severe and unanticipated impact on affected State medicaid programs. Further, Congress intended this program to be an incentives program to be validated on a current basis by HEW. The committee amendment would prevent any reduction in Federal matching payments to States until February 1, 1977, because of any prior noncompliance. This will allow time to act on substantive legislative changes now pending.

The States which will be affected by the reductions if this provision is not enacted and the amounts involved are shown below.

<i>Penalties imposed October 1, without legislation</i>	
Alabama.....	\$2, 925, 901
Alaska.....	274, 083
California.....	30, 718, 446
Colorado.....	4, 590, 794
Illinois.....	2, 117, 346
Iowa.....	6, 241, 218
Kansas.....	3, 887, 502
Maryland.....	2, 236, 487
Massachusetts.....	19, 025, 834
Michigan.....	9, 196, 973
Minnesota.....	5, 290, 508
Missouri.....	2, 947, 502
Montana.....	737, 379
Nebraska.....	1, 386, 147
New Jersey.....	11, 138, 489
New York.....	107, 612, 304
North Carolina.....	2, 687, 131
North Dakota.....	503, 327
Ohio.....	6, 943, 149
Pennsylvania.....	13, 593, 459
Tennessee.....	8, 711, 618
Wisconsin.....	6, 827, 299
Total.....	249, 592, 890

### III. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970 and section 308 of the Congressional Budget Act of 1974, the following statements are made relative to the budgetary impact of the bill. This bill is essentially a temporary measure designed to provide certain extensions and waivers pending enactment of permanent legislation. The only provision expected to have a budgetary impact is the extension of the additional funding for child care services. The annual \$200 million increase in the limit on social services enacted as part of Public Law 94-401 would be extended for four months. The committee estimates that approximately half of the additional funding available under this authority would actually be used during this period. On this basis it is estimated that the legislation would result in increased Federal expenditures of approximately \$33 million in fiscal year 1978. This increase is consistent with (and less than) the allowance for new legislation of this type in the budget allocation report filed by the committee relative to the second concurrent resolution on the budget for fiscal year 1978.



#### IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee to report the bill. The bill was ordered reported by a voice vote.

#### V. REGULATORY IMPACT

In accordance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the following statement of the regulatory impact of the bill is made.

The basic purpose of the bill is to extend certain expiring provisions and relieve States from certain fiscal sanctions which would otherwise be imposed. As such, the bill, if anything, would tend to relieve somewhat the regulatory changes which might otherwise be required. One provision dealing with vendor payments under the Aid to Families with Dependent Children program will, if the States choose to use the authority granted thereby, require some additional recordkeeping and compliance with regulations designed to assure proper use of the provision. However, this is entirely voluntary with the States and should have a negligible impact on their overall operation of the program.

#### VI. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).

