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B-164031(3).150

September 5, 1979

The Honorable Robert N. Giaimo  
Chairman, Committee on the Budget  
House of Representatives

Dear Mr. Chairman:

This is in response to your request for a legal interpretation of the Department of Health, Education, and Welfare's (HEW) recent decision to restore approximately \$137 million of unobligated Fiscal Year (FY) 1978 Medicaid appropriations in order to pay States the Federal share of Medicaid expenditures incurred in FY 1978 but not claimed by the States until FY 1979. We believe, as explained below, that this action by HEW is legally authorized.

The description of HEW's restoration of funds contained in your request has been confirmed in its essential details by HEW (except that \$157 million rather than \$137 million will be restored to the FY 1978 Medicaid appropriation). HEW's report to us on this question states:

"Pursuant to section 1903 of the Social Security Act, 42 U.S.C. 1396b, the Secretary of HEW makes quarterly grant awards to each state that has an approved state plan for Medicaid. The grant awards are made prior to the beginning of each quarter after the receipt from each state of estimates of the amount of federal financial participation to which the state believes it will be entitled in the forthcoming quarter. These estimates are reviewed and adjusted by the Secretary and the quarterly grant award is then made to the states.

"The total grant awards to the states for Medicaid for FY 1978 turned out to have been lower than the actual expenditures incurred by the states in that fiscal year. Based upon quarterly expenditure reports submitted by the states in FY 1979, which covered expenditures that were actually incurred in FY 1978, we determined that the total of the four quarterly grant awards for FY 1978 was approximately \$183.5 million (as of April 1979) less than the Federal matching funds to which the states were entitled. Had our estimates been more accurate, we would obviously have made larger grant awards

for the fourth quarter of FY 1978 and would not have allowed the \$157 million in appropriations for Medicaid to remain unobligated at the expiration of FY 1978."

Your doubt concerning the legality of the fund restoration is based on the view that obligations under the Medicaid program are only incurred when the Secretary of HEW makes an estimate under section 1903(d) of the Social Security Act, as amended (42 U.S.C. § 1396b(d)✓ (1976)). As a result, you do not believe HEW can use the authority of 31 U.S.C. § 701(a)(2)✓ (1976) to restore unobligated balances to the FY 1978 Medicaid appropriation account because the Secretary's estimates for that year did not cover the \$157 million that HEW proposes to restore.

Medicaid to the extent of available appropriations is an entitlement program, under which the United States is required to pay a share in the total amount expended by States for medical assistance and other authorized activities under an approved State Medicaid plan. Section 1903(a) of the Social Security Act, as amended (42 U.S.C. § 1396b(a)✓ (1976)). That subsection provides:

"(a) From the sums appropriated therefor, the Secretary \* \* \* shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing January 1, 1966 --

"(1) an amount equal to the Federal medical assistance percentage \* \* \* of the total amount expended during such quarter as medical assistance under the State plan \* \* \*; plus [ certain amounts for other authorized activities] ."

Under this subsection, there is no need for the Secretary to make an estimate in order for the Government to incur an actual obligation, at least to the extent of available appropriations. It is the obligational effect of this subsection that he is estimating.

Section 1903(d)✓ provides:

"(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such

quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

"(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection. Expenditures for which payments were made to the State under subsection (a) of this section shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

"(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

"(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated."

Under this subsection, the obligation that is created by "estimate" under paragraph (4) is described in paragraph (1). (The first sentence of this subsection recognizes the entitlements that occur under earlier subsections.) Paragraph (2) does not affect the obligation created under paragraph (4) which applies to the fiscal year in which the estimate is made. Rather, paragraph (2) directs payment of the estimated amount, adjusted to reflect over or underpayments made in a prior quarter under any part of section 1903, including the entitlements created by subsection (a). Accordingly, where, as in this case, there are underpayments, payments made under section 1903(d)(2) will include the obligation incurred under the paragraph (1) estimate plus the obligations incurred under subsections (a) and (b), to the extent they have not been already paid.

42 USC 1396t(d)(2)

We can see no compelling reason to read paragraph (2) as requiring that amounts paid under the adjustment provision because of underpayments be attributed to the appropriations of the year of payment rather than to those of the year the entitlement occurred since the payments that exceed the estimate that are to cover underpayments are based on specific amounts presented by the States to collect entitlements created in a prior fiscal year. Of course, the reverse would clearly not be allowable; that is, a prior year's appropriation, even if some amount remains unobligated, cannot be applied to expenditures under a State plan in the current fiscal year.

What is unusual about subsection 1903(d) is the authority it provides in the event there is an over-estimate in the last quarter of a fiscal year to leave funds appropriated in one fiscal year in the hands of the States where such funds will be available for expenditure in the next fiscal year. This provision was intended to provide HEW with some administrative flexibility in its dealings with the States and we see no reason to conclude from this that Congress intended to make it mandatory that an obligation arising from an under-estimate in one fiscal year would have to be paid from appropriations available for the subsequent fiscal year, although this would be permissible under section 1903(d) in the event that there is no unobligated balance available to pay the additional amounts due to the State.

The entitlement created by section 1903(a) meets the documentary evidence requirements for obligations even though not formally recorded or liquidated until a subsequent year. Title 31 of the United States Code, section 200(a), provides:

"After August 26, 1954 no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of--

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"(5) a grant or subsidy payable (i) from appropriations made for payment of or contributions toward, sums required to be paid in specific amounts fixed by law or in accord with formulae prescribed by law, or (ii) pursuant to agreement authorized by, or plans approved in accord with an authorized by, law; or

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"(8) any other legal liability of the United States against an appropriation or fund legally available therefor."

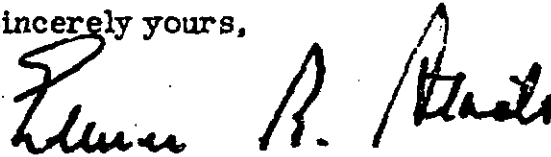
Subsection (d) of 31 U.S.C. § 200 further provides:

"No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for liquidation of amounts obligated in accord with subsection (a) of this section; but no such appropriation or fund shall remain available for expenditure for any period beyond that otherwise authorized by law." (Emphasis added.)

It is clear that 31 U.S.C. § 701(a)(2) permits a withdrawn "unobligated balance" to be restored to "liquidate obligations and effect adjustments." It is also clear that this provision is intended to allow the Government to adjust its accounts to more accurately reflect what took place during the period an account was available for obligation. We believe that HEW's FY 1978 Medicaid experience is the kind of situation covered by 31 U.S.C. § 701(a)(2), where an obligation properly attributable to a particular fiscal year, although not then formally recorded, meets any of the criteria specified in 31 U.S.C. § 200(a). Accordingly, HEW has the authority under 31 U.S.C. § 701(a)(2) to restore funds to the FY 1978 Medicaid account to cover under-estimated actual expenditures incurred by States in FY 1978.

This position is not inconsistent with our March 23, 1979, letter to the Office of Management and Budget, which you cite. That letter dealt, as you note, with carrying forward unobligated balances. Here, there is no question of carrying forward into FY 1979 an unobligated balance. Rather, we are saying that the \$157 million is properly treated as an obligation of FY 1978.

Sincerely yours,



Comptroller General  
of the United States