



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JUL 31 2014

The Honorable Jeff Sessions
Ranking Member
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Senator Sessions:

Thank you for your letter to former Secretary Kathleen Sebelius expressing concern that Temporary Assistance for Needy Families (TANF) cash assistance is being used to create or increase drug dependency. I am aware of the media reports related to individuals withdrawing cash at Automated Teller Machines (ATMs) located in establishments selling marijuana in Colorado, which has legalized the use of this substance. I agree that any inappropriate expenditure of public funds is a cause for concern and should be addressed immediately.

As you note in your letter, the Department of Health and Human Services (HHS) does have the authority to reduce a state's TANF grant if it fails to implement policies and practices to prevent TANF assistance benefits from being used in any Electronic Benefit Transfer (EBT) transaction in any liquor store, any gambling casino or gaming establishment, or any retail establishment in which performers disrobe or perform in an unclothed state for entertainment. This authority was granted by section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96).

On February 6, 2014, HHS published a proposed rule to implement the TANF provisions of the Middle Class Tax Relief and Job Creation Act. As stated in the regulation, the Administration's rulemaking authority is limited to the information states must include in their reports describing the policies and practices they have implemented. In the preamble of the rule, we describe the types of policies and practices we consider to be in compliance with the statutory requirements.

As your letter points out, marijuana stores were not included in the list of establishments in Public Law 112-96 where TANF EBT transactions are prohibited. Because section 417 of the Social Security Act (42 U.S.C. § 617) limits the federal government's ability to regulate the conduct of states with respect to the TANF program except where expressly provided in the Social Security Act, HHS has no authority to prescribe policies and practices for the states to implement in order to prohibit the use of TANF benefit cards at marijuana stores.

However, nothing in the TANF statute or regulations precludes states from taking measures to prevent recipients from using their benefit cards at marijuana shops. In fact, states have the flexibility to prevent TANF assistance from being used in any type of establishment they deem


inappropriate. We understand that legislators in Colorado have already explored prohibiting EBT withdrawals at retail marijuana shops and medical-marijuana dispensaries.

As you may be aware, earlier this year Representative Dave Reichert (R-WA) and other Members of Congress introduced legislation addressing this very issue. Their bill would prohibit TANF EBT cards from being used for purchases at marijuana stores or used to withdraw TANF cash assistance at ATMs in these locations.

Finally, you asked whether HHS has reduced the block grant of any state for failure to implement the policies and practices required by section 4004 of Public Law 112-96. Earlier this year, states submitted their first annual reports outlining efforts they have undertaken to comply with the new requirements. All states reported by the February 22, 2014, deadline specified in the law, and HHS is currently reviewing all reports to ensure that states have implemented the required policies and practices. If, based on the information in these reports, HHS finds that a state has not implemented and maintained the required policies and practices, we will reduce its block grant, in accordance with section 4004(b) of Public Law 112-96.

I hope this information is helpful to you. Please feel free to contact me if you have any further thoughts or concerns.

Sincerely,



Sylvia M. Burwell