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April 10, 2014

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Sebelius:

The Temporary Assistance for Needy Families (TANF) “is designed to help needy families achieve self-sufficiency.”¹ I am afraid that in the state of Colorado and perhaps others, the benefits might be being used to create or increase a drug dependency.

As you know, some states like Colorado have decriminalized or legalized the use of marijuana under certain circumstances. Marijuana, however, remains illegal under federal law and is regulated under the Controlled Substances Act.² Notwithstanding the illegality of marijuana under federal law, there are numerous reports that TANF benefits are being used to purchase the drug. The U.S. Department of Health and Human Services (HHS) has an obligation to prohibit this activity.

The use of TANF benefits for unintended activities has become easier since states have been allowed to place the benefits on Electronic Benefit Transfer (EBT) cards. Recipients can now withdraw cash from practically any ATM across the country. I understand that HHS, through regulatory authority under the Middle Class Tax Relief and Job Creation Act of 2012, is seeking to address some of the inappropriate activity. A new rule proposal would require that states “maintain policies and practices as necessary to prevent assistance provided under the State program funded under this part from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment

¹ HHS Office of Family Assistance TANF summary page, available at <http://1.usa.gov/1oJRLah>.

² 21 U.S.C. § 811

which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.”³ Clearly, this proposed rule confirms that the underlying intent of TANF is to meet the physical needs of families, not recreational preferences.

Under your direction, the Administration for Children and Families (ACF) has been instructed to reduce the block grants of a state in violation of EBT transaction rules.⁴ While the Act did not include marijuana stores as a prohibited place to make transactions, certainly the law cannot be construed to turn a blind eye to illegal activities.

Since HHS has rulemaking authority to regulate TANF transactions, it might not be necessary for Congress to act legislatively for the Administration to perform its role of enforcing the law and protecting the funds of taxpayers in the process.

The United States Department of Agriculture has taken the necessary steps to limit the use of food stamps from illegal and recreational activity. HHS should do the same with TANF. In order that we might have confidence that you are taking the necessary steps to prohibit the activities being reported out of Colorado, please respond to the following:

1. Has HHS/ACF taken any steps to verify reports that TANF benefits are being used to purchase marijuana in Colorado? Please provide the results of any investigation.
2. Has HHS/ACF reduced the block grants of any state in violation of the EBT transaction rule? If the answer is yes, please provide the amount of reduction and reason for reduction.
3. Does HHS/ACF believe it is illegal to purchase marijuana with TANF benefits and that it is necessary to take steps to prohibit purchases? If the answer is yes, please explain what steps are being taken to prohibit this activity. If the answer is no, please explain the legal authority for that conclusion.
4. Does HHS/ACF believe that congressional action is necessary to include marijuana stores/purchases/etc. in the same category as liquor stores/purchases, casinos/gambling, or adult-oriented entertainment, or can this activity be limited through regulations? Please explain in detail.

³ HHS Notice of Proposed Rulemaking, “Policies and Practices to Prevent Use of TANF Funds in Electronic Benefit Transfer Transactions in Specified Locations,” available at <http://1.usa.gov/1oJS8Se>.

⁴ HHS Office of Family Assistance, “Q & A: TANF Requirements Related to EBT Transactions,” available at <http://1.usa.gov/1n017df>.

5. How many EBT transactions have been made in the states of Colorado and Washington from ATMs, in stores, etc., known to be involved in the marijuana business? Please provide the amount of these financial transactions.

Public assistance benefits should not be used for the purchase of marijuana. This is a matter that must be taken seriously if public assistance programs are to be run with integrity.

Please have your staff provide this information both in hard copy and in an electronic, searchable format no later than May 21, 2014, to William Smith on the Senate Committee on the Budget. If you have any questions, please contact me or have your staff contact Mr. Smith at (202) 224-0642, or William.smith@budget.senate.gov.

Very truly yours,



Jeff Sessions
Ranking Member

JS:ws:ph