

STATE WELFARE LAWS

Bulletin No. 108



**LEGISLATIVE COMMISSION
LEGISLATIVE COUNSEL BUREAU**

STATE OF NEVADA

December 1972

Carson City, Nevada

FINAL REPORT OF THE SUBCOMMITTEE
FOR STUDY OF
NEVADA STATE WELFARE LAWS

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FILE NUMBER 96

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to conduct a study of the welfare laws of the State of Nevada and report and recommend corrective revision to the next regular session of the legislature.

WHEREAS, The tremendous growth in the population of the State of Nevada has resulted in increased demands on the programs, services and facilities of the state; and

WHEREAS, In order to meet such demands, it is necessary to provide for more efficient and effective administration of such programs, services and facilities in the interest of all of the people of the State of Nevada; and

WHEREAS, The efficient and effective administration of a comprehensive and adequate program of economic aid to the citizens of this state who are qualified recipients has become a matter of vital interest to the state; and

WHEREAS, The present laws of the State of Nevada relating to economic aid and welfare are inadequate and do not meet the needs of the state; and

WHEREAS, Many federally funded programs of assistance for economic aid and welfare are available to the several states; and

WHEREAS, Due to the inadequacy in the scope and language of the present laws of this state, the state is unable to meet the needs of its citizens through full participation in and utilization of such federally funded programs of assistance; and

WHEREAS, The legislature recognizes the immediate need for a complete study to be conducted of such laws; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is hereby directed to conduct a complete study of all of the laws of this state relating to economic aid and welfare, and especially those concerning the state's participation in and utilization of federally funded programs of assistance, and to report the results of such study and make recommendations for corrective revision of such laws, for the purpose of more fully meeting the needs of the citizens of this state, to the 57th session of the legislature of the State of Nevada.

The last session of the Nevada legislature left little doubt that no one was pleased with the welfare laws as they presently exist in this state. An exhaustive study is indicated into the Social Security Act and the regulations adopted thereunder, together with a study of the manner in which other states are meeting the requirements of persons within such states in need of assistance. In making this study it is expected that the Welfare Division of the Department of Health, Welfare and Rehabilitation will extend every cooperation, as will the boards of county commissioners of the various counties.

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 57th SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Concurrent Resolution No. 13 of the 56th session of the Nevada legislature, which directed the legislative commission to conduct a study of the welfare laws of the State of Nevada and report and recommend corrective revision to the next session of the legislature. Senator Lee E. Walker was designated chairman of the subcommittee and the following legislators were named as members: Senator Chic Hecht, Assemblymen Juanita Greer White and Woodrow Wilson.

The subcommittee attempted to carry out this mandate, the results were frustrating and less than satisfactory. Economically, the state is dependent upon federal aid for its welfare programs. However, the national welfare programs have been in a constant state of flux during this biennium. Simply to chronicle the various reform proposals is a significant study.

The latest attempts at welfare reform were passed and signed late in October, 1972. To date, no groups the subcommittee contacted, federal officials, state officials or welfare client organizations will be scheduling meetings to study the ramifications of H.R. 1. Our subcommittee and staff will attempt to become informed through these meetings and pass any information on to the 1973 session.

This subcommittee worked diligently during a period of 17 months and its report and recommendations, attached for your examination, was approved by the legislative commission in December, 1972.

Respectfully submitted,

Legislative Commission
State of Nevada

December 28, 1972

NEVADA STATE WELFARE LAWS

Introduction

This subcommittee was appointed to carry out the mandate of A.C.R. 13 of the 1971 legislative session. The resolution directs the Legislative Commission to study the laws of Nevada relating to economic aid and welfare and "especially those concerning the state's participation in and utilization of federally funded programs of assistance." The results and recommendations of this study are to be reported to the 1973 legislature.

In reviewing this subject, it was discovered that generally there are two types of public assistance programs in the United States. One type limits benefits to those who qualify by a means test while the other type is broader in purpose and provides more general coverage.

The largest of the need-related welfare programs is categorical public assistance for the blind (AB), needy aged (OAA), families with dependent children (AFDC) and disabled (APTD). Other need-related programs include (1) medicaid for the indigent and "medically indigent"; (2) certain food and nutrition programs (food stamp and commodity food); (3) nonservice-connected pensions for wartime veterans; and (4) low rent housing and rent supplements. Benefits from these need-related programs can be direct cash payments or benefits-in-kind (vendor payments for services, direct provision of commodities).

The non-need-related public assistance programs include such programs as unemployment compensation, medicare, Social Security and education subsidies.

These programs distribute benefits broadly to poor and nonpoor. These programs are not as controversial as the need-related programs or the subject of the various welfare reforms, and were, therefore, not studied by the subcommittee. Instead, emphasis was placed on the categorical public assistance programs plus medicaid and the food and nutrition programs.

Impact of Federal Aid on Welfare Programs in Nevada

The Social Security Act of 1935 established a federal-state partnership in welfare where federal grants are awarded to states on a matching basis for the various public assistance programs. With these federal funds come the many federal regulations or "redtape" which are a prerequisite for the receipt of the funds. The result of this federal-state welfare partnership has been the development of a great economic dependence by the states on federal aid.

Nevada is no exception to this economic dependence as shown in the table below:

1972-73 Appropriations and Authorizations to
The Nevada State Welfare Division

<u>Program</u>	<u>State Appropriation</u>	<u>Federal Authorization</u>	<u>Total</u>
Administration	\$ 1,854,253	\$ 2,457,962	\$ 4,312,215
ADC	3,023,100	4,974,882	7,997,982
AB	110,592	115,200	225,792
OAA	1,179,672	2,268,600	3,448,272
CWS	671,140	188,160	859,300
WIN	61,248	194,940	256,188
SAMI	4,479,480	6,965,052	11,444,532
Homemaking	43,037	129,114	172,151
Cuban Refugee	--	165,222	165,222
Intermediate Care	540,000	540,000	1,080,000
Indian Service	--	195,645	195,645
Welfare Prof. Educ.	<u>1,750</u>	<u>26,250</u>	<u>28,000</u>
Total	\$11,964,272	\$18,221,027	\$30,185,299
Percent	39.7	60.3	100

As can be seen from the table, slightly over 60 percent of the programs administered by the Welfare Division are funded by the Federal Government.

The Social Security Act of 1935--Early History and Program Expansion

America's system of federally aided public assistance originated with the Social Security Act of 1935. Before then, the needs of the poor had been met by private charities or by state and local

governments, and federal concern with welfare problems had been limited to specific emergencies or major disasters.

The public assistance titles of the 1935 act established a federal-state partnership in welfare where federal grants are made available to states on a matching basis for cash payments to specified categories of the needy. The original act authorized grants for three categorical programs: OAA (Title I), ADC (Title IV) and AB (Title X). Those poor who did not meet the criteria for any of the federal categorical programs received assistance, if any, from state or local governmental assistance programs.

Although these new public assistance programs violated the long-standing principle of state responsibility for welfare, they generated little opposition at the time (the great depression of the 1930's). The 1935 act was adopted as an emergency or stopgap measure to meet the immediate needs of specific categories of indigents at a time when the states were unable to meet these needs.

The 1935 federal matching was limited to 50 percent of cash assistance payments of up to \$30 monthly for OAA and AB and to one-third of payments for ADC of up to \$18 monthly for the first child in a family and \$12 for each additional child.

Since then the public assistance programs have been expanded in various ways. Up until the 1960's, congressional action concentrated primarily on liberalizing the federal matching formula in an effort to raise the level of cash benefits paid by the states. The 1939 Social Security amendments increased federal matching for ADC from one-third to 50 percent, thereby bringing it into line with the formula applicable to benefits for OAA and AB. Subsequently, in 1946, 1948, 1952, 1958, 1961, 1962 and finally in 1965, the level of federal sharing and the reimbursable limits were progressively increased for all programs.

Amendments in 1950 established a new categorical program of grants for the permanently and totally disabled (APTD, Title XIV) and inaugurated federal sharing in vendor payments for medical services to the indigent. The 1950 amendments also authorized an optional earnings exemption for AB, an exemption that was made mandatory for all states in 1952. Subsequently, optional earnings exemptions were authorized for OAA (1962) and for the disabled and dependent children under 18 (1965).

Beginning in the early 1960's congressional emphasis in public assistance shifted to efforts designed to decrease caseloads by increasing the self-sufficiency of recipients. Also, a great deal more attention was focused on ADC. By this time, OAA had experienced a decline in caseload as more of the aged population came under the coverage of OASDI (Old-Age, Survivors, and Dependent Insurance). AB caseloads were also declining and APTD annual increases were viewed as minimal. But ADC had continued to increase at what was viewed as an alarming rate. Moreover, the nature of the ADC caseload had changed. What had begun as a widows' and orphans' program had become largely a program for families whose father was absent due to desertion, separation, divorce, illegitimacy or imprisonment.

This new emphasis began in earnest with the Social Security amendments of 1962. These amendments (1) changed the name of ADC to Aid to Families with Dependent Children (AFDC); (2) authorized 75 percent federal matching for prescribed services and rehabilitation programs; (3) provided for the development of optional community work and training programs that included child care services and earnings exemptions to cover work expenses; and (4) extended to 1967 the optional program of Aid to Families with an Unemployed Parent (AFDC-U) that had been enacted on a temporary basis in 1961. States participating in AFDC-U had to require recipients to register with public employment offices and accept bona fide job offers from employment offices or employers.

In 1967, amendments to the act included a combination of incentives, services and penalties designed to move as many AFDC recipients as possible into training or work. The 1967 amendments (1) made the AFDC-U program permanent, though still optional with the states; (2) added a work incentive by replacing the dollar-for-dollar offset of earnings against benefits in AFDC with a system that exempts the first \$30 of earnings plus one-third of additional earnings for the purposes of determining eligibility and payments; (3) authorized the Work Incentive Program (WIN), and (4) authorized optional federal grants for emergency assistance to families with needy children.

From 1968 through 1972, welfare reform and major modifications were hotly debated topics on the national scene. Nearly everybody agreed that the welfare system required basic reform. At that point, however, agreement ended. After the House-passed Family Assistance Plan was stopped in the Senate, basic welfare reform was scrapped for the time. Instead, the 1972 amendments provided for a major revision of cash assistance in the adult categories (OAA, AB and APTD). These amendments establish,

by January 1, 1974, a fully federally financed and administered program in the adult categories, with national minimum standards. The amendments contain a fiscal "hold harmless" provision for states that choose to supplement the federal payment. Under this provision, no state will have to spend more in any year after January 1, 1974, for cash assistance to the aged, blind and disabled than they spent in calendar year 1972.

At the current time, the exact implications of the 1972 amendments to Nevada have not been fully examined. The federal guidelines to implement the amendments are being written, and, until these are received and studied, no final determination can be reached.

General Characteristics of the Social Security Programs

The general characteristics of the Social Security Act of 1935 have survived, with only minor modification, to the present day. First, public assistance is a categorical program--it makes no provision for general relief to needy people who do not fit its categories. This general noncategorical assistance was and is a state-local responsibility.

Second, the public assistance titles are enabling legislation. The decision to operate a program lies with the states and, to a degree, so does the determination of who is eligible for benefits, how much can be granted and under what conditions. In recent years, the areas of state discretion have been greatly reduced as a result of HEW regulations and court decisions. Nevertheless, there continues to be a wide disparity from state to state in program coverage, administrative practices and benefit levels.

Third, the programs are administered by local governments or the states (under the authority of state laws). There is, however, the proviso that administrative responsibility be lodged in a single state agency operating under a federally approved statewide plan. This state plan is a statement submitted by the public assistance agency describing the system under which the state proposes to operate its programs. The plan describes the state operations pertinent to the specific requirements of the Social Security Act.

Fourth, the funds authorization is open ended and, thus, expands automatically to cover the federal matching obligation resulting from the increase in eligible applicants, rising benefit levels and program additions. Currently,

federal assistance grants for the aged, blind and disabled are distributed under a complex formula providing a federal share equal to \$31 of the first \$37 in monthly payments per recipient, plus 50 to 65 percent of the remaining state payment (with the percentage depending on state per capita income) up to a \$75 statewide average. There is no additional federal participation in amounts over \$75. Comparably, the basic matching formula for AFDC provides for federal shares amounting to \$15 of the first \$18 for each recipient, plus 50 to 65 percent of the balance (again depending on per capita income) up to a \$32 maximum. Again, there is no additional federal participation in AFDC grants in excess of \$32.

Other Need Related Public Assistance Programs

The largest of the benefit-in-kind programs related to need began with the 1950 amendments to the Social Security Act. These amendments authorized, for the first time, federal sharing in vendor payments made to doctors, nurses and health care institutions for the treatment of persons receiving public assistance. In 1960, in an attempt to increase state spending for the medical care of the aged, the Kerr-Mills amendments liberalized federal matching for medical vendor payments under OAA and established a separate grant program for the aged who were medically indigent (MAA). The Kerr-Mills program has now been replaced by parts of both medicaid (for the medically indigent) and medicare (for the aged).

Food and nutrition programs whose benefits are need-related include surplus commodity distribution (authorized by Section 416 of the Agricultural Act of 1949), the food stamp program (authorized by the Food Stamp Act of 1964) and smaller programs such as school lunches, special milk and OEO emergency food.

Nevada and the Social Security Act

Until 1937, public assistance in Nevada was exclusively administered by the counties under Art. 13, § 3 of the Nevada constitution. This section required:

The respective counties of the State shall provide * * * for those inhabitants who, by reason of age, and infirmity or misfortunes, may have claim upon the sympathy and aid of Society.

This section of the Nevada constitution was repealed in 1937, to make Nevada eligible for federal assistance under the 1935 Social Security Act. As previously mentioned, the federal act required that a single state agency administer or supervise the administration of the public assistance program. Nevada, therefore, could not accept federal funds or adopt state laws for the administration of the public assistance programs until section 3 of article 13 was repealed.

The repeal of the constitutional provision for county responsibility for relief paved the way for the legislation of 1937 providing for Nevada's participation in the federally financed OAA programs. Nevada's participation in AB was authorized in 1953, ADC was authorized in 1955, and medicaid, in 1967. Currently, Nevada is the only state which does not participate in the APTD program. Nevada also does not participate in the unemployed parent or emergency grant portions of the AFDC program.

Specific details on Nevada's involvement in each of these public assistance programs are detailed in later sections of this report.

State Welfare Administration in Nevada

The basic legal requirements pertaining to public welfare in Nevada are contained in Title 32, chapters 422-432 of NRS. The Division of Welfare as a division of the Department of Health, Welfare and Rehabilitation is specified in NRS 232. NRS 422, State Welfare Administration, describes the duties of the State Welfare Board and the Welfare Administrator.

The Welfare Board is a seven-member bipartisan board appointed by the Governor. No more than four members of the board may be of the same political party and not more than two members may be residents of the same county. Terms of office are 4 years and no member may serve more than two consecutive terms. The members' terms are overlapping so continuity of the board is assured. Members of the board receive a salary of \$10 per day plus per diem and travel expenses for each day's attendance at board meetings. The board is required to meet at least once each calendar quarter. The board is vested with the policy-making duties, powers and responsibilities assigned by law to the Welfare Division. The Welfare Board and the Welfare Division are therefore designated as "the single state agency" to administer the various federally supported public assistance titles as required by the Social Security Act.

The execution and enforcement of the Welfare Board's policies are, by law, delegated to the State Welfare Administrator. The Welfare Administrator is appointed, with the consent of the Governor, by the Director of the Department of Health, Welfare and Rehabilitation. The qualifications of the administrator are specified by law and, in compliance with the Social Security Act, he is within the state's merit system. The administrator is assisted by a staff of approximately 407 in implementing the responsibilities of the Welfare Division.

As required by the Social Security Act, the administrator is advised by an Advisory Committee. The Advisory Committee is a six-member body appointed by the administrator. Two members of the Advisory Committee must be public assistance recipients; two members must represent professional, civic or public or private service organizations; one member must be a private citizen; and one member must be a representative from a welfare related state agency. The Advisory Committee members serve for overlapping terms of 3 years and receive no compensation other than per diem and travel expenses. The functions of the Advisory Committee are to make recommendations concerning policies for providing day care for children and, upon request by the division, to make recommendations concerning child welfare services and aid to dependent children.

The Welfare Division maintains its headquarters office in Carson City, district offices in Reno, Winnemucca, Elko, Ely, Las Vegas, Fallon, Yerington, Carson City and Hawthorne, and subdistrict offices in Lovelock, Pioche and Tonopah.

County Welfare Administration in Nevada

NRS 428.010 requires that, within the limits of available funds, every county shall provide public assistance to indigents who are not supported by relatives, guardians or state and federal programs. In most of the Nevada counties, these county administered public assistance programs relate to general assistance, medical assistance for indigents not eligible for SAMI, child welfare services and food distribution services. This dual responsibility for public assistance has led to several charges and countercharges by state and county officials. It appears to the subcommittee that this dual system of responsibility should be the objective of intensive study during the ensuing biennium with the view toward pinpointing responsibility in either the state or the county.

Nevada State Welfare Programs

In terms of categorical public assistance, Nevada currently participates in the programs of ADC, OAA and AB. The state is also involved in the SAMI program for medical assistance and the surplus commodity food program. The most controversial program today is the ADC program. Therefore, this program drew the majority of review by the subcommittee. The major characteristics of the ADC program are discussed below.

Aid to Dependent Children

As previously discussed, the ADC program is a categorical assistance program funded jointly by the state and Federal Government and administered by the states. Assistance is extended to needy children under 18 (up to 21 if attending school). Nevada does not provide assistance to complete families. Rather, aid is limited to children living in an incomplete family situation where one parent is absent from the home. Assistance is provided in complete homes if one of the parents is medically incapacitated. The program is funded jointly by the state and Federal Government under a formula which provides a maximum of \$22 federal to \$10 from the state. Any grant over this \$32 level is a 100 percent state responsibility. In an attempt to maximize the federal dollars, Nevada for the past several years has developed its ADC budgets on an average grant level of \$32. The actual amount of assistance granted is a function of family size, family income, level of need and percent of need met. Currently the Welfare Board authorizes payments at 55 percent of need.

Welfare Reform

There is widespread agreement today that America's welfare system requires basic reform. At that point, however, agreement ends. The basic purpose of welfare--to help those who are in financial need--seems simple and easy to accomplish. But it is extremely difficult to construct a system that would serve this purpose equitably, efficiently, without undermining incentive and at a cost taxpayers are willingly to pay. Commensurately, the goal of eliminating poverty is clear but the means are elusive.

How poor does one have to be to be poor? Should the standards of need be national, regional or local? Should they apply--as they do today--only to people who have been beset by one of the specified causes of need--blindness, disability, old

age, denial of a father's support or prolonged unemployment? Or should they apply across the board to all persons and families who do not have enough money to live in decency? What does "live in decency" mean in money terms?

Should welfare assistance be paid in cash, vouchers or in-kind? Is there a way to provide an adequate level of support without undermining incentive and dignity? Are work requirements necessary, useful and feasible in a democracy? What level of payments provides the best balance between the needs of recipients and the burden on those who work and pay taxes? What is the proper mix between casework services and cash payments?

These are the major questions involved in the welfare reform proposals of today. Their final resolution will have a significant impact on public assistance programs in Nevada and the other states. We have already seen that, at this time, it is not economically feasible for Nevada to provide adequate levels of welfare without federal aid, and to receive federal aid also requires that federal rules and regulations be closely followed.

Therefore, any major changes in Nevada's welfare laws must be reviewed in terms of changes in federal laws. Unfortunately at this time (early December, 1972), the full impact of the 1972 amendments on Nevada's programs cannot be accurately projected. As this information becomes available, specific program additions or changes may be warranted.

Recommendations

The recommendations of the subcommittee have been classified into three general groupings:

1. Recommendations, which, if implemented, would have an immediate fiscal impact;
2. Recommendations which clarify previous legislation or modify existing administrative procedures; and
3. Areas requiring further study during the next biennium.

Recommendations With Immediate Fiscal Impact

These recommendations are listed in the priority order determined by the subcommittee.

Recommendation 1--Institute an APTD Money Grant Program in Nevada

Nevada is currently the only state in the United States which does not participate in the money grant portion of the APTD program. It appears, from preliminary examinations of H.R. 1, that a money grant APTD could be instituted at the minimum federal levels at no additional cost to the state. There may, however, be additional state costs in the SAMI portion of the APTD because of an increased caseload. The precise impact of the APTD to SAMI is currently being studied as guidelines from H.R. 1 are developed.

Recommendation 2--Institute the Unemployed Parent Segment of AFDC

Presently, there is no state level program which provides assistance to the intact family. As a result, there is an incentive for family breakup to obtain state aid, or the burden is shifted to the county where no federal matching is available. If implemented, it is estimated that this program would cost the state an additional \$800,000 per year.

Recommendation 3--Increase the Percentage of Need Funded in the ADC Program

The current need level established by the State Welfare Board is approximately the same as the poverty level as defined by the Federal Government. However, the current payment level allows the state to pay only 55 percent of established need. The state has appeared on one hand to have established a fair needs standard, but has inadequately funded the program. Because of the tremendous fiscal impact of meeting full need immediately, the subcommittee does not see full need as a practical reality in the 1973-75 biennium. The subcommittee does urge, however, that the legislature consider at least a \$10 increase in the average monthly payment. This recommendation would cost the state an additional \$2.2 million in the 1973-75 biennium.

Recommendation 4--The State Assume the State Overhead Costs of the Commodity Food Program

The Purchasing Division of the Department of Administration administers the Commodity Food Program. This program distributes food donated by the U.S. Department of Agriculture to county welfare agencies, school lunch programs and other eligible institutions. The state's overhead costs of transporting and storing these foods are funded through service

charges levied against the various governmental units. The current rates are \$1 per package unit on nonfrozen foods, and \$1.50 per package unit on frozen foods. If the state were to assume these overhead costs, it would relieve the hard-pressed participating entities at an additional cost to the state of \$400,000 for the 1973-75 biennium.

Clarification and Procedural Recommendations

Recommendation 1--Clarify Legislative Intent of A.B. 319, chapter 218 of the 1971 Legislative Session

Funds for the Welfare Division to provide public assistance to recipients are appropriated on an average grant basis. In 1971-73, appropriations in ADC were projected on an average grant of \$32 per month per recipient. The projected monthly caseload multiplied by the projected average grant determines the funds appropriated for public assistance. The 55 percent of need standard utilized is the percent of need which will maintain the average grant relatively close to \$32. A.B. 319 of the 1971 session amended NRS 425.100 by eliminating the floor placed under the amount of assistance required to be provided ADC recipients. As amended, NRS reads:

425.100

* * *

2. * * * At no time shall the annual average grant for eligible individuals covered by the program exceed the average grant amount authorized by the legislature. * * *

There has been some confusion over the intent of this legislation. Did the legislature intend to literally restrict the Welfare Board and recipients to a pegged average grant? Or was it the intention of the legislature simply to place an upper limit on the total expenditure for ADC over the biennium?

In fact, the ADC caseload has been lower than projected while the Welfare Board has attempted to hold firm to an approximate \$32 grant level. As a result, a projected reversion has developed in the funds appropriated for the ADC program and has been the subject of much discussion.

Recommendation 2--More Actively Involve the Counties in the
Process for Developing the State Welfare
Plan

Since Nevada does have a dual county-state welfare responsibility, it is important that the counties are at least consulted in the welfare planning process. Inclusions or omissions of various categories of indigents in the state plan have a significant impact on the county welfare programs. It, therefore, appears advisable that the counties be consulted when plans are in the formative stages.

Areas Requiring Further Study

Preliminary study and questions raised during a public hearing in Las Vegas indicate several areas requiring extended study over the 1973-75 biennium. Many serious doubts were raised over the continuation of the dual county-state welfare responsibility. The current dual system appears to duplicate expensive administrative costs, not optimize the available federal funds (especially in the area of the medically indigent and available social services money), lead to charges and counter charges because responsibility is diffused, and consequently not always meet the needs of Nevada's indigents. The subcommittee therefore recommends that the legislature abolish the current dual county-state welfare responsibility by turning the entire responsibility to the state if the mechanics of such change can be formulated during the 1973 session. If not, then the preparation for such change should be continued during the coming biennium, looking for full withdrawal of county responsibility in 1975.