

MEMORANDUM

July 10, 2012

To: The Honorable Jared Polis
Attention: Scott Groginsky

From:



Subject: Whether Fee-Based Programs and Services Constitute “State and Local Public Benefits” under the Personal Responsibility and Work Opportunity Reconciliation Act

Prepared at your request, this memorandum addresses whether programs and services that state or local governments provide for a fee could be found to constitute “state and local public benefits” for purposes of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.¹ Based on the judicial opinions published to date, it would appear that such services are unlikely to be viewed as state and local public benefits because they do not “assist people with economic hardship”² and “create little or no incentive for illegal immigration.”³ In fact, courts have traditionally viewed certain services provided for a fee (i.e., education at state-sponsored institutions of higher education) as *not* constituting state public benefits under PRWORA.⁴ However, it should be noted that there are relatively few published decisions addressing this question, and that many of the extant decisions have been issued by state courts and might not be viewed as precedential—or even persuasive—authority in all jurisdictions. In addition, some states and localities may have enacted their own statutory definitions of “public benefit.”⁵ Not all such state or local definitions may be permissible under federal law,⁶ but where permissible, they could

¹ P.L. 104-193, 110 Stat. 2105 (Aug. 22, 1996) (codified, as amended, at 8 U.S.C. § 1601 *et seq.*). Per your request, this memorandum focuses specifically upon the case law construing the phrase “state and local public benefits,” not that addressing the related term, “federal public benefit.”

² *Rajeh v. Steel City Corp.*, 813 N.E.2d 697, 707 (Ohio App. 2004).

³ *County of Alameda v. Agustin*, 2007 Cal. App. Unpub. LEXIS 7665, at *10 (1st App. Dist., Div. One, Sept. 24, 2007).

⁴ *See, e.g., Equal Access Educ. v. Merten*, 305 F. Supp. 2d 585, 605 (E.D. Va. 2004) (“PRWORA addresses only post-secondary monetary assistance paid to students or their households, not admissions to college or university. ... Simply put, access to public higher education is not a benefit governed by PRWORA.”).

⁵ *See, e.g., GA. CODE ANN. § 50-36-1(a)(4)(A)(i)* (defining “public benefit” to include adult education; authorization to conduct a commercial enterprise or business; business certificate, license, or registration; business loan; cash allowance; disability assistance or insurance; down payment assistance; energy assistance; food stamps; gaming licenses; health benefits; housing allowance, grant, guarantee or loan; loan guarantee; Medicaid; occupational license; professional license; registration of a regulated business; rent assistance or subsidy; state grant or loan; state identification card; tax certificate required to conduct a commercial business; temporary assistance for needy families (TANF); unemployment insurance; and welfare-to-work. This provision has been challenged as part of the litigation in *Georgia Latino Alliance for Human Rights v. Deal*. See No. 1:11-CV-1804, Complaint for Declaratory and Injunctive Relief: Class Action, filed June 2, 2011.

⁶ *See, e.g., Villas at Parkside Partners v. City of Farmers Branch*, 701 F. Supp. 2d 835, 856 (N.D. Tex. 2010) (“The City’s attempt to characterize a residential occupancy license as a ‘public benefit’ for which it may require proof of eligibility pursuant (continued...)”).

help to determine whether fee-based services may be provided to certain aliens. These state or local definitions are outside the scope of this memorandum, as is the legislative history of PRWORA, information about which has already been provided to you by other CRS analysts.⁷

Information in the memorandum is drawn from publicly available sources and is of general interest to the Congress. As such, all or part of this information may be provided in memoranda or reports for general distribution to the Congress. Your confidentiality as a requester will be preserved in any case.

PRWORA's Definition of "State and Local Public Benefit"

Enacted in response to concerns about "a rising unauthorized immigrant population in the United States,"⁸ PRWORA seeks to ensure that the availability of federal, state, and local benefits does not constitute a magnet for immigration by restricting aliens' eligibility for such benefits. Toward that end, PRWORA categorizes all aliens as "qualified" (e.g., lawful permanent residents, asylees, refugees) or not qualified for eligibility for benefits,⁹ and provides that aliens who are not qualified aliens are generally ineligible for state and local public benefits, with certain exceptions (e.g., emergency medical care).¹⁰ However, PRWORA permits states to grant aliens who are not lawfully present in the United States—and, thus, are not qualified aliens—eligibility for state and local public benefits by enacting legislation, subsequent to the date PRWORA took effect (i.e., August 22, 1996), which "affirmatively provides for such eligibility."¹¹

PRWORA defines both "federal public benefit" and "state and local public benefit." The former are outside the scope of this memorandum, although it is important to note that benefits provided by states or localities using federal funds constitute federal public benefits, not state and local public benefits.¹² The latter generally includes:

(...continued)

to 8 U.S.C. § 1625 does not validate its classification or avoid the conclusion that the Ordinance is a regulation of immigration."), *aff'd*, 675 F.3d 802 (5th Cir. 2012).

⁷ See e-mail from Ruth Wasem to Scott Groginsky, June 29, 2012; email from LaVonne Mangan to Scott Groginsky, June 29, 2012.

⁸ *Doe v. Wilson*, 67 Cal. Rptr. 187, 191 (Cal. App. 1997) (quoting 8 U.S.C. § 1601, which states that "[s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration laws," and that "[i]t continues to be the immigration policy of the United States that aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and the availability of public benefits not constitute an incentive for immigration to the United States").

⁹ See, e.g., *League of United Latin Am. Citizens (LULAC) v. Wilson*, No. CV 04-7569 MRP, 1998 U.S. Dist. LEXIS 3418, at *10 (C.D. Cal., Mar. 13, 1998) (PRWORA preempting a state law that defined alien eligibility for state benefits in other ways).

¹⁰ 8 U.S.C. § 1621(a)-(b). Other exceptions include: (1) short-term, non-cash, in-kind emergency disaster relief; (2) public health assistance for immunizations and for testing and treatment of symptoms of communicable diseases; and (3) programs, services or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter), specified by the Attorney General, which deliver in-kind services at the community level, do not condition assistance on individuals' income or resources, and are necessary for the protection of life and safety.

¹¹ 8 U.S.C. § 1621(d). See also *Szewczyk v. Dep't of Social Services*, 881 A.2d 259, 276 (Conn. 2005) (finding that, because the state had not passed a law after August 22, 1996, authorizing illegal aliens to receive certain medical benefits, federal law governed); *Cano v. Mallory Mgmt.*, 760 N.Y.S.2d 816 (2003) (even if the ability to sue for negligence were a state and local public benefit, Congress has authorized states to extend such benefits to unauthorized aliens).

¹² See, e.g., *Pimentel v. Dreyfus*, 670 F.3d 1096, 1099 n.4 (9th Cir. 2012) (finding that the Supplemental Nutrition Assistance Program (SNAP) is a federal public benefit, even though it is provided through the states).

any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.¹³

Published Decisions Interpreting the PRWORA Definition

Although PRWORA took effect in 1996, relatively few federal or state court decisions published since its enactment address what constitutes a state or local public benefit under this definition.¹⁴ Moreover, in many of the extant cases, either the parties agreed on whether the program in question constituted a state or local public benefit,¹⁵ or the court indicated whether the program constituted a benefit without articulating a rationale for this categorization.¹⁶ However, several decisions have articulated the court's rationale in finding that particular programs were not state and local public benefits for purposes of PRWORA.

For example, in *County of Alameda v. Agustin*, the California Court of Appeals rejected the argument that “child collection support services” and the issuance of a court order requiring child support payments constituted state and local public benefits and, thus, could not be provided to an alien who was present in the United States without authorization.¹⁷ While the court's primary rationale was that the child support payments were made from private funds, it noted the county's role in obtaining these funds,¹⁸ but found this role permissible given the purposes of PRWORA and the types of benefits encompassed within its definition of state and local public benefits. According to the court, PRWORA was intended to “reduce the incentives for illegal immigration by denying publicly financed social welfare benefits to aliens not residing legally in the United States.”¹⁹ The court also noted that all the benefits listed in PRWORA are “direct income support payments” or “services intended to meet the daily needs of disadvantaged persons,” and are “continuing, or potentially continuing benefits, intended to provide ongoing public support for the recipients for as long as required.”²⁰ It viewed child collection support services as “quite different” from the benefits listed in PRWORA because such services do not “foster[] dependence on

¹³ 8 U.S.C. § 1621(c).

¹⁴ Searches of the Lexis database using the phrase “state and local public benefit” yielded 5 published federal court decisions and 6 published state court decisions. Searches using the phrase “state or local public benefit” yielded 14 federal and 17 state decisions, while searches for “public benefit” within the same paragraph as “alien” yielded 163 federal and 71 state cases. Many of the federal cases, in particular, discussed unrelated topics, such as the parole of aliens into the United States, which the Secretary of Homeland Security may grant on a case-by-case basis for “urgent humanitarian reasons or significant public benefit.” See 8 U.S.C. § 1182.

¹⁵ See, e.g., *Wilson*, 67 Cal. Rptr. at 191 (parties agreeing that routine prenatal care constituted a state benefit); *LULAC v. Wilson*, 997 F. Supp. 1244, 1255 (C.D. Cal. 1997) (parties agreeing that particular social services and health services constituted state and local public benefits); *Caballero v. Martinez*, 897 A.2d 1026, 1031 (N.J. 2005) (parties agreeing that the Unsatisfied Claim and Judgment Fund did not involve a state public benefit).

¹⁶ See, e.g., *Soskin v. Reinerston*, 353 F.2d 1242 (10th Cir. 2004) (health benefits constitute state and local public benefits); *City Plan Dev., Inc. v. Office of the Labor Comm'r*, 117 P.3d 182, 190 (Nev. 2005) (payment of prevailing wages under a public contract does not constitute a state and local public benefit).

¹⁷ 2007 Cal. App. Unpub. LEXIS 7665, at *8-*10 (1st App. Dist., Div. One, Sept. 24, 2007).

¹⁸ *Id.*, at *8.

¹⁹ *Id.*, at *9.

²⁰ *Id.*

public support.”²¹ Rather, according to the court, such services are intended to help recipients support themselves, and terminate with the award of child support. Thus, the court concluded that, because child collection support services “provide no continuing public assistance to recipients” and “create little or no incentive for illegal immigration,” they are not state and local benefits for purposes of PRWORA.²² The court further noted that, “when properly provided, child support collection services return to the local agency considerably more funds than they cost.”²³

Similarly, in *Rajeh v. Steel City Corporation*, the Ohio Court of Appeals rejected the assertion that workers’ compensation constituted a state and local public benefit, which could not be provided to illegal aliens.²⁴ In reaching this conclusion, the court noted that the benefits listed in PRWORA are “either means for the government to assist people with economic hardships until they are able to financially manage on their own, such as welfare and food assistance, or they are an earned benefit, such as retirement.”²⁵ The court viewed workers’ compensation as neither economic assistance nor earned benefits, instead characterizing it as a “substitutionary remedy” for a negligence suit.²⁶ The court further noted that employers are ultimately responsible for paying workers’ compensation, and that the main purpose of workers’ compensation is to promote a safe and injury-free workplace.²⁷ While the court did not explain the significance of the latter two points, its mention of them could be taken to suggest that it did not view the state’s role in the implementation of the workers’ compensation scheme as sufficient to render that scheme a public benefit.²⁸ Similarly, it may also suggest that the court viewed the benefits encompassed by PRWORA as those that would promote unauthorized immigration. The majority in *Dowling v. Slotnik*, another case finding that workers’ compensation benefits did not constitute state and local public benefits, expressly rejected the view that such benefits provided an incentive for unauthorized immigration.²⁹

Fee-Based Programs and Services as State and Local Public Benefits?

Based on the foregoing cases, it appears that programs and services provided by a state or locality for a fee may be unlikely to be viewed as state and local public benefits for purposes of PRWORA. Like child support collection services and workers’ compensation, such programs and services arguably could not be characterized as either economic assistance or earned benefits. Moreover, the availability of such programs and services is unlikely to be seen as constituting an “incentive” for illegal immigration, which would distinguish them from the welfare, health, disability, and unemployment benefits characterized as public benefits under the act. The funds for programs and services provided for a fee could also potentially be said to come from aliens—as opposed to the state or locality—much as child support

²¹ *Id.* The court did not directly address the question of whether the award of child support by a court constituted a public benefit. However, lawsuits to enforce private rights have traditionally not been viewed as public benefits.

²² *Id.*, at *10.

²³ *Id.*

²⁴ 813 N.E.2d 697, 707 (Ohio App. 2004).

²⁵ *Id.* See also *Villas at Parkside Partners*, 701 F. Supp. 2d at 856 (describing “state and local benefits” under PRWORA as including professional licenses, commercial licenses, and “a host of other forms of assistance”); *Caballero*, 897 A.2d at 1031 (characterizing the benefits covered by PRWORA as “need-based benefits”).

²⁶ 813 N.E.2d at 707.

²⁷ *Id.*

²⁸ *Cf.* *Garcia v. Dicterow*, No. G039824, 2008 Cal. App. Unpub. LEXIS 9611, at *25 (Fourth App. Dist., Div. Three, Nov. 26, 2008) (rejecting the view that local funding of an entity that provided services to day laborers, some of whom were allegedly unauthorized immigrants, constituted an impermissible public benefit).

²⁹ 712 A.2d 396, 412 n.17 (Conn. 1998). *But see id.* at 414 (McDonald, J., dissenting) (stating that the provision of workers’ compensation benefits would constitute “an incentive for illegal immigrants to enter or remain in th[e] country”).

payments were said to come from parents, and workers' compensation payments from employers. The state's or locality's role (and potential expenditure of funds) in implementing the child support and workers' compensation schemes did not render them public benefits, and probably would not render fee-based programs and services public benefits, particularly not if the provision of such programs and services would return more funds to the state or locality than it costs.

The decisions addressing post-secondary education benefits under PRWORA further support this conclusion. These decisions have traditionally distinguished between financial assistance for higher education and access to state-funded institutions of higher education, finding that only the latter constitutes a state and local public benefit under PRWORA.³⁰ Under this reasoning, states may allow unauthorized aliens to enroll in state institutions of higher education, while paying out-of-state tuition, without enacting legislation expressly to authorize this.³¹ Were enrollment itself seen as a public benefit, this would arguably not be permissible under PRWORA.³² While these decisions do not provide any guidance on what other programs may constitute benefits under PRWORA, they could perhaps be construed to mean that fee-based services (like enrollment at a state-funded institution of higher education at out-of-state rates) are permissible.³³

³⁰ *Equal Access Educ.*, 305 F. Supp. 2d at 605 n.18 ("It is clear ... that PRWORA does not consider mere admission or attendance at a public post-secondary institution to be a public benefit."); *McPherson v. McCable*, No. 5:04-CT-990-FLA, 2007 U.S. Dist. LEXIS 69483 (E.D.N.C., Apr. 10, 2007) (rejecting a challenge by an illegal alien to the requirement that he pay for certain post-secondary and occupational extension courses that a state community college generally provided to inmates for free on the grounds that PRWORA prohibited the state from providing public benefits to aliens who are not qualified aliens), *aff'd*, 241 F. App'x 963 (4th Cir. 2007) (per curiam). *But see Sanchez v. Hall*, No. 5:10-CT-3027-D, 2011 U.S. Dist. LEXIS 145542 (E.D.N.C., Dec. 19, 2011) (suggesting that enrollment in state-funded post-secondary education, in itself, may constitute a public benefit for purposes of PRWORA).

³¹ *Equal Access Educ.*, 305 F. Supp. 2d at 605.

³² *Id.* See also 8 U.S.C. § 1621(c).

³³ Another provision of federal law prohibits states from granting unauthorized aliens certain postsecondary educational benefits on the basis of state residence unless equal benefits are made available to all U.S. citizens, and has generally been understood to apply to the granting of "in-state" residency status for tuition purposes. This provision, rather than PRWORA's restriction on the provision of state and local benefits to unauthorized aliens, has formed the focus of litigation post-*Equal Access Education*. See generally CRS Report RS22500, *Unauthorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis*, by Jody Feder.
