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FMNP Policy Memorandum: #95- 1
Implementation of P.L. 103-448 Provisions

Regional Directors
Supplemental Food Programs
All Regions

This policy memorandum authorizes the implementation of the provisions contained in Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994.

As you know, this law reauthorizes the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the WIC Farmers' Market Nutrition Program (FMNP) through September 30, 1998, and establishes several new provisions designed to improve Program management and accessibility. Attached for your use and information is a copy of the legislative language as it appeared in the Congressional Record of October 6, 1994. We have also attached a listing of all of the WIC and FMNP provisions in Pub. L. 103-448. The attached listing is provided for easier reference but should not be used as a substitute for the text of the statute.

Generally, legislative provisions must be promulgated in an interim or final rulemaking before they can be implemented. After further review of the WIC and FMNP provisions of Pub. L. 103-448, we have determined that the provisions can be deemed nondiscretionary. Considering that the provisions can be deemed nondiscretionary and given the long and complex process of issuing regulations, State agencies may begin implementing the WIC and FMNP provisions of Pub. L. 103-448 prior to the issuance of a final rulemaking.

State agencies opting to implement any of the WIC and FMNP provisions of Pub. L. 103-448 prior to issuance of a final rulemaking must make the appropriate amendments to their State Plans and/or procedure manuals. State agencies should also be advised that changes to procedures may be necessary once the provisions are codified in a final rulemaking.

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Attachments

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The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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IMPLEMENTATION REQUIREMENTS
P.L. 103-448
HEALTHY MEALS FOR HEALTHY AMERICANS ACT OF 1994

Section 204(a) adds a new subparagraph under the definition of nutritional risk. The new subparagraph includes conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse. This change removes alcoholism or drug abuse as predisposing nutritional risk conditions.

Section 204(b) requires the Secretary to promote the WIC Program by informing potentially eligible individuals of WIC's benefits and services through development and distribution of informational materials and television and radio public service announcements in English and other appropriate languages.

Section 204(c) stipulates that an otherwise income ineligible pregnant woman is income eligible for WIC benefits if the addition of one person to her family size would qualify her under WIC Program eligibility standards.

Section 204(c) allows States to consider pregnant women who meet the income eligibility standards to be presumed eligible for the Program until such time as they are determined to be not at nutritional risk. A nutritional risk evaluation must be completed not later than 60 days after the woman is certified for participation.

Section 204(d) makes a technical correction in the numbering of existing paragraphs.

Section 204(e) requires inclusion of Medicaid managed care providers among those programs to which WIC must make referrals.

Section 204(f) requires local programs to provide priority consideration to serving migrant participants who are residing in the State for a limited period of time.

Section 204(g) allows States to concurrently implement income guidelines for the WIC Program and Medicaid as long as such guidelines are implemented by July 1 of each year.

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Section 204(h) allows State agencies to use funds recovered as a result of violations in the food delivery system of the program in the year in which such funds are collected, so long as such funds are used for the purpose of carrying out the program.

Section 204(i) requires the Secretaries of Agriculture and Health and Human Services to establish and carry out an initiative to assure that, in a case in which a State Medicaid program uses coordinated care providers, coordination is continued with Medicaid including cross referrals and the timely sharing of Medicaid medical data with the WIC Program.

Section 204(j) reauthorizes WIC from years 1995 through 1998.

Section 204(k) extends the purposes for which research and evaluation funds can be used to include technical assistance and research projects, and to include the WIC Farmers' Market Nutrition Program, in addition to WIC, as a program that may be evaluated using these funds.

Section 204(l) increases the national minimum breastfeeding promotion expenditure from $8,000,000 to an amount that in Fiscal Year 1995 is equal to $21 multiplied by the number of pregnant and breastfeeding women, based on the average of the last 3 months for which the Department has data. In Fiscal Years 1996 to 1998, the $21 per participant amount would be adjusted for inflation using the same inflation percentage used to determine the national administrative grant per person.

> In Fiscal Year 1995, a State shall pay, in lieu of the expenditure required under the above mentioned formula, an amount that is equal to the lesser of:
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> 1) an amount that is more than the State's Fiscal Year 1994 breastfeeding promotion and support expenditure, or
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> 2) an amount that is equal to $21 multiplied by the number of pregnant women and breastfeeding women participating in the program in the State, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which there is final data.

This section also permits the Secretary to allow a State agency that is unable to make the required expenditure in Fiscal Year 1996, to make the required expenditure not later than October 1, 1996.

In the case of Fiscal Year 1996, such State shall pay the lesser of:

1) an amount that is more than the State's Fiscal Year 1995 breastfeeding promotion and support expenditure, and

2) an amount that is equal to $21 multiplied by the number of pregnant women and breastfeeding women participating in the program in the State, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which there is final data.

Section 204(m) requires the development of standards for the collection of breastfeeding data. Not later than 1 year after the date of enactment, uniform requirements for collection of data regarding incidence and duration of breastfeeding among participants in the program must be developed. Upon development of such uniform requirements, each State agency must report such data for inclusion in the biennial report to Congress on participant characteristics.

Section 204(n) changes the frequency for submitting information to the Congress on waivers granted with respect to procurement of infant formula from a 6-month reporting basis to an "as needed" basis.

Section 204(o) extends the cost containment requirements for the Department to administer a national infant formula bid solicitation on behalf of two or more requesting States. It would further require that not later than September 30, 1996 the Secretary must offer to solicit bids for infant cereal using procedures established for soliciting bids for infant formula, to the maximum extent feasible.

Section 204(p) exempts WIC State agencies from interest liability on rebate funds for infant formula and other foods when such funds are used for program purposes.

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Section 204(q) requires the Secretary to establish pilot projects in at least 1 State, with the consent of the State, to determine the feasibility and cost of requiring States to carry out a system for using universal product codes (UPC) to assist WIC vendors in providing the type of infant formula prescribed for participants. The Secretary would be required to determine whether such a system reduces the incidence of incorrect redemptions of low-iron formula or unauthorized brands of infant formula, or both. Further, the Secretary must provide notification to the Committee on Education and Labor and the Committee on Agriculture, Nutrition, and Forestry regarding whether the system is feasible, cost effective and reduces incorrect redemptions, and results in any additional costs to States. The system could not require WIC vendors to obtain special equipment and cannot be applicable to a vendor that does not have equipment the can use UPC.

Section 204(r) requires the Secretary to use the lesser of $10,000,000 or the amount of unspent nutrition services and administration funds from the previous year for:

1) infrastructure development, including management information systems,

2) special State projects of regional or national significance to improve the service of the program, and

3) special breastfeeding support and promotion projects, including projects to assess the effectiveness of particular breastfeeding promotion strategies and to develop State or local agency capacity or facilities to provide quality breastfeeding services.

Section 204(s) permits the Secretary to authorize a State agency to expend not more than 3 percent of the amount of funds allocated to it for supplemental foods for a fiscal year for expenses incurred for supplemental foods during the preceding fiscal year, if the Secretary determines that there was a significant reduction in the State's infant formula cost containment savings rebates that resulted in the State not being able to maintain its participation level.

Section 204(t) eliminates a duplicative migrant report and, in lieu thereof, requires the Department to provide the existing biennial participant characteristics report containing migrant information to the National Advisory Council.

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Section 204(u) requires the Secretary to work with the Secretary of the Department of Health and Human Services to establish and carry out an initiative to provide WIC Program services at substantially more Community and Migrant Health Centers. The initiative shall include: activities to improve the coordination of the provision of supplemental foods and nutrition education at facilities funded by IHS, and the development and implementation of strategies to ensure that, to the maximum extent feasible, new community health centers, migrant health centers, and other federally supported health care facilities established in medically underserved areas provide WIC services. The initiative may include: outreach and technical assistance for State and local agencies and the facilities named above; demonstration projects in selected State and local areas; and, such other activities as the Secretaries find are appropriate. The Secretaries must report progress to the Congress at three intervals--an initial report due by April 1, 1995, an interim report due by July 1, 1996, and a final report at an unspecified date.

Section 204(v) permits the Secretary to negotiate with an Indian State agency for an FMNP match rate that is lower than the current mandatory 30 percent match, but not lower than 10 percent, upon demonstration of financial hardship for the affected Indian tribe, band, group, or council.

Establishes for the FMNP a 17 percent administrative funding rate and permits up to 2 percent of total program funds to be expended on market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote such development in disadvantaged areas or remote rural areas with limited access to locally grown fruits and vegetables.

Clarifies that funds a State may contribute in excess of the funds used by the State to meet the FMNP match requirement can be used for either food or administrative purposes.

Requires the Secretary to give the same preference for funding to eligible States that participated in the FMNP in a prior fiscal year as to States that participated in the FMNP in the most recent fiscal year.

Requires the Secretary to inform each FMNP State of its funding amounts (both base and expansion) by February 15.

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Increases the minimum grant levels for the FMNP from $50,000 to $75,000 in situations where ratable reductions are necessary due to an insufficient appropriation.

Establishes a November 15 due date for submission of FMNP State Plans to the Department.

Changes the ratio of funds to be allocated to FMNP States to 75 percent for existing States to expand their FMNP and to 25 percent for States to start new programs.

Specifies that certain information on the effects of the FMNP on the change in consumption of fresh fruits and vegetables by recipients and effects of the FMNP on the use of farmers' markets must be reported only if available.

Extends the FMNP through 1988 at authorized funding levels of $10.5 million for Fiscal Year 1995, and such sums as necessary for each of Fiscal Years 1996 through 1998.

Eliminates the ability of FMNP State agencies to carry over not more than 5 percent of total funds from the previous fiscal year to reimburse expenses expected to be incurred under the FMNP during a succeeding fiscal year.

Eliminates a now obsolete provision pertaining to the allocation of unexpended FMNP demonstration project funds.

Permits the Chief Executive Officer of the State to designate agencies other than Agriculture or Health to administer the FMNP.

Requires the Secretary to promote the use of farmers' markets by recipients of Federal nutrition programs.

<u>Section 204(w)</u> Sets forth numerous conforming amendments to change the name of the program from the "Special Supplemental Food Program for Women, Infants and Children" to the "Special Supplemental Nutrition Program for Women, Infants and Children".