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Two Lawsuits Aim to End Practice of Arresting Victims of Domestic Violence

A class action lawsuit in Columbus, Georgia, filed by the <u>Southern Center</u> <u>for Human Rights (SCHR)</u>, argues that

a city ordinance charging a minimum fee of \$50 to a prosecuting witness who decides to dismiss a case represents an illegal "victim's fee." The lawsuit argues that the fee is illegal under Georgia state law, which "does not permit such fees unless there is a finding by a judge that the alleged victim's original complaint was both 'unfounded and malicious."

The suit was filed on behalf of domestic violence victims who make a decision that it is not in their interest to pursue charges, often because of the harm that an arrest would do to them financially and emotionally. A report in Cosmopolitan magazine features one victim who was charged a fee and arrested after first calling the police on her then boyfriend, but who later wanted to drop the charges. According to the report:

- Because victims rarely report to outside groups the fees they are charged by courts and the consequences of the fees for them, there is no information on how many courts in the United States assess victim's fees.
- Policies like the Columbus victim's fee are generally intended to punish false reporting and to strengthen the case against abusers with the victim's testimony. But a victim asking to drop charges has no bearing on the truth of her report, and prosecutors proceed with a case and could even subpoena the victim to testify regardless of the victim's willingness to participate.

- Mandatory arrest laws were designed to ensure that police take domestic violence incidents seriously, and they have had a positive impact in a large share of cases, but there are many consequences that can harm the victim, including that the policies
 - o ignore what the victim believes is in her best interests,
 - o give enforcement agencies and courts power over victims, and
 - o have actually increased domestic violence homicides.
- A 2015 study of more than 1,100 domestic violence victims in Milwaukee examined the safety status of victims 23 years after police either issued a warning to their abuser or made an arrest, and found that, "No victims benefited from partner arrest, but black victims suffered most, experiencing near double the risk of mortality" in subsequent years.
- One-size-fits-all policies discourage women from calling the police if there is another violent incident. Fewer reports make police think their policies are working, which is why the policies have not been questioned or changed since their inception.
- A program in the state of Oregon called <u>You Have Options</u> is described as a
 useful model for contending with reporting by victims. It gives sexual
 violence survivors three options for how to report: information-only, which
 allows them to report but not engage in the investigation; partial
 investigation, which allows the survivor to engage in an initial investigation
 without having charges brought unless they opt to do so; or complete
 investigation with full involvement.

In a positive turn for the particular case in Georgia, the SCHR and the Columbus city attorney reached a settlement this month, which will pay back \$75,000 of victim's fees collected from crime victims over the last four years, and repeal the city ordinance that allowed victims to be charged fees for declining to prosecute a case of domestic violence. The settlement will not change mandatory arrest or other nodrop policies, which remain legal across the country, but it represents a step toward ensuring victims' constitutional rights and giving them more power in the justice system.

In the city of Maplewood, Missouri, a policy that allegedly evicts domestic violence victims and banishes them from the St. Louis suburb if they call police for help more than twice in six months is being challenged in a lawsuit filed by the ACLU this month. The lawsuit was brought on behalf of Rosetta Watson, who was the victim over two years of a series of domestic violence attacks by her boyfriend at the time. Watson's ex-boyfriend is alleged to have repeatedly showed up at her home to punch, shove, and choke her. Watson called the police four times when her ex boyfriend violently assaulter her at her home, resulting in his being arrested for assault three times.

Despite the arrests, Watson was punished under Maplewood's nuisance policy, which bans "more than two instances within a 180-day period of incidents of peace

disturbance or domestic violence resulting in calls to the police." The city used the policy to evict Watson from her home and deny her an occupancy permit anywhere in the city for six months. She was forced to move to the city of St. Louis, where her ex tracked her down and stabbed her. At that point she was fearful of calling the police and walked to the hospital alone for treatment.

Maplewood is the subject of another lawsuit over its nuisance ordinance, this one alleging that the ordinance has been used to target African American residents, with especially harmful effects on women and disabled residents who may have a higher need for police assistance.

Sandra Park, senior staff attorney at the ACLU's Women's Rights Project reports that such laws exist in over 30 states. Despite the fact that many municipalities do not post the policy in their online codes, the ACLU estimates that there are thousands of similar laws around the country. A study completed in 2012 found that citations in Milwaukee were issued mostly to the city's black residents, and nearly a third of them were generated by domestic violence. Most property owners responded by evicting the battered women.

HHS and States Pushing for Medicaid Work Requirements

The Medicaid program for low-income and disabled individuals currently covers more than 70 million, or approximately 1 in 5, US

residents. The program covers an increasing number of working-age adults; partially because of this, current Health and Human Services Secretary Tom Price has notified governors that the department is ready to approve waivers for state Medicaid program proposals that encourage work. In addition to the waivers, an amendment to the House GOP health care bill would allow individual states to require work or training for adults, with exceptions for certain categories, such as pregnant women, or parents of a disabled child. Nearly 60 percent of Medicaid participants already work either full- or part-time, according to the Kaiser Family Foundation. Among those who are not working, the reasons include illness, caring for a family member, or going to school.

A number of states are already crafting waiver requests to allow them to require work from Medicaid recipients. Although none have been granted as of this writing, the planned or submitted waiver requests include:

• <u>Kentucky Governor Matt Bevin is seeking a waiver</u> to suspend coverage for able-bodied adults who do not comply with a work requirement. Job training and caring for a disabled relative would count toward fulfilling the obligation and those identified as "medically frail" would be exempt. Bevin is also proposing eliminating basic vision and dental services from the program, and implementing monthly premiums, co-payments for services, and "lock-outs" of coverage for up to six months for some who fail to pay premiums.

- Wisconsin Governor Scott Walker is proposing to limit the cumulative amount of time childless adults can be covered by Medicaid to four years for adults ages 19-49 who are not working or participating in employment training programs for at least 80 hours a month. Recipients who have reached the maximum would lose benefits for six months. The proposal would exclude full-time students and individuals with disabilities. Walker would also require drug testing (see below) and require childless adults to contribute \$8 toward their first emergency room visit each year and \$25 for subsequent visits.
- Arizona and Pennsylvania have pending waiver requests that would require
 a certain number of hours of work, typically 20, or another approved activity,
 such as job search or job training, per week.
- Indiana would require a referral to a work search program.

A recent review of research by <u>Health Affairs</u> found that if work requirements were implemented for Medicaid nationally, approximately 22 million adults covered by Medicaid (58 percent of all adults on Medicaid) could be subject to them. Of these 22 million, fifty percent are already working, 14 percent are looking for work, and 36 percent are neither working nor looking for work. The report also finds that approximately 11 million Medicaid enrollees, including those already looking for work, would be at risk of losing coverage if these requirements were imposed nationwide. Among these 11 million enrollees:

- Almost half (46 percent) have serious health problems, even when those on disability programs such as Supplemental Security Income (SSI) or Social Security Disability Insurance are excluded.
- Almost two-thirds (63 percent) are women.
- Slightly more than half are racial and ethnic minorities, while 44 percent are non-Hispanic whites.
- Two-fifths (39 percent) are middle-aged (45 to 64) adults, who have a greater risk of serious medical problems.
- About 30 percent lack a high school diploma, and another 30 percent have a high school degree or GED equivalency but no college.

An analysis of Medicaid waiver law by the National Health Law Program (NHeLP) concludes that Section 1115 of the Social Security Act does not give the Secretary and complicit states *carte blanche* to ignore congressional mandates; to cut eligibility, services, or provider payments; or to use section 1115 to save money. The waiver must be for an experimental project that is likely to promote the objectives of the Medicaid Act. Only certain Medicaid provisions can be waived, and the waiver can last only for the extent and period necessary. Otherwise, the approval is made without statutory authorization and judicial intervention may be needed.

Number of States Imposing New Restrictions on Public Benefits Continues to Grow

An expanding number of proposals are under

consideration across states to increase eligibility requirements for the receipt of public benefits. Some are described above with regard to Medicaid and are detailed below with regard to particularly harsh restrictions in Mississippi. Many of the proposals are based on model legislation created by the American Legislative Exchange Council (ALEC) in Washington, D.C. ALEC model bills have been found to have a better chance than most legislation of being enacted into law, and the bills that pass are most often linked to controversial social and economic issues. Among the proposals currently under consideration in state legislatures:

- At least three states (<u>New Hampshire</u>, South Dakota [see <u>March 2017 Policy Briefing</u>], and <u>Wisconsin</u>) are considering proposals to require that a parent is making child support payments before being determined eligible for the receipt of food stamps. A House committee in New Hampshire has voted to retain the bill for reconsideration next year.
- Arizona Governor Doug Ducey has plans that would allow some families to receive TANF benefits beyond the state's one-year lifetime limit, but the plan would also block an estimated 30 percent of recipients from eligibility for the second year, and would cut more participants out in the first year if they made more than one mistake. Mistakes include missing an appointment with a job counselor, failure to meet job-search requirements, as well as failing to get children to school most days or not getting them immunized. The changes would retain Arizona's status as the state with the most stringent TANF requirements, and one that went from approximately 38,000 beneficiaries in 2006 to 12,000 in 2014, even as the unemployment rate doubled. The average monthly benefit from the TANF program is about \$270.
- In <u>Maine</u>, several bills in the current legislature would increase work participation requirements for TANF; one bill would decrease the lifetime limit for benefits from 5 to 3 years.
- The Ohio House and Senate have introduced legislation to require the state Department of Job and Family Services to crosscheck residents receiving benefits through Medicaid or food stamp programs with income tax, lottery, real estate, voting and other records to pinpoint potential changes in their eligibility. The bill's sponsor addressed the individuals who are its target this way: "You know who you are, if you're cheating the system. You know that you don't qualify. You know that you shouldn't be receiving benefits from the state. Stop it. Stop it right now, because we're going to catch you, and when we catch you, you're going to get criminal prosecution." Upwards of 85 percent of the recipients of the affected programs are children, elderly or disabled, with incomes that generally do not fluctuate.

The <u>National Council of State Legislatures (NCSL)</u> has a complete list of state policies and proposals to require some form of drug testing or screening for public assistance benefits. As of last month, at least 20 states have proposed such legislation. The states include: Hawaii, Illinois, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New York, North Dakota,

Rhode Island, South Carolina, Texas, and Vermont. Florida, Oregon and Pennsylvania have proposals to drug test those applicants who have been convicted of drug-related offenses. Arizona's proposal applies only to nutrition assistance applicants convicted of drug-related offenses.

See the March 2017 Policy Briefing for a piece describing drug testing policies in specific states, the failure to demonstrate their value in terms of state savings, and the negligible number participants who test positive or receive any help with drug addiction.

In addition, the US House and Senate have sent House <u>Joint Resolution 42</u> to President Trump for his likely signature. The resolution allows states to require that unemployment insurance (UI) beneficiaries be subject to drug testing as a condition of receiving benefits, despite the fact that UI is an insurance program; employers are required to pay into it for their employees during the time they are employed, so the benefits belong to the employee and not the state.

Other notable developments regarding drug testing include:

- Wisconsin Governor Scott Walker is seeking a waiver from the federal government to require that Medicaid applicants complete a screening assessment for illegal drug use and to test likely users. People who refuse a drug test would be ineligible for coverage until the test is completed, while people who test positive would get treatment. Those who refuse treatment would lose benefits for six months. Wisconsin would become the first state to require drug tests for Medicaid benefits.
- In Florida, a bill to drug test TANF applicants seeks to avoid the fate of the state's 2011 bill to do the same, which was struck down by a federal court as overly broad and a violation of the privacy rights of recipients who the state had no reason to believe were using drugs. Under HB 1117, TANF applicants would be subject to drug tests if they had been convicted of a drug-related felony in the last 10 years. Applicants who have been convicted of a drug felony would have to pay for the drug test upfront, which has an average cost of \$40. The state would reimburse the applicant if they pass the test. The bill provides no funding for treatment. An estimated 400 new TANF applicants per month could be affected by it. Failure to pass the test would render the applicant ineligible for TANF benefits for one year, or for six months if they complete a drug treatment program at their own expense.

Unprecedented Decline in Home Ownership Among Black Families Wealth disparities could be exacerbated for decades to come because of a historic drop in home ownership among black

families. The trend is particularly troubling because homeownership is an effective way to build wealth and achieve financial stability. The declining homeownership rate could signal an oncoming period of increasing challenges to black Americans'

economic well-being, threatening greater racial inequality and higher rates of poverty, especially for older Americans, many of whom rely on their home equity to fund retirement.

A report from the Urban Institute made the following key findings:

- In the period following passage of the Fair Housing Act in 1970, black home ownership increased by almost 6 percentage points. From 2000 to 2015, however, homeownership rates dropped by 6 percentage points. This is partly attributed to the fact that black homebuyers bought homes at the peak of the housing bubble at higher rates than whites and Asians, and were often offered subprime loans even when they qualified for prime loans.
- The homeownership rate for black 35- to 44-year-olds fell from 45 percent in 1990 to 33 percent in 2015, half the level for whites of the same age and lower than the black homeownership rate in 1960.
- The financial and housing crisis of 2000 slowed the transition into homeownership by blacks in their early 30s and 40s from 2000 to 2010 and caused more of this generation to lose their homes than to become owners after 2010. This retrocession is unprecedented for any other generation or age group. The financial and housing crisis slowed the transition of this age cohort into homeownership from 2000 to 2010 and caused more of this generation to lose their homes than to become owners after 2010. This retrocession is unprecedented for any other generation or age group. For younger black adults born from 1976 to 1985, who have barely reached the typical age of homeownership, the homeownership rate has slowed even more than it has for either of the two older cohorts.

Low-Income Families Increasingly Vulnerable to Utility Shut-Off

A <u>report from the NAACP Environmental</u> <u>and Climate Justice Program</u> describes issues created by utility shut-off policies

that deny customers their basic rights to uninterrupted service. The interests of these customers often compete with the interests of utility companies, regulators, and other utility customers, posing obstacles to establishing appropriate policies. According to the report:

- Low-income communities, communities of color, and vulnerable persons, including people who are elderly, pay the highest proportion of their incomes to energy and are most vulnerable to shut off and most likely to suffer from the pollution from energy production.
- Among all households at or below 150% of the federal poverty level, 11.3% of African American-headed households were shut off, compared to 5.5% of Caucasian-headed households
- Nine states do not provide any state regulated seasonal protections for utility customers. These states include: Alaska, California, Colorado, Connecticut, Florida, North Dakota, Oregon, Tennessee, and Virginia.

- Eight states do not have regulations establishing standard protections for socially vulnerable groups: Alaska, Arkansas, Colorado, Florida, Kentucky, North Carolina, North Dakota, and Rhode Island.
- Utility cut-offs can result in life-threatening extremes in heat or cold, or the loss of electricity to power life-saving devices like respirators or medicines requiring refrigeration as well as the loss of light, electricity/heating/cooling.

The report supports a long-term goal of a moratorium on utility disconnections, and almost 20 changes to current policies that would reduce the harm of cut-offs, including better notification procedures, seasonal protections, payment assistance, and protections for the socially vulnerable.

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A provision in President Trump's budget proposal would dramatically restrict access to utilities for low-income families. The Low-Income Home Energy Assistance Program (LIHEAP) has subsidized utility bills for approximately 6 million households per year since 1980; Trump's budget eliminates the program.

According to the Washington Post, LIHEAP currently serves just 20% of eligible households, and a 2011 federally funded survey of recipients found that more than 90 percent of LIHEAP households include either children, disabled people or senior citizens, all of whom are at particular risk for temperature-related health issues. One-fifth of LIHEAP households include military veterans.

Mark Wolfe, head of the National Energy Assistance Director's Association <u>reacted</u> to the proposed cuts. "People are going to die. Someone will say 'Oh that's extremist,' but how can you take this much money away from this group of people and not think people will die? If you take away assistance from very poor families, some of them will have their heat shut off. Some will turn their heat down to unsafe levels. And some of them will die."

State Policy And Practice News

• A <u>bill has passed the House and Senate</u> in **Mississippi** and is expected to be signed into law that would apply to all Mississippians who receive Medicaid, TANF, or SNAP benefits. All participants identified by a private contractor hired by the state in these programs would receive a written request for information proving their eligibility and will have 10 days to reply. Anyone not responding in that timeframe would lose eligibility. Because participants in these programs are often disabled, unemployed, lack stable housing, or have any of the multitude of barriers that are faced by families in poverty, the deadline will be extremely difficult to meet.

The bill's sponsors have stated that it aims to reduce fraud, but were unable to provide any numbers or data to demonstrate a problem related to fraud among

applicants to the programs. In fact, the current system used for food stamps has received \$8.75 million in bonus federal funds for its payment accuracy rates.

Mississippi is already <u>rejecting most applicants to its TANF program</u> in a trend over recent years that saw approximately half of the state's TANF applicants rejected from 2003 to 2011, and 89 percent rejected in 2011, with a gradual increase in rejection rates before reaching more than 99 percent last year. No other state has a rejection rate above 90 percent; the closest is Texas, which rejected 89.7 percent of applicants in 2015, according to the Center for Budget and Policy Priorities.

Last year, 11,717 state residents applied for the monthly TANF benefit of \$170 per month for a family of three, and just 167 were approved and enrolled in the program. Both state officials and policy advocates have been unable to fully explain the dramatic drop. Some likely contributors include a new state policy that requires applicants to look for work or attend orientation problems before their applications are approved; a two-month suspension from the program for failure to comply with strict work requirements; a stringent drug testing process for eligibility; the TANF block grant structure that allows states to decide who is eligible with little oversight from the federal government.

- On April 18, law enforcement agencies in Rockcastle County, **Kentucky** teamed up to serve 250 warrants to parents behind in child support payments. The warrants follow an amnesty program that was started in March, and that gave parents who were behind on child support a chance to avoid criminal prosecution by setting up a payment plan. Parents who failed to take advantage of the amnesty offer in time now have only the option of arrest. Officials say those who owe \$300 or less within the last six months will face misdemeanor charges. The charge is upgraded to a felony for anyone owing more than \$1,000. "Everyone on that list of 250 warrants that we have active are going to jail when they are found. They may not be found today, but we when they are found, they'll be going to jail," Assistant County Attorney William Leger said.
- The **Tennessee** House of Representatives <u>passed legislation last week</u> to provide for the collection of overdue child support payments from parents who have been incarcerated. House Bill 993 allows for up to fifty percent of an inmate's prison account to be used to satisfy outstanding child support obligations. The types of prisoner accounts covered by the bill include commissary accounts and accounts containing wages received for work performed by the inmate while incarcerated. Under the legislation, deductions currently made from an inmate's account, such as victim compensation funds and court costs, would continue to receive priority.
- The <u>Parental Accountability Court (PAC) program</u>, in effect in **Georgia** since 2009, continues to expand to <u>new counties</u> in the state. The program is a joint

program between state child support services and superior court judges and offers an alternative to incarceration for parents who are consistently behind in child support payments. PAC provides literacy training and education, employment search, assistance and placement, substance abuse treatment, mentoring and life-skills training, mental health services and volunteer work opportunities, utilizing existing community resources. It can also provide clothing assistance and transportation by offering a bus pass to participants. The program entails intense oversight of participants, with court monitoring of their progress toward a goal of parents achieving self-sufficiency and "parental accountability." To graduate from the program, participating parents must demonstrate at least six consecutive months of full compliance with their child support obligation; failure to comply with program requirements can result in dismissal and the potential of facing jail time for future contempt actions.

Despite the consequences for noncompliance, the program has been successful at finding employment and addressing barriers for participants, 80 percent of whom have criminal records upon enrollment. A 2015 study of the program found that between 51-53 percent of participants found employment while in the program, and that if the program were expanded to all 49 counties in the state, the benefits would outweigh the costs by an estimated \$11.7 million per year. A more recent program fact sheet states that from 2012 to June 2016, 2,711 parents had participated in the program, resulting in an estimated \$2.8 million in child support payments and more than \$10 million in savings from reduced incarceration costs.

In describing the incentive for judges to encourage the PAC programs, Dougherty County Chief Superior Court Judge Willie Lockette stated: "We've discovered that incarceration is the least compelling reason for a person to pay child support."

• The **Maryland** General Assembly failed to pass the Rape Survivor Family Protection Act, a bill that would allow a woman who is raped and conceives a child to terminate the parental rights of her assailant. It was the ninth time the bill has been considered by the state assembly, and the decision was made by a committee formed to negotiate differences between the House and Senate versions that was made up exclusively of men. The state's current law means that women who are victims of rape in the state still have to negotiate with an alleged rapist over custody or get his permission before putting the child up for adoption.

Most states have at least some protections for women who become pregnant as a result of rape, but seven, including Maryland, do not. Forty-three other states and the District of Columbia have <u>legislation that offers at least some protection</u> to prevent rape victims from facing their attackers over parental rights; eight of those laws were adopted in 2016, but the legislative protections vary greatly. In 20 states and D.C., a rape conviction is required before a victim can request

termination of parental rights, despite the fact that the majority of sexual assaults do not lead to prosecution.

• The Franklin County, Ohio Child Support Enforcement Agency is providing a new, customer-friendly approach to encourage the payment of child support. The program aims to simplify paperwork and provide assistance to parents to resolve child support issues. Parents in the program receive business-reply envelopes and are sent thank-you notes by the agency to encourage parents to continue making payments.

Parents are not told they are in the program, because it is part of a national pilot created by MDRC and known as the <u>Behavioral Interventions for Child Support Services (BICS) Project</u>. BICS has been piloted in Franklin County, where parents were found to make more frequent payments with the reminders, but did not increase overall payments because of the program, indicating, according to MDRC, that some parents may not have had the resources to increase the amount of money they paid. According to MDRC, the parents "may have needed additional forms of support, such as employment referrals or order modifications."

Franklin County Child Support Agency Director Susan Brown said the agency is trying to change its reputation and shift from the punitive approach. The county has experienced a declining caseload in recent years. The agency saw 100,000 cases in 2009, but handled just 68,000 cases last year. Brown said the threat of jail or losing a driver's license did not work for the "one-third of the cases in which the paying parent is poor."

Also of Note

- A new Conference of State Legislatures (NCSL) provides a searchable database of passed, pending and failed legislation from 2011 to 2016 by state, year, topic, keyword, status, and/or primary sponsor. Topics relate to custody and visitation, economic stability, child support enforcement, family violence collaboration, father engagement, child support guidelines, health care coverage, prevention, healthy family relationships, implementation, and other related issues. It also provides a graphic depiction of legislation enacted in 2016, which shows that the majority of legislation on child support and family law was related to child support enforcement (37 enacted bills), followed by family law (23 bills).
- One of the means used by the Obama administration to encourage states to expand Medicaid under the Affordable Care Act appears to have been dropped by the Trump administration, according to the New York Times. The tool used was to deny funding for hospitals that would have helped cover the costs of care for low-income individuals who are uninsured, instead encouraging the state to

expand Medicare and have the costs fully covered through the program. Funding for this "low-income pool" fell to \$608 million, from \$1 billion, under the Obama administration. Florida Governor Rick Scott had attempted for years to increase the state's low-income pool, and the Trump administration recently announced that the pool would grow to \$1.5 billion a year.

Former Obama administration official Andrew Slavitt said the change in low-income pools was misguided. "Florida is just being paid by taxpayers not to expand Medicaid. The low-income pool is essentially a slush fund," Slavitt said, "and it's a really inefficient way to pay for medical care."

Florida is one of 19 states that have not expanded Medicaid under the Affordable Care Act. In a <u>report last week</u>, the Urban Institute estimated that 730,000 to 900,000 people would gain coverage if it did. Of the 20 million people insured as a result of the Affordable Care Act, more than half have gained coverage through the expansion of Medicaid.

Two House Democrats from Florida, Debbie Wasserman Schultz and Kathy Castor, said that after receiving the commitment of federal funds, the Florida Legislature was now moving to adopt a budget that includes cuts in state Medicaid spending. According to Castor, "it would be more efficient to expand Medicaid so people would have coverage, rather than running up huge bills at hospitals that need to seek reimbursement from the low-income pool."

Thirty-one states and the District of Columbia have expanded the Medicaid program under the Affordable Care Act. The expansion provides federal funding to broaden eligibility to include most low-income adults with incomes up to 138 percent of the federal poverty level (approximately \$16,000 for an individual). A recent Health Affairs study analyzed data from the National Association of State Budget Officers for fiscal years 2010 to 2015 to assess the fiscal effects of expansion's first two years, finding that the expansion led to an 11.7 percent increase in overall spending on Medicaid, which was accompanied by a 12.2 percent increase in spending from federal funds. There were no significant increases in spending from state funds as a result of the expansion, nor any significant reductions in spending on education or other programs. State budget projections also showed no significant differences between the projected levels of federal, state, and Medicaid spending and the actual expenses as measured at the end of the fiscal year.