NATIONAL GOVERNORS' ASSOCIATION

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ADOPTION OF POLICY STATEMENTS IN PLENARY SESSIONS

Committee policy statements proposed for adoption were forwarded to each Governor on January 19, 1996. Attached are these policies, with any amendments adopted by Committees. These amendments, marked by a slash on the cover, are in italics and deletions are double-lined throughout. These policy statements require a two-thirds vote. Also included in the packet (pink cover) are proposals to be offered under suspension of the rules. See #3 for procedures governing adoption of these proposals.

Article IX of the National Governors' Association Articles of Organization and the Rules of Procedure determine the procedures necessary to adopt policy statements. Proposed policy statements are submitted by the Standing Committees and are transmitted to all Governors 15 days before the plenary session at which they will be considered.

These policies and amendments primarily focus on current NGA priorities and, unless otherwise noted, are time limited to two years.

1. Germane Committee amendments and floor amendments by individual Governors to these proposed Committee policies require a two-thirds vote. Final adoption of a Committee amended policy statement requires a two-thirds vote.

2. Individual Governors must submit proposed policy statements to the Executive Director at least 45 days in advance of the plenary session. These proposals are transmitted to the appropriate NGA Standing Committee for further action.

   If an individual Governor's proposal is not adopted by the Standing Committee and therefore not included in the 15-day advance mailing to all Governors, it is subject to the suspension of the rules if the individual Governor or the Committee chooses to resubmit the proposal at the plenary session.

3. Any proposed new policy or resolution by a Committee or an individual Governor that is not included in the advance mailing requires a three-fourths vote to suspend the rules, a three-fourths vote for final passage, and a three-fourths vote for any amendment.

4. Resolutions do not address new policy, but affirm existing policy and/or recognize certain persons, places, and events. They remain in effect for one year.

5. Notice procedures: Motions for the suspension of the Rules of Procedure shall be distributed to all Governors present by the end of the calendar day before such motion is put to a vote. The Chairman may request that copies of floor amendments also be available for distribution.

6. Non-debatable motions: Table -- majority vote; Previous Question -- two-thirds vote; Suspend the Rules -- three-fourths vote.

7. A motion to postpone is debatable on the entire policy only and requires a majority vote.

8. Voting may be by voice, show of hands, or roll call. A roll call vote shall be called by a show of hands of ten members.

THE WHITE HOUSE
OFFICE OF DOMESTIC POLICY

CAROL H. RASCO
Assistant to the President for Domestic Policy

To: _____ _____

_____ _____

Draft response for POTUS
and forward to CHR by: _____

Draft response for CHR by: _____

Please reply directly to the writer
(copy to CHR) by: _____

Please advise by: _____

Let's discuss: _____

For your information: _____

Reply using form code: _____

File: _____

Send copy to (original to CHR): _____

Schedule ? : ☐ Accept ☐ Pending ☐ Regret

Designee to attend: _____

Remarks: _____

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_____

Post-it® Fax Note 7671	Date	# of pages ▶ 3
To Julia Demeo	From Tim Gage	
Co./Dept. Fab Carol Rasko	Co. Calif Senate	
Phone #	Phone # (916) 324-0341	
Fax # 456-2878	Fax # (916) 445-0596	

DRAFT LETTER TO CLINTON

Dear Mr. President:

During the last few months, we or other members of the Legislature have communicated with you regarding major concerns raised by proposed social services reform legislation. The purpose of this letter is to provide recommendations for staff-level negotiations regarding the details of this legislation. If there is to be an agreement, we ask that these primarily technical issues be addressed in ways that will make implementation easier in California (and other states) as well as protect the health and welfare of children.

MAR 11 1996

In this letter we address nine issues in a variety of areas: child welfare, Supplemental Security Income (SSI), child care, AFDC-work participation rates, benefits eligibility, and implementation dates.

Maintain Entitlement of Title IV-E Administration and Training Costs

While we commend maintaining the entitlement to Adoptions Assistance and Foster Care Maintenance payments, we think it is critical to maintain the entitlement for administration and training as well. "Administration" dollars support caseworkers essential to providing emergency response and other services necessary to place and maintain children safely in foster care and adoptive homes. We must, at a minimum, assure meaningful protection for children from abuse and neglect during welfare restructuring. Title IV-E "administration" is actually part and parcel of the foster care and adoption assistance network; together they provide child welfare services.

SSI for Older Non-Citizens

There were 292,000 non-citizen legal immigrants receiving SSI in California as of December 1993, a figure that undoubtedly has grown in the two years since then. This aid is provided to the aged, blind and disabled, most of whom could not support themselves by going to work if their SSI benefits ended. Under HR 4, SSI would be denied to non-citizens. Current recipients who are non-citizens would lose their SSI in 14 months.

The House version of HR 4 exempted from the SSI ban non-citizens who are at least 75 and have lived in the U.S. for five years, and those too disabled to become citizens. Your December budget proposal also would exempt from an SSI ban those who become disabled after they enter this country.

The costs of the proposed congressional bar on SSI to non-citizens are estimated in the billions of dollars for California's counties, which would have to provide for aged, blind and disabled non-citizens turned down elsewhere. At a minimum, the very elderly, those too disabled to become citizens and those who find themselves disabled after they arrive in this country should be exempted from the prohibition on SSI -- if for no other reason than

to lessen to counties the indefensible cost of shifting care for a needy population admitted under U.S. immigration laws.

Adequate Funding for Child Care:

The funds provided for child care are inadequate to meet the needs of parents entering the work force while on aid and leaving aid as their earnings increase. For California to meet required participation rates, about 400,000 parents would have to enter the work force and an additional 100,000 would have to increase their hours of work. Even if only 15 percent of these parents need a paid, formal child care arrangement, we will need nearly $300 million per year in additional child care funds. Funding provided in section 802 of the Conference Report should increase in FFY 1998 and each year thereafter.

Real Flexibility for Child Care:

California has years of experience utilizing a range of child care options. The more flexibility states have to design high-quality, cost-effective options, the more families can be served and the better will be children's child care experience. While the Conference Report makes state flexibility the first goal of the Child Care title (see section 802), it leaves limits and strictures in current federal law that stand in the way of such flexibility. Section 658D(c)(2)(A) of the Child Care and Development Block Grant of 1990 should direct states to provide parental choice between a certificate and a space in a contract program at the time parents establish eligibility for care rather than at the time services are offered -- because there is no guarantee that both a certificate and a space in a contract program would be open on the same day. This change would provide true choice rather than the false choice in current law. A similar provision should be amended into part A of Title IV of the Social Security Act, in or near section 418 -- allowing states to design a mix of certificates and contract programs to ensure access and quality in all communities.

Valuing Part-Time Work for Parents:

Congress and the President can strike an important blow for children and single parents by recognizing that part-time work is often the best way for a parent to mix family responsibilities and earnings. Recognizing the value of part-time work also decreases the need for child care funds -- either from a parent's earnings or from government subsidies. In this spirit, any single parent who has a child 15 years of age or younger should be credited with being in the work force and meeting a state's participation rates if he or she is working 20 hours per week or more. This change should also assist parents to keep their young adolescents safe from high-risk behavior that can lead to crime, drug and alcohol use, and teen pregnancy. Such a change would also recognize the reality of today's economy -- in which California and other states have more new part-time jobs than full-time jobs.

Calculating Participation Rates:

When someone is exempted from any work requirement imposed, either temporarily or permanently, they should not remain in the denominator of the calculation of participation rates. For example, persons exempted from work with a young child, persons exempted because they or a dependent are disabled, and persons exempted due to the fact that they are already working in the private sector should be excluded from the denominator as well as the numerator in this calculation.

State Flexibility for Transition Benefits:

States should be provided the ability to design their own benefits package, including transitional Medicaid and transitional child care, for those transitioning from AFDC to private sector employment. For example, a state that currently provides up to a year of Medicaid benefits to a family that is moving off aid should not be prohibited from making that a two-year transition.

Maintain the Link Between Eligibility for AFDC and for Medicaid:

States should be permitted to retain for the Medicaid program categorical eligibility of children and parents on AFDC. This policy saves state and county administrative costs (families do not have to apply separately), and it helps us ensure that low-income children get coverage.

Set Implementation "Start Date" Realistically:

The states and counties need adequate time to enact statutory changes in state law, notify recipients of program changes, train caseworkers, and reprogram computers. Given the magnitude of the proposed changes and the size of California's caseload, any measure enacted by Congress this year could not reasonably be implemented until July 1, 1997, the beginning of our next fiscal year, or January 1, 1997 at the very earliest. Moreover, we believe that the date for the state implementation of program changes should correspond with the date set for changes in federal funding.

Thank you for your consideration of these concerns. If your staff have any questions about these issues, they can contact Tim Gage, at (916) 324-0341.

Sincerely,

BILL LOCKYER RICHARD KATZ

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-Mar-1996 06:56pm

TO: (See Below)

FROM: Christopher C. Jennings
Domestic Policy Council

SUBJECT: Governors' Medicaid update

Despite rumors and discussions to the contrary, the Republicans on the Hill (under direction from Dole's office) decided to not release their new legislative draft of the "Governors' Medicaid" agreement. (They were thinking about releasing it to the Governors today and asking them for a response.)

They probably decided to take this course for fear that an early leak of their latest draft would be the target of two weeks of recess criticisms from the advocacy and provider groups. It is also possible that the Republicans simply have not figured out their welfare/Medicaid strategy and don't want to make decisions that may undermine their eventual positioning strategy. Lastly, the all Democrats Finance Committee letter, which urged a bipartians, consultative approach, seems to have Roth thinking about ways to be able to at least act like he is going about this in a more bipartisan way.

Howard Cohen of Bliley's Commerce Committee has indicated that, as of now, the plan is to not release their current draft until after the Congress comes back from recess. Should they wait this long, it will certainly further slow up the process; so much so, in fact, that it is certainly possible that other Hill drafting efforts -- like Breaux/Chafee -- may well surpass the Governors' efforts.

Regardless, it now seems clear that the Republicans are currently working off a different financing formula, which will almost inevitably be inconsistent with that advocated by the Governors. They will claim they are doing so because GAO cannot do state-by-state analysis of the NGA formula and because CBO probably cannot score it for adequate savings. Should this occur, the Democratic Governors will likely have a substantive reason to exit away from this process. If they pursue this course, they will likely want to exit onto the Breaux/Chafee approach (or something akin to it.)

Having said the above, Governor Chiles is now counseling caution on unilaterally departing the NGA process; instead he is

suggesting seeing if the Republican Governors themselves will blow this up. The 3 Republican lead Medicaid Governors are hearing complaints from some of their brethren -- Wilson, Bush, Allen, etc. -- that they have already given up too much. (For example, they are mad that the Republican Governors have agree to have even the most minimalistic standards of adequacy.) As a result, Gov. Thompson is growing increasingly weary of trying to hold together such diverse opinions on Medicaid reform. Chiles believes the best of all worlds would be for the Republican Governors to walk away from this process.

On the bicameral/bipartisan coalition fronts, not too much to report. They seem to be holding fairly firm on Medicaid packages that we would have little to no problems with.

Congresswoman Lincoln met with Congressman Bliley earlier this week and today met with the most conservative Democrats (Peterson, et al) today. She did not agree to anything and said she needed to see specifics before commenting. Moreover, she outlined a series of problems/questions that the meeting participants had difficulty in coming up with effective responses. Havings said this, Blanche wants to see if there is a way to make a deal. She is willing to (in fact, she wants to) play a significant role in coming up with a compromise we can live with. She wants to keep in close touch with us.

Obviously this is all very fluid. We'll keep you informed as more deveolpments arise.

cj

Distribution:

TO: Carol H. Rasco
TO: Laura D. Tyson
TO: John Hilley
TO: Marcia L. Hale
TO: Nancy-Ann E. Min
TO: Gene B. Sperling
TO: Jennifer L. Klein

AS ADOPTED 2/6/96

RESTRUCTURING MEDICAID

PREAMBLE

For most of the last decade, health care expenditures in the United States have far exceeded overall growth in the U.S. economy. And while medical inflation is declining, public and privately funded health care costs continue to limit the long term economic growth of the nation. For states, the primary impact of health care costs on state budgets has been in the Medicaid program. Annual Medicaid growth over the last decade has been well in excess of 10 percent, and in half of those years annual growth approached 20 percent. Determining the causes of such unbridled growth is difficult. However, major contributing factors include: congressional expansions in the program, court decisions limiting the states in their ability to control costs, policy decisions by states maximizing federal financing of previously state-funded health care programs, and changing demographics.

Restricting the growth of Medicaid is no easy task. Medicaid is the primary source of health care for low income pregnant women and children, persons with disabilities, and the elderly. This year, states and the federal government combined will spend more than $140 billion in this program providing care to more than 28 million people. The challenge for the nation, and Governors as the stewards of this program, is to redesign Medicaid so that health care costs are more effectively contained and those that truly need health care coverage continue to gain access to that care while giving states the needed flexibility to maximize the use of these limited health care dollars to most effectively meet the needs of low income individuals.

THE NEW PROGRAM

Within the balanced budget debate, a number of alternatives to the existing Medicaid program have been proposed. The following outlines the nation's Governors proposal that blends the best aspects of the current program with congressional and administration alternatives toward achieving a streamlined and state-flexible health care system that guarantees health care to our most needy citizens.

Program Goals. The program is guided by four primary goals.

1. *The basic health care needs of the nation's most vulnerable populations must be guaranteed.*
2. *The growth in health care expenditures must be brought under control.*

3. *States must have maximum flexibility in the design and implementation of cost-effective systems of care.*
4. *States must be protected from unanticipated program costs resulting from economic fluctuations in the business cycle, changing demographics, and natural disasters.*

Eligibility. Coverage remains guaranteed for:

- *Pregnant women to 133 percent of poverty.*
- *Children to age 6 to 133 percent of poverty.*
- *Children age 6 through 12 to 100 percent of poverty.*
- *The elderly who meet SSI income and resource standards.*
- *Persons with disabilities as defined by the state in their state plan. States will have a funds set-aside requirement equal to 90 percent of the percentage of total medical assistance funds paid in FY 1995 for persons with disabilities.*
- *Medicare cost sharing for Qualified Medicare Beneficiaries.*
- *Either:*
  - *Individuals or families who meet current AFDC income and resource standards (states with income standards higher than the national average may lower those standards to the national average); or*
  - *States can run a single eligibility system for individuals who are eligible for a new welfare program as defined by the state.*

Consistent with the statute, adequacy of the state plan will be determined by the Secretary of HHS. The Secretary should have a time certain to act.

Coverage remains optional for:

- *All other optional groups in the current Medicaid program.*
- *Other individuals or families as defined by the state but below 275 percent of poverty.*

Benefits

- *The following benefits remain guaranteed for the guaranteed populations only.*
  - *Inpatient and outpatient hospital services, physician services, prenatal care, nursing facility services, home health care, family planning services and supplies, laboratory and x-ray services, pediatric and family nurse practitioner services, nurse midwife services, and Early and Periodic Screening, Diagnosis and Treatment Services. (The*

"T" in EPSDT is redefined so that a state need not cover all Medicaid optional services for children.)

- *At a minimum, all other benefits defined as optional under the current Medicaid program would remain optional and long term care options significantly broadened.*
- *States have complete flexibility in defining amount, duration, and scope of services.*

Private Right of Action

- *The following are the only rights of action for individuals or classes for eligibility. All of these features will be designed to prevent states from having to defend against an individual's suit on benefits in federal court.*
  - *Before taking action in the state courts, the individual must follow a state administrative appeals process.*
  - *States must offer individuals or classes a private right of action in the state courts as a condition of participation in the program.*
  - *Following action in the state courts, an individual or class could petition the U.S. Supreme Court.*
  - *Independent of any state judicial remedy, the Secretary of HHS could bring action in the federal courts on behalf of individuals or classes but not for providers or health plans.*
- *There should be no private right of action for providers or health plans.*

Service Delivery

- *States must be able to use all available health care delivery systems for these populations without any special permission from the federal government.*
- *States must not have federally imposed limits on the number of beneficiaries who may be enrolled in any network.*

Provider Standards and Reimbursements

- *States must have complete authority to set all health plan and provider reimbursement rates without interference from the federal government or threat of legal action of the provider or plan.*
- *The Boren amendment and other Boren-like statutory provisions must be repealed.*
- *"One hundred percent reasonable cost reimbursement" must be phased out over a two year period for federally qualified health centers and rural health clinics.*

- *States must be able to set their own health plan and provider qualifications standards and be unburdened from any federal minimum qualification standards such as those currently set for obstetricians and pediatricians.*
- *For the purpose of the Qualified Medicare Beneficiaries program, the states may pay the Medicaid rate in lieu of the Medicare rate.*

Nursing Home Reforms

- *States will abide by the OBRA '87 standards for nursing homes.*
- *States will have the flexibility to determine enforcement strategies for nursing home standards and will include them in their state plan.*

Plan Administration

- *States must be unburdened from the heavy hand of oversight by the Health Care Financing Administration.*
- *The plan and plan amendment process must be streamlined to remove HCFA micromanagement of state programs.*
- *Oversight of state activities by the Secretary must be streamlined to assure that federal intervention occurs only when a state fails to comply substantially with federal statutes or its own plan.*
- *HCFA can only impose disallowances that are commensurate with the size of the violation.*
- *This program should be written under a new title of the Social Security Act.*

Provider Taxes and Donations

- *Current provider tax and donation restrictions in federal statutes would be repealed.*
- *Current and pending state disputes with HHS over provider taxes would be discontinued.*

Financing. Each state will have a maximum federal allocation that provides the state with the financial capacity to cover Medicaid enrollees. The allocation is available only if the state puts up a matching percentage (methodology to be defined). The allocation is the sum of four factors: base allocation, growth, special grants (special grants have no state matching requirement) and an insurance umbrella, described as follows:

1. *Base. In determining base expenditures, a state may choose from the following—1993 expenditures, 1994 expenditures, or 1995 expenditures. Some states may require special provisions to correct for anomalies in their base year expenditures.*
2. *Growth. This is a formula that accounts for estimated changes in the state's caseload (both overall growth and case mix) and an inflation factor. The details of this formula are to be determined. This formula is calculated each year for the following year based on the best available data.*
3. *Special Grants. Special grant funds will be made available for certain states to cover illegal aliens and for certain states to assist Indian Health Service and related facilities in the provision of health care to Native Americans. States will have no matching requirement to gain access to these federal funds.*
4. *The Insurance Umbrella. This insurance umbrella is designed to ensure that states will get access to additional funds for certain populations if, because of unanticipated consequences, the growth factor fails to accurately estimate the growth in the population. Funds are guaranteed on a per-beneficiary basis for those described below who were not included in the estimates of the base and the growth. These funds are an entitlement to states and not subject to annual appropriations.*

   Populations and Benefits. Access to the insurance umbrella is available to cover the cost of care for both guaranteed and optional benefits. The umbrella covers all guaranteed populations and the optional portion of two groups—persons with disabilities and the elderly.

   Access to the Insurance Umbrella. The insurance umbrella is available to a state only after the following conditions are met.

   1. *States must have used up other available base and growth funds that had not been used because the estimated population in the growth and base was greater than the actual population served.*
   2. *Appropriate provisions will be established to ensure that states do not have access to the umbrella funds unless there is a demonstrable need.*
5. *Matching Percentage. With the exception of the special grants, states must share in the cost of the program. A state's matching contribution in the program will not exceed 40 percent.*
6. *Disproportionate Share Hospital Program. Current disproportionate share hospital spending will be included in the base. DSH funds must be spent on health care for*

low income people. A state will not receive growth on DSH if these funds constitute more than 12 percent of total program expenditures.

Provision for Territories. The National Governors' Association strongly encourages Congress to work with the Governors of Puerto Rico, Guam, and other territories towards allocating equitable federal funding for their medical assistance programs.

AS ADOPTED 2/6/96

WELFARE REFORM

The Governors believe that our nation's leaders are now faced with an historic opportunity and enormous responsibility to restructure the federal-state partnership in providing services to needy families. We, the nation's Governors, are committed to achieving meaningful welfare reform now. The continuation of the current welfare system is unacceptable. Congress has made significant efforts toward making changes that will allow states the flexibility to build upon the lessons states have learned through a decade of experimentation in welfare reform. The President has also voiced his commitment to achieving welfare reform and has continued to grant waivers to states to facilitate experimentation. We urge Congress and the President to join with the nation's Governors in support of a bipartisan agreement that will reallocate responsibilities among levels of government, maximize state flexibility, and restructure welfare as a transitional program with a focus on work and self-sufficiency. We believe, however, that children must be protected throughout the restructuring process.

State experience in welfare reform has demonstrated that three elements are particularly crucial for successful welfare reform: welfare must be temporary and linked to work; both parents must support their children; and child care must be available to enable low-income families with children to work. Additionally, we believe that block grants should be entitlements to states and enable states broad discretion in the design of their own programs based upon mutually agreed upon goals. We also believe that states should have access to supplementary matching federal funds for their cash assistance programs during periods of economic downturn. The conference agreement on HR 4, the Personal Responsibility and Work Opportunity Act, incorporated many of these elements, but we also believe further changes must be made to create a sound and workable welfare reform bill. The National Governors' Association would support the HR 4 conference agreement with the changes listed below. The absence of recommendations on the restriction of benefits for aliens should not be interpreted as support for or opposition to the alien provisions of the HR 4 conference agreement:

Core Employment Support Services

- *Add $4 billion in funding to the general entitlement for child care. This funding would not require a state match.*

Flexibility in Meeting Work Requirements

- *Change the participation rate calculation to take into account those who leave cash assistance for work as long as they remain employed.*

- *Reduce the number of hours of participation required in future years to 25.*
- *Permit states the option to limit the required hours of work to 20 hours a week for parents with a child under age six.*
- *Allow job search and job readiness to count as a work activity for up to 12 weeks.*

Contingency Fund for State Welfare Programs

- *Add $1 billion to the contingency fund.*
- *States can meet one of two triggers to access the contingency fund: the unemployment trigger in the conference agreement or a new trigger based on food stamps. Under the food stamp trigger, states would be eligible for the contingency fund if the number of children in their food stamp caseload increased by 10 percent over FY 1994 or FY 1995 levels.*
- *Eliminate the maintenance of effort requirement for the contingency fund.*

Performance Incentives

- *Provide cash bonuses of 5 percent annually to states that exceed specified employment-related performance target percentages. These bonuses would not be funded out of the block grant base.*
- *Maintain the bonus for states that reduce out-of-wedlock births contained in the conference agreement.*

Family Cap

- *Provide states with the option to restrict benefits to additional children born or conceived while the family is on welfare.*

Cap on Child Care Administrative Costs

- *Raise the administrative cap on child care funds to 5 percent.*

Hardship Exemption

- *Raise the exemption to the five-year lifetime limit on benefits to 20 percent of the caseload.*

Fair and Equitable Treatment

- *Add a state plan requirement that the state set forth objective criteria for the delivery of benefits and fair and equitable treatment.*

Child Protection Block Grant

- *Maintain the open-ended entitlement for foster care and adoption assistance.*
- *Provide a state option to take foster care, adoption assistance, and independent living funding as a capped entitlement with annual growth adjustment based on average national caseload growth rate. States may transfer any portion into a Child Protection Block Grant for activities such as early intervention, child abuse prevention, and family preservation. States must continue to maintain effort at 100 percent based on state spending in the year prior to accepting the capped entitlement. States must maintain protections and standards under current law. States can reverse their decision on a yearly basis.*
- *Create an entitlement Child Protection Block Grant of the remaining child welfare, family preservation, and child abuse prevention and treatment programs. These programs are not currently individual entitlements. States must maintain protections and standards under current law.*

Supplemental Security Income (SSI) for Children

- *Accept the provisions in the Senate-passed welfare bill.*
- *Change effective date for current and new applicants to January 1, 1998.*

Food Stamps

- *Accept the provision in the Senate-passed welfare bill that reauthorize the Food Stamp program in its current uncapped entitlement form.*
- *Modify the income deductions as outlined in the Senate-passed welfare bill.*

School Nutrition Block Grant Demonstration

- *Maintain the current entitlement for children.*
- *Schools would continue to receive per meal federal subsidies for all lunches and breakfasts under current eligibility criteria.*
- *Additional subsidies for schools with high proportions of free or reduced-price participants will be maintained.*
- *States would continue to receive the proportion of administrative costs based on current law but in a block grant.*

- *The state must develop a state-based plan that includes public input and describes how the state will operate the program.*
- *All other safeguards described in the conference report will be maintained.*

Provision for Territories

- *The National Governors' Association strongly encourages Congress to work with the Governors of Puerto Rico, Guam, and other territories towards allocating equitable federal funding for their welfare program.*

Earned Income Tax Credit

- *This is only an issue within the context of budget reconciliation.*
- *Limit the savings from revising the EITC to $10 billion.*
- *Add a state option to advance the EITC.*

Any changes in the above recommendations would nullify this endorsement.

Status: On hold
as per
Carol

February 9, 1996

MEMORANDUM TO THE PRESIDENT

FROM: Carol Rasco and Laura Tyson

SUBJECT: The Medicaid "Guarantee" and Issues Raised Surrounding the NGA Resolution

The National Governors' Association (NGA) Medicaid resolution passed on Tuesday has received a great deal of attention from the media, the Hill, and the health care provider and advocacy community. As a whole, the "right" has given this proposal widespread praise and raised concern only about the resolution's financing provisions. The "left" has been extremely critical of the proposal, charging that the provisions on benefits, eligibility and enforcement strip the Medicaid program of its "guarantee."

This memo briefly analyzes the NGA proposal as it relates to the Medicaid "guarantee." (While there are numerous issues related to the NGA resolution, including how it addresses quality standards, nursing home standard enforcement, and spousal impoverishment, we thought it was most important to focus on the fundamental structural issues first.) The memo also describes reactions from the Governors, the Hill and the interest groups.

BACKGROUND

From the beginning of the Medicaid debate, the Administration has consistently taken the position that it is possible to constrain program growth while still maintaining Medicaid's guarantee of coverage to the elderly, the disabled, children and pregnant women. Your latest proposal, incorporated into your balanced budget proposal, provides unprecedented flexibility to the Governors while maintaining the guarantee and saving $59 billion over seven years.

In response to you and the Republican Leadership, the Governors attempted to hammer out a compromise Medicaid position to further the budget negotiations. The Democratic Governors worked tirelessly to move the Republicans from their insistence on a block grant. The Republicans hesitantly agreed to a new funding formula that assures that federal dollars increase with enrollment increases during economic downturns.

The Democratic Governors rightly believe that their success in getting the Republicans to agree to a guaranteed funding stream represents a significant step forward. To achieve this victory, however, the outnumbered Democrats were apparently forced to give in on provisions that may well undermine other aspects of the federal guarantee.

FOUR PARTS OF THE GUARANTEE UNDER MEDICAID

There are four elements that make up the Medicaid guarantee: financing, eligibility, benefits, and enforcement. Since the debate has so focused on the "guarantee," it is likely that any compromise will be evaluated in this context. It is with this in mind that we review the NGA proposal, understanding that it is somewhat of a moving target subject to future clarification:

- **Financing Guarantee.** As mentioned above, the NGA proposal seems to achieve the financing guarantee by eliminating the block grant financing approach and substituting a so-called "umbrella" financing mechanism. This mechanism automatically provides additional federal support as economic downturns produce enrollment increases. Over the weekend, the Republicans agreed that the umbrella would cover the increased costs of optional as well as mandatory benefits and populations. This was an important breakthrough for the Democratic Governors.

  Interestingly, the Democratic Governors could only secure their recession protection provision if they agreed that states (like Michigan and Wisconsin) would be guaranteed their base allotment even if they chose to reduce coverage and spending. This is a significant departure from the historical Medicaid federal/state partnership, where federal financing support rises and falls with changes in coverage and state contributions. Additionally, the reduction of the required state match permitted by the NGA resolution (and inserted at the last second for Governor Pataki) could significantly decrease overall Medicaid spending. In fact, estimates from HHS indicate that the $85 billion in federal savings would translate into $290 billion in total spending reductions if all states matched at the minimum level. Lastly, the state may be able to substitute state tax dollars with revenue raised through provider taxes and donations. Since this is "borrowed" money, it would effectively reduce states' real spending on Medicaid. These provisions may have an impact on how CBO scores this proposal and, if it does, estimates of federal savings may decline.

- **Eligibility Guarantee.** The NGA proposal, with some notable exceptions, seems to retain most of the currently eligible populations. The NGA proposal repeals provisions of the 1990 law, signed by President Bush, that phases-in coverage for about three million poor children between the ages of 13 and 18. In addition, the proposal allows states to define disability, subject to federal approval, instead of requiring all states to meet a minimum federal definition, as is now the law. As currently drafted, this proposal has potential to result in widespread variation in eligibility determinations among states and, in the minds of some, could threaten the eligibility guarantee for people with disabilities.

- **Benefits (Coverage) Guarantee.** The NGA proposal leaves in place the current, nationally defined list of covered benefits for mandatory coverage groups. At first glance, one might conclude that the benefits guarantee was assured. However, the proposal seems to eliminate the current requirement that medically necessary benefits be provided and gives states unlimited discretion to determine the amount, duration and scope of services within benefit categories. It also seems to permit states to offer different benefits to different groups of beneficiaries or in different areas of the state. For example, under these provisions, states could limit the number of hospital days per year provided to children, even if a doctor decides that the care is medically necessary. States could also decide to cover five days of hospital services for disabled children but only two days for people with AIDS. Finally, they could chose to cover a particular benefit in some areas of the state, but not for example, on an Indian reservation. Although the resolution's language seems fairly clear, it is hard to believe that the Governors, particularly the Democrats, really intended to go this far on both mandatory and optional benefits.

  The proposal also redefines the treatment portion of EPSDT (Early and Periodic Screening, Diagnosis and Treatment) so that "states need not cover all Medicaid optional services for children." They have not yet resolved what treatment would be covered.

- **Enforcement of the Guarantee.** The NGA proposal eliminates a federal cause of action by Medicaid beneficiaries. Claims brought by individuals to enforce their rights under Medicaid would be limited to state courts and state law. Only the Secretary of Health and Human Services could bring an action in federal court on behalf of Medicaid beneficiaries.

  Attached is a more detailed description of the issues raised by the NGA proposal to eliminate the federal cause of action. The most significant problem is that, under this proposal, eligibility will vary between states because state courts will interpret the law differently. In addition, fewer remedies are available under state law than under federal law. The Secretary of Health and Human Services will be unable to litigate adequately on behalf of individuals because the significant new administrative burden that will be placed on the Department will likely cause delays and because the only remedy available to the Secretary is the withdrawal of funds (which will make matters worse for the recipients in the state).

REACTION TO THE NGA PROPOSAL

- **Governors Position:** As of this writing, the Governors are working with NGA staff to clarify the intent behind their Medicaid resolution and to write up the back-up details. Based on conversations that we have had with the Democratic Governors and their staffs, as well as NGA staff, it is clear that there are a great deal of unanswered questions regarding the intent and substance behind the resolution. NGA staff will

work with the 6 Medicaid-designated Governors (Romer, Chiles, Miller, Thompson, Engler and Leavitt) in the upcoming two weeks to try to further clarify this issue.

As with any hastily-drafted document, we have found that there were a number of provisions that Democratic Governors either did not know about or are uncomfortable with. For example, Governor Chiles was apparently unaware that the resolution provided for the reinstatement of provider taxes and donations. Governor Romer has told us he is uncomfortable with the disability language and the state matching reduction provision. And it seems that all the Democrats are uneasy with dropping the phase-in of the kids.

- **Hill Position:** Most Republicans, through the RNC and comments by the Speaker, are strongly embracing the NGA proposal. They claim that it is a virtual mirror-image of their Medigrant proposal. The RNC is literally passing out paper declaring "victory" and the House Republican staff are drafting up language that they are touting will incorporate the NGA recommendations. Republicans appear to want to push a bill out and dare us to criticize it. In fact, there are now rumors that they may attach their interpretation of the NGA resolution to the debt ceiling bill.

  The Republican reaction has fueled the suspicions of the Democrats and, with extremely few exceptions, there has been a generally negative reaction to the NGA proposal. The "base" Democrats, like Henry Waxman, have been extremely critical of the proposal and have charged that it offers no guarantee and may even be a block grant in sheep's clothing. Congressman Stenholm and Congressman Dingell were apparently quite disappointed in the lack of state accountability, the reduction in state match, and raised concerns about the adequacy of the legal enforcement provisions. They argue that it is not unreasonable to expect a federally-enforced, national eligibility and standards floor in return for a large federal investment. To back up their point, their staffs have been circulating a chart that shows how the coalition proposal would provide $840 billion to state Medicaid programs, at the same time the states are trying to significantly decrease their Medicaid expenditures.

  On the Senate side, Senator Breaux distanced himself a bit and called for hearings so he could fully understand the implications of the proposal. On the moderate Republican side of the aisle, Senator Chafee raised significant concerns about the proposal and suggested it appeared to be something akin to a federal maintenance of effort with little to no accountability. Clearly, however, both Senators' Breaux and Chafee want to keep the Medicaid discussions alive for the sake of a budget deal and will continue to avoid being overly critical in public.

- **Interest Groups:** We have received only negative reactions from the groups, including the American Hospital Association, the American Academy of Pediatrics, the Chidren's Defense Fund, the Alzheimers' Association and the Consortium for Citizens with Disabilities. The groups, particularly those who represent children and the

disabled, feel that enactment of a proposal like the Governors' resolution would significantly increase the number of uninsured and renege on what they believe is a jointly-held commitment with the Administration to expand, or at least not reduce, the number of insured. The AIDS groups are particularly concerned because they greatly fear a state-by-state definition of disability.

The Office of Public Liaison believes that your strong stand on Medicaid has built bridges that extend far beyond the traditional Medicaid constituencies. Public Liaison believes that significant changes from these groups' perception of our past Medicaid position may damage this strong alliance and may be difficult to repair.

CONCLUSION

This morning, Carol, Intergovernmental Affairs and Legislative Affairs met with Ray Scheppach to discuss the NGA Welfare and Medicaid resolutions and the process to move forward. We will be following up this meeting with a briefing by NGA for White House, OMB, and Department staff to seek clarification of the intent behind the resolution's language. We will keep you informed of these discussions and would be happy to meet with you to discuss any of these issues further.

PRIVATE RIGHT OF ACTION

A Federal Private Right of Action is Important to Maintaining the Guarantee. The NGA proposal (and the Congressional conference report) have eliminated any federal cause of action by Medicaid beneficiaries. Claims brought by individuals to enforce their rights under Medicaid would be limited to state courts and state law. Only the Secretary of Health and Human Services could bring an action in federal court on behalf of Medicaid beneficiaries.

Both Republican and Democratic Governors want to reduce the number of Medicaid cases filed. In addition, they do not want court decisions from federal courts in other states to have any effect on how they run their Medicaid programs. While, under their proposal, cases heard in other states' courts would no longer have precedential value, it is not likely that fewer cases would be filed; they would simply be filed in state court.

Since the inception of the Medicaid program, a person eligible for Medicaid has had both a guarantee of access to certain services and the right to enforce this commitment. We believe that preservation of the *federal cause of action* for individuals to enforce Medicaid eligibility assures this guarantee.

- **Consistent Interpretation.** Those aspects of the Medicaid program that are common to all states -- like eligibility -- should be consistently interpreted and administered. The basic guarantee of who is covered should be uniform across the country; without a federal cause of action, it will not be. For example, under current interpretations, a woman who has a miscarriage is considered "pregnant" and therefore eligible for services for complications arising from the miscarriage. Under the NGA proposal, if a state improperly denied those services, she could no longer go to federal court to enforce her right. The issue would instead be litigated in fifty states; in some states, she would receive care while in others she might not.

- **Significant Limitation of Remedies.** Most state laws establish higher hurdles for plaintiffs and provide less relief than federal law. Under most state statutes that allow courts to review administrative actions, there is no *de novo* review (the record before the court is limited to information considered by the agency) and relief is granted only when a claimant can show that the agency action was arbitrary and capricious, not merely wrong. In addition, most state laws do not allow beneficiaries to recover attorneys' fees, making it more difficult for them to afford legal counsel.

The NGA proposal (and the conference report) maintains a right to sue in federal court through the Secretary of Health and Human Services. However, this poses three problems: (1) the Secretary can sue only if a state is in "substantial noncompliance" -- a much higher standard than exists today; (2) the Health Care Financing Administration will become involved in greater numbers of lawsuits and face significant new administrative burdens; and (3) it is unclear what remedies are available. If the only remedy that the Secretary can seek is the withdrawal of federal funds, this would cause significant harm to the beneficiaries that the Secretary is supposed to represent (and might even make this remedy unusable).

- **Departure from Other Federal Statutes.** Eliminating the federal cause of action would single out Medicaid as the one federal statute that could not be enforced in federal court by its intended beneficiaries. Such an unprecedented step would be seen as a signal of second-class status and would set off a massive reaction from beneficiary groups and their allies.

- **Elimination of Remedies under Civil Rights Law.** While it is not clear that the NGA intends to go this far, the conference agreement precludes the right to enforce civil rights laws. Protection against discrimination in state programs has been established under the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Americans with Disabilities Act of 1990. If this is what the Governors intended, the civil rights community is likely to be very concerned.

Your Proposal Increases Flexibility While Maintaining the Guarantee. Under your plan, you eliminate causes of action by providers over payment rates by repealing the Boren Amendment. This removes state officials' greatest source of concern over litigation and the most frequent basis for cases filed in federal court.

Your proposal maintains current law on private enforcement of beneficiary rights under Medicaid. You could take steps to address the Governors' concerns by separating eligibility claims from some benefits claims. On eligibility issues, which are most closely linked to the concept of a guarantee, individuals would retain their current right to bring suits in federal court. However, individuals would be required to exhaust a state administrative process before filing in court. Most claims involving benefits would be heard only in state courts. A benefits claim could be heard in federal court only if there were an allegation that the state plan or a contract between the state and a provider violated a provision of federal law.

AS ADOPTED 2/6/96

WELFARE REFORM

The Governors believe that our nation's leaders are now faced with an historic opportunity and enormous responsibility to restructure the federal-state partnership in providing services to needy families. We, the nation's Governors, are committed to achieving meaningful welfare reform now. The continuation of the current welfare system is unacceptable. Congress has made significant efforts toward making changes that will allow states the flexibility to build upon the lessons states have learned through a decade of experimentation in welfare reform. The President has also voiced his commitment to achieving welfare reform and has continued to grant waivers to states to facilitate experimentation. We urge Congress and the President to join with the nation's Governors in support of a bipartisan agreement that will reallocate responsibilities among levels of government, maximize state flexibility, and restructure welfare as a transitional program with a focus on work and self-sufficiency. We believe, however, that children must be protected throughout the restructuring process.

State experience in welfare reform has demonstrated that three elements are particularly crucial for successful welfare reform: welfare must be temporary and linked to work; both parents must support their children; and child care must be available to enable low-income families with children to work. Additionally, we believe that block grants should be entitlements to states and enable states broad discretion in the design of their own programs based upon mutually agreed upon goals. We also believe that states should have access to supplementary matching federal funds for their cash assistance programs during periods of economic downturn. The conference agreement on HR 4, the Personal Responsibility and Work Opportunity Act, incorporated many of these elements, but we also believe further changes must be made to create a sound and workable welfare reform bill. The National Governors' Association would support the HR 4 conference agreement with the changes listed below. The absence of recommendations on the restriction of benefits for aliens should not be interpreted as support for or opposition to the alien provisions of the HR 4 conference agreement:

Core Employment Support Services

above H.R. 4 Conf.

- *Add $4 billion in funding to the general entitlement for child care. This funding would not require a state match.*

Flexibility in Meeting Work Requirements

- *Change the participation rate calculation to take into account those who leave cash assistance for work as long as they remain employed.*

- *Reduce the number of hours of participation required in future years to 25.*
- *Permit states the option to limit the required hours of work to 20 hours a week for parents with a child under age six.*
- *Allow job search and job readiness to count as a work activity for up to 12 weeks.* Conf. agreement limited to 4 weeks.

Contingency Fund for State Welfare Programs

- *Add $1 billion to the contingency fund.*
- *States can meet one of two triggers to access the contingency fund: the unemployment trigger in the conference agreement or a new trigger based on food stamps. Under the food stamp trigger, states would be eligible for the contingency fund if the number of children in their food stamp caseload increased by 10 percent over FY 1994 or FY 1995 levels.*
- *Eliminate the maintenance of effort requirement for the contingency fund.*

felt 75% MOE for overall program was sufficient. Senate bill 80%; also concerned about ~~flexible~~ transferability

Performance Incentives

- *Provide cash bonuses of 5 percent annually to states that exceed specified employment-related performance target percentages. These bonuses would not be funded out of the block grant base.* fleshing out mechanics.
- *Maintain the bonus for states that reduce out-of-wedlock births contained in the conference agreement.*

Family Cap

- *Provide states with the option to restrict benefits to additional children born or conceived while the family is on welfare.* Want it to be opt-in, not opt out

Cap on Child Care Administrative Costs

- *Raise the administrative cap on child care funds to 5 percent.* 3% in HR4

Hardship Exemption

- *Raise the exemption to the five-year lifetime limit on benefits to 20 percent of the caseload.*

Fair and Equitable Treatment

- *Add a state plan requirement that the state set forth objective criteria for the delivery of benefits and fair and equitable treatment.*

Child Protection Block Grant

- *Maintain the open-ended entitlement for foster care and adoption assistance.*
- *Provide a state option to take foster care, adoption assistance, and independent living funding as a capped entitlement with annual growth adjustment based on average national caseload growth rate. States may transfer any portion into a Child Protection Block Grant for activities such as early intervention, child abuse prevention, and family preservation. States must continue to maintain effort at 100 percent based on state spending in the year prior to accepting the capped entitlement. States must maintain protections and standards under current law. States can reverse their decision on a yearly basis.*
- *Create an entitlement Child Protection Block Grant of the remaining child welfare, family preservation, and child abuse prevention and treatment programs. These programs are not currently individual entitlements. States must maintain protections and standards under current law.*

Supplemental Security Income (SSI) for Children

- *Accept the provisions in the Senate-passed welfare bill.*
- *Change effective date for current and new applicants to January 1, 1998.*

Food Stamps

- *Accept the provision in the Senate-passed welfare bill that reauthorize the Food Stamp program in its current uncapped entitlement form.* Strike adjustable food-stamp cap from H.R. 4
- *Modify the income deductions as outlined in the Senate-passed welfare bill.* - standard deduction/excess shelter cap.

School Nutrition Block Grant Demonstration

- *Maintain the current entitlement for children.*
- *Schools would continue to receive per meal federal subsidies for all lunches and breakfasts under current eligibility criteria.*
- *Additional subsidies for schools with high proportions of free or reduced-price participants will be maintained.*
- *States would continue to receive the proportion of administrative costs based on current law but in a block grant.*

- *The state must develop a state-based plan that includes public input and describes how the state will operate the program.*
- *All other safeguards described in the conference report will be maintained.*

Provision for Territories

- *The National Governors' Association strongly encourages Congress to work with the Governors of Puerto Rico, Guam, and other territories towards allocating equitable federal funding for their welfare program.*

Earned Income Tax Credit

- *This is only an issue within the context of budget reconciliation.*
- *Limit the savings from revising the EITC to $10 billion.*
- *Add a state option to advance the EITC.*

($)

Any changes in the above recommendations would nullify this endorsement.

immigrants and elderly —
No position

AS ADOPTED 2/6/96

RESTRUCTURING MEDICAID

PREAMBLE

For most of the last decade, health care expenditures in the United States have far exceeded overall growth in the U.S. economy. And while medical inflation is declining, public and privately funded health care costs continue to limit the long term economic growth of the nation. For states, the primary impact of health care costs on state budgets has been in the Medicaid program. Annual Medicaid growth over the last decade has been well in excess of 10 percent, and in half of those years annual growth approached 20 percent. Determining the causes of such unbridled growth is difficult. However, major contributing factors include: congressional expansions in the program, court decisions limiting the states in their ability to control costs, policy decisions by states maximizing federal financing of previously state-funded health care programs, and changing demographics.

Restricting the growth of Medicaid is no easy task. Medicaid is the primary source of health care for low income pregnant women and children, persons with disabilities, and the elderly. This year, states and the federal government combined will spend more than $140 billion in this program providing care to more than 28 million people. The challenge for the nation, and Governors as the stewards of this program, is to redesign Medicaid so that health care costs are more effectively contained and those that truly need health care coverage continue to gain access to that care while giving states the needed flexibility to maximize the use of these limited health care dollars to most effectively meet the needs of low income individuals.

THE NEW PROGRAM

Within the balanced budget debate, a number of alternatives to the existing Medicaid program have been proposed. The following outlines the nation's Governors proposal that blends the best aspects of the current program with congressional and administration alternatives toward achieving a streamlined and state-flexible health care system that guarantees health care to our most needy citizens.

Program Goals. *The program is guided by four primary goals.*

1. *The basic health care needs of the nation's most vulnerable populations must be guaranteed.*
2. *The growth in health care expenditures must be brought under control.*

3. *States must have maximum flexibility in the design and implementation of cost-effective systems of care.*

4. *States must be protected from unanticipated program costs resulting from economic fluctuations in the business cycle, changing demographics, and natural disasters.*

Not in here —

Eligibility. *Coverage remains* *__guaranteed__* *for:*

Umbrella pop'ns + elderly & disabled

- *Pregnant women to 133 percent of poverty.*
- *Children to age 6 to 133 percent of poverty.*
- *Children age 6 through 12 to 100 percent of poverty.* < current law phases up to 18. would be optional
- *The elderly who meet SSI income and resource standards.* C.L.
- *Persons with disabilities as defined by the state in their state plan. States will have a funds set-aside requirement equal to* *__90 percent of the percentage__* *of total medical assistance funds paid* *__in FY 1995 for persons with disabilities__*. (As a % of total state spending
- *Medicare cost sharing for Qualified Medicare Beneficiaries.*
- *Either:*
  - *Individuals or families who meet current AFDC income and resource standards (states with income standards higher than the national average may lower those standards to the national average); or*
  - *States can run a single eligibility system for individuals who are eligible for a new welfare program as defined by the state.* { Note: new criteria would assume cost-neutrality — some cap required — State option to do work transition implicit (cap to 275%)

Consistent with the statute, adequacy of the state plan will be determined by the Secretary of HHS. The Secretary should have a time certain to act.

Coverage remains optional for:

- *All other optional groups in the current Medicaid program.*
- *Other individuals or families as defined by the state but below 275 percent of poverty.*
  — No umbrella cov'g for this pop'n. —

Benefits

Like current law — can limit duration and scope of care (eg. days of hosp.) No closure on cost-sharing

- *The following benefits remain guaranteed for the guaranteed populations only.*
  - *Inpatient and outpatient hospital services, physician services, prenatal care, nursing facility services, home health care, family planning services and supplies, laboratory and x-ray services, pediatric and family nurse practitioner services, nurse midwife services, and Early and Periodic Screening, Diagnosis and Treatment Services. (The*

"T" in EPSDT is redefined so that a state need not cover all Medicaid optional services for children.) FQHCs, RHCs. OBRA '89 — optional EPSDT benefits that are med. necessary not guaranteed

- *At a minimum, all other benefits defined as optional under the current Medicaid program would remain optional and long term care options significantly broadened.* more durable coverage
- *States have complete flexibility in defining amount, duration, and scope of services.*

Private Right of Action What you see was what was discussed

- *The following are the only rights of action for individuals or classes for eligibility. All of these features will be designed to prevent states from having to defend against an individual's suit on benefits in federal court.*
  - *Before taking action in the state courts, the individual must follow a state administrative appeals process.*
  - *States must offer individuals or classes a private right of action in the state courts as a condition of participation in the program.*
  - *Following action in the state courts, an individual or class could petition the U.S. Supreme Court.*
  - *Independent of any state judicial remedy, the Secretary of HHS could bring action in the federal courts on behalf of individuals or classes but not for providers or health plans.*
- *There should be no private right of action for providers or health plans.* Can take action under contractual agreements

Service Delivery

- *States must be able to use all available health care delivery systems for these populations without any special permission from the federal government.* NO waivers for managed care
- *States must not have federally imposed limits on the number of beneficiaries who may be enrolled in any network.* get rid of 75-25 rule

Provider Standards and Reimbursements

- *States must have complete authority to set all health plan and provider reimbursement rates without interference from the federal government or threat of legal action of the provider or plan.* ridd Boren amendment
- *The Boren amendment and other Boren-like statutory provisions must be repealed.*
- *"One hundred percent reasonable cost reimbursement" must be phased out over a two year period for federally qualified health centers and rural health clinics.*

State-wide comparability - discrepancies between mandatory and optional services touched on issue of "medical necessity"

Carl - vague on benefits falling btw no P.R.A. or P.R.A. on state courts

Intend to preclude action under Sec. 1983 - Remedies in state ct would be state/not fed.

- *States must be able to set their own health plan and provider qualifications standards and be unburdened from any federal minimum qualification standards such as those currently set for obstetricians and pediatricians.*

- *For the purpose of the Qualified Medicare Beneficiaries program, the states may pay the Medicaid rate in lieu of the Medicare rate.*

Nursing Home Reforms

- *States will abide by the OBRA '87 standards for nursing homes.*
- *States will have the flexibility to determine enforcement strategies for nursing home standards and will include them in their state plan.*

Plan Administration

- *States must be unburdened from the heavy hand of oversight by the Health Care Financing Administration.*
- *The plan and plan amendment process must be streamlined to remove HCFA micromanagement of state programs.*
- *Oversight of state activities by the Secretary must be streamlined to assure that federal intervention occurs only when a state fails to comply substantially with federal statutes or its own plan.*
- *HCFA can only impose disallowances that are commensurate with the size of the violation.*
- *This program should be written under a new title of the Social Security Act.*

Provider Taxes and Donations

- *Current provider tax and donation restrictions in federal statutes would be repealed.*
- *Current and pending state disputes with HHS over provider taxes would be discontinued.*

Financing. *Each state will have a maximum federal allocation that provides the state with the financial capacity to cover Medicaid enrollees. The allocation is available only if the state puts up a matching percentage (methodology to be defined). The allocation is the sum of four factors: base allocation, growth, special grants (special grants have no state matching requirement) and an insurance umbrella, described as follows:*

1. *Base. In determining base expenditures, a state may choose from the following—1993 expenditures, 1994 expenditures, or 1995 expenditures. Some states may require special provisions to correct for anomalies in their base year expenditures.*

2. *Growth. This is a formula that accounts for estimated changes in the state's caseload (both overall growth and case mix) and an inflation factor. The details of this formula are to be determined. This formula is calculated each year for the following year based on the best available data.*

3. *Special Grants. Special grant funds will be made available for certain states to cover illegal aliens and for certain states to assist Indian Health Service and related facilities in the provision of health care to Native Americans. States will have no matching requirement to gain access to these federal funds.*

4. *The Insurance Umbrella. This insurance umbrella is designed to ensure that states will get access to additional funds for certain populations if, because of unanticipated consequences, the growth factor fails to accurately estimate the growth in the population. Funds are guaranteed on a per-beneficiary basis for those described below who were not included in the estimates of the base and the growth. These funds are an entitlement to states and not subject to annual appropriations.*

   Populations and Benefits. Access to the insurance umbrella is available to cover the cost of care for both guaranteed and optional benefits. The umbrella covers all guaranteed populations and the optional portion of two groups—persons with disabilities and the elderly.

   Access to the Insurance Umbrella. The insurance umbrella is available to a state only after the following conditions are met.

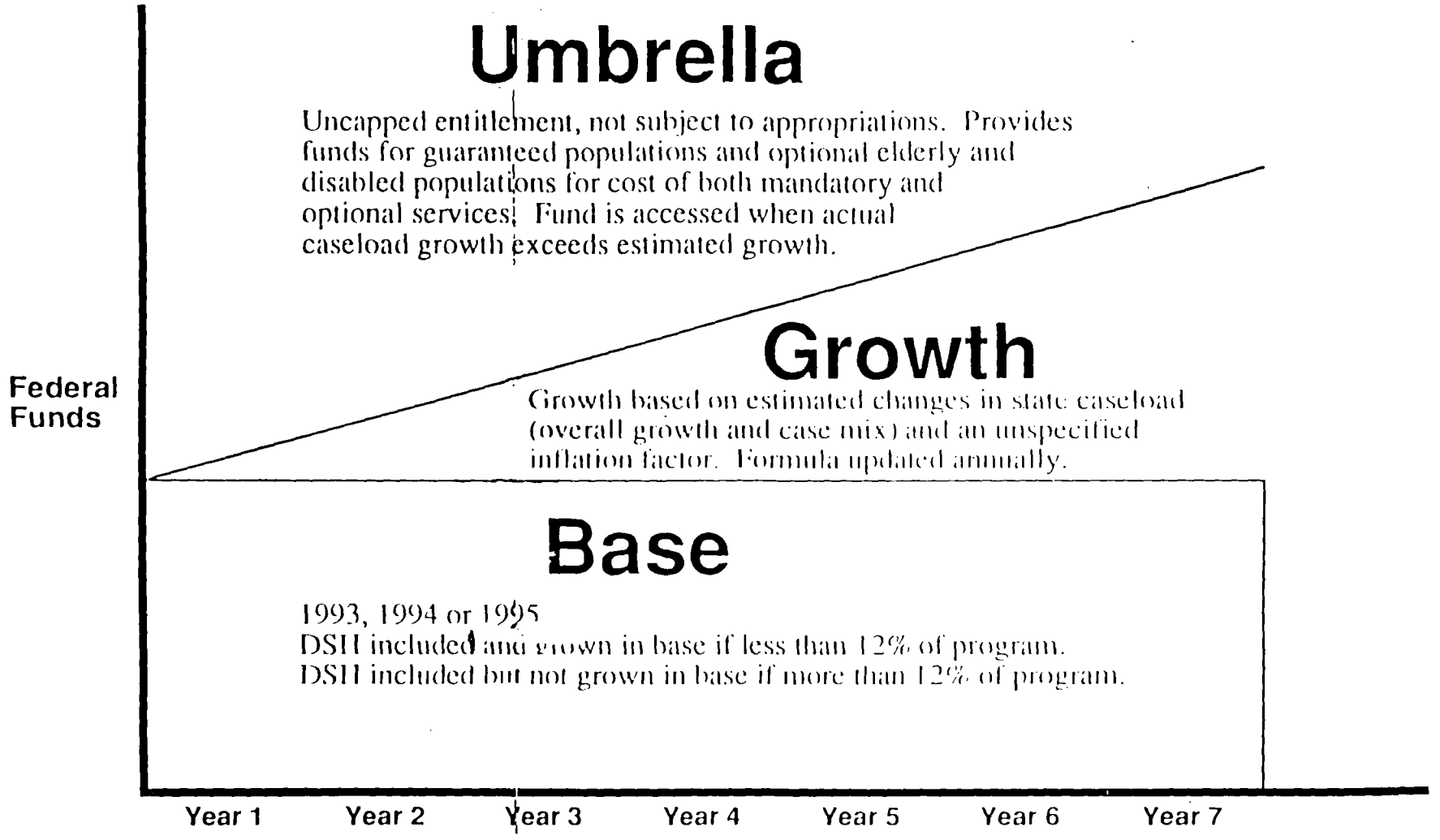
   1. *States must have used up other available base and growth funds that had not been used because the estimated population in the growth and base was greater than the actual population served.*
   2. *Appropriate provisions will be established to ensure that states do not have access to the umbrella funds unless there is a demonstrable need.*

5. *Matching Percentage. With the exception of the special grants, states must share in the cost of the program. A state's matching contribution in the program will not exceed 40 percent.*

6. *Disproportionate Share Hospital Program. Current disproportionate share hospital spending will be included in the base. DSH funds must be spent on health care for*

low income people. A state will not receive growth on DSH if these funds constitute more than 12 percent of total program expenditures.

Provision for Territories. *The National Governors' Association strongly encourages Congress to work with the Governors of Puerto Rico, Guam, and other territories towards allocating equitable federal funding for their medical assistance programs.*


Umbrella
Uncapped entitlement, not subject to appropriations. Provides funds for guaranteed populations and optional elderly and disabled populations for cost of both mandatory and optional services. Fund is accessed when actual caseload growth exceeds estimated growth.
Growth
Growth based on estimated changes in state caseload (overall growth and case mix) and an unspecified inflation factor. Formula updated annually.
Base
1993, 1994 or 1995
DSH included and grown in base if less than 12% of program.
DSH included but not grown in base if more than 12% of program.
Federal Funds
Year 1
Year 2
Year 3
Year 4
Year 5
Year 6
Year 7

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Feb-1996 04:28pm

TO: Carol H. Rasco

FROM: Bruce N. Reed
Domestic Policy Council

SUBJECT: One other thing

One other thought on the NGA and WR -- the NGA may be thinking about fleshing out the details of their agreement on WR (as I guess they are doing on Medicaid), and recirculating it for full NGA approval. We might want to discourage that on WR. It's not really necessary -- their agreement is quite clear on the amendments they want to the conference report. The important thing is to get legislation drafted, not to reopen negotiations between Carper and Engler.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Feb-1996 05:24pm

TO: Bruce N. Reed

FROM: Carol H. Rasco
Domestic Policy Council

SUBJECT: RE: One other thing

I will certainly stress this although at this point I don't foresee from discussions with Ray and others that they are planning to circulate further detail to all 50 any time soon....once they get something on the books like they just voted they usually avoid like the plague having to recirculate....here's hoping that MO is "stuck to"....!!!!!!!!!!!!!!!!!

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Feb-1996 03:43pm

TO: Carol H. Rasco

FROM: Bruce N. Reed
Domestic Policy Council

SUBJECT: NGA mtg w/Ray

The main point to make with Ray on WR is that NGA needs to do everything they can to put this on a bipartisan footing in the House and Senate. The more they do to ensure that the drafting and the support comes from a bipartisan, center-out coalition, the easier it will be for them to defeat nutty amendments from the right and obstacles from the left. If the NGA agreement has bipartisan legs, it will also be much easier to persuade Dole and Gingrich to stick with it.

It sounds like Ray is already off and running in this direction. But you should reinforce with him that NGA should turn this over to the Breaux-Chafee group in the Senate, and some combination of Shaw and the Blue Dogs in the House. The Administration (OMB, HHS, or just WH) is available as a resource on whatever basis NGA wants, but we'll try not to get in the way.

You can give him that three-pager of talking pts on the pros and cons. Our major concerns are child welfare, MOE, and the food stamp block grant option -- but we recognize those are problems the Hill will have to fix, not NGA.

You might also suggest to him that at an appropriate moment, if he thinks he can get away with it, he might want to reiterate NGA's previously stated concerns about cuts in benefits for legal immigrants -- either in an official letter from Ray or informal conversations.

Thanks. I heard there is an NGA mtg with Hill staff tomorrow; we'll try to send Rich or somebody.

AS ADOPTED 2/6/96

WELFARE REFORM

The Governors believe that our nation's leaders are now faced with an historic opportunity and enormous responsibility to restructure the federal-state partnership in providing services to needy families. We, the nation's Governors, are committed to achieving meaningful welfare reform now. The continuation of the current welfare system is unacceptable. Congress has made significant efforts toward making changes that will allow states the flexibility to build upon the lessons states have learned through a decade of experimentation in welfare reform. The President has also voiced his commitment to achieving welfare reform and has continued to grant waivers to states to facilitate experimentation. We urge Congress and the President to join with the nation's Governors in support of a bipartisan agreement that will reallocate responsibilities among levels of government, maximize state flexibility, and restructure welfare as a transitional program with a focus on work and self-sufficiency. We believe, however, that children must be protected throughout the restructuring process.

State experience in welfare reform has demonstrated that three elements are particularly crucial for successful welfare reform: welfare must be temporary and linked to work; both parents must support their children; and child care must be available to enable low-income families with children to work. Additionally, we believe that block grants should be entitlements to states and enable states broad discretion in the design of their own programs based upon mutually agreed upon goals. We also believe that states should have access to supplementary matching federal funds for their cash assistance programs during periods of economic downturn. The conference agreement on HR 4, the Personal Responsibility and Work Opportunity Act, incorporated many of these elements, but we also believe further changes must be made to create a sound and workable welfare reform bill. The National Governors' Association would support the HR 4 conference agreement with the changes listed below. The absence of recommendations on the restriction of benefits for aliens should not be interpreted as support for or opposition to the alien provisions of the HR 4 conference agreement:

Core Employment Support Services

- *Add $4 billion in funding to the general entitlement for child care. This funding would not require a state match.*

Flexibility in Meeting Work Requirements

- *Change the participation rate calculation to take into account those who leave cash assistance for work as long as they remain employed.*

- *Reduce the number of hours of participation required in future years to 25.*
- *Permit states the option to limit the required hours of work to 20 hours a week for parents with a child under age six.* from Senate bill
- *Allow job search and job readiness to count as a work activity for up to 12 weeks.*

Contingency Fund for State Welfare Programs

- *Add $1 billion to the contingency fund.* (total $2 B)
- *States can meet one of two triggers to access the contingency fund: the unemployment trigger in the conference agreement or a new trigger based on food stamps. Under the food stamp trigger, states would be eligible for the contingency fund if the number of children in their food stamp caseload increased by 10 percent over FY 1994 or FY 1995 levels.*

6.5% unemp. = 10% in food stamps - any quarter

- *Eliminate the maintenance of effort requirement for the contingency fund.*

Funds provided - Matching basis

Performance Incentives

- *Provide cash bonuses of 5 percent annually to states that exceed specified employment-related performance target percentages. These bonuses would not be funded out of the block grant base.*
- *Maintain the bonus for states that reduce out-of-wedlock births contained in the conference agreement.*

Family Cap

- *Provide states with the option to restrict benefits to additional children born or conceived while the family is on welfare.*

Cap on Child Care Administrative Costs

- *Raise the administrative cap on child care funds to 5 percent.*

Hardship Exemption

- *Raise the exemption to the five-year lifetime limit on benefits to 20 percent of the caseload.*

Fair and Equitable Treatment

- *Add a state plan requirement that the state set forth objective criteria for the delivery of benefits and fair and equitable treatment.*

Child Protection Block Grant

take out

- *Maintain the open-ended entitlement for foster care and adoption assistance.*
- *Provide a state option to take foster care, adoption assistance, and independent living funding as a capped entitlement with annual growth adjustment based on average national caseload growth rate. States may transfer any portion into a Child Protection Block Grant for activities such as early intervention, child abuse prevention, and family preservation. States must continue to maintain effort at 100 percent based on state spending in the year prior to accepting the capped entitlement. States must maintain protections and standards under current law. States can reverse their decision on a yearly basis.* Jane – child still has an entitlement
  Elaine – favors family preservation / removes barrier to current law.
- *Create an entitlement Child Protection Block Grant of the remaining child welfare, family preservation, and child abuse prevention and treatment programs. These programs are not currently individual entitlements. States must maintain protections and standards under current law.*

Supplemental Security Income (SSI) for Children

- *Accept the provisions in the Senate-passed welfare bill.*
- *Change effective date for current and new applicants to January 1, 1998.*

Food Stamps

- *Accept the provision in the Senate-passed welfare bill that reauthorize the Food Stamp program in its current uncapped entitlement form.*
- *Modify the income deductions as outlined in the Senate-passed welfare bill.*

School Nutrition Block Grant Demonstration

• Is a state option for block-granting; state-wide EBT; low (60%) base

7 donor states

- *Maintain the current entitlement for children.*
- *Schools would continue to receive per meal federal subsidies for all lunches and breakfasts under current eligibility criteria.*
- *Additional subsidies for schools with high proportions of free or reduced-price participants will be maintained.*
- *States would continue to receive the proportion of administrative costs based on current law but in a block grant.*

- *The state must develop a state-based plan that includes public input and describes how the state will operate the program.*
- *All other safeguards described in the conference report will be maintained.*

Provision for Territories

- *The National Governors' Association strongly encourages Congress to work with the Governors of Puerto Rico, Guam, and other territories towards allocating equitable federal funding for their welfare program.*

Earned Income Tax Credit

- *This is only an issue within the context of budget reconciliation.*
- *Limit the savings from revising the EITC to $10 billion.*
- *Add a state option to advance the EITC.*

Any changes in the above recommendations would nullify this endorsement.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Feb-1996 03:30pm

TO: Jeremy D. Benami
TO: Elizabeth E. Drye

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: See Carol quote

MEDICAID: CLINTON FACES "POLITICALLY DIFFICULT" CHOICES

President Clinton "came under mounting pressure [2/7] from within his own party to keep his distance" from the Medicaid and welfare reform plans approved by the nation's governors 2/6 at the winter meeting of the National Governors' Association (NGA), L.A. TIMES reports (see AHL 2/7). Many Democrats, who were "initially guarded" about the proposals, argued that Clinton's support "would hand Republicans a big victory, while undoing basic Democratic legislation." Rep. Henry Waxman (D-CA) said the governors' plan "ends the federal entitlement and replaces it with a block grant. That's the proposal we fought against and the one that the president objected to. I don't see how he can support it now" (Richter/Hook/Rosenblatt/Cooper, 2/8).

MIXED SIGNALS: WASH. POST reports that Clinton is "oblige[d] ... to make a politically difficult choice" between sticking with Democratic governors who signed on to the plans and congressional Democrats who are voicing their opposition. The administration so far has been "noncommittal." White House Press Secretary Mike McCurry said, "In some respects the governors' approach is better" than what Congress has proposed and "in some cases it's worse" (Havemann/Vobejda/Dewar, 2/8). One administration official said Clinton will only support Medicaid reform "if it remains a national program with standards that apply uniformly." But White House domestic policy adviser Carol Rasco called the governors' plan a "very positive step" and said that "such proposals ... often emerge as initial blueprints rather than 'something that is complete'" (Richter/Hook/Rosenblatt/ Cooper, 2/8).

OMNIBUS OR BUST?: Democrats "involved in drafting" the Medicaid and welfare plans said that "they thought they could get the Republicans to compromise on issues of major concern to Clinton and that ultimately they were involved in a grand bargain that encompassed both welfare and an overhaul of" Medicaid (Havemann/Vobejda/Dewar, 2/8). TIMES notes that Republicans are left with a "tactical decision" of their own, because the party is split on whether to separate Medicaid and welfare reforms from the overall budget bill. House Majority Whip Tom Delay (TX) said

"one possible vehicle for a welfare-Medicaid reform package would be legislation to raise the government's debt ceiling" that is expected to be passed by 3/1 (Richter/Hook/Rosenblatt/Cooper, 2/8).

MOVING FAST ON MEDICAID: The House is "likely to move quickly" on Medicaid reform when it returns from recess, BUFFALO NEWS reports. According to House Commerce Committee Chair Tom Bliley (VA), the governors' plan "is already in the process of being drafted in legislative form for consideration." The bill will likely add coverage for illegal aliens and "impoverishment protection" for spouses and children with relatives in nursing homes (Turner, 2/8). House leaders also said they will "summon" lawmakers back to Washington to work on the welfare reform bill. House Speaker Newt Gingrich (GA) predicted the House would pass "80 to 90 percent" of the governors' welfare proposal by "sometime in early March" (Havemann/Vobejda/Dewar, 2/8).

GEARING UP THE OPPOSITION: NPR's Silberner, on the NGA compromise: "Various advocacy groups are likely to weigh in, asking for more money and guaranteed coverage. The governors warned that major changes could upset the delicate compromise proposal, but given the $158 billion cost of the program, a big fight is likely."

WEIGHING IN FOR: Michigan Medicaid Director Vern Smith said in support of the NGA plan, "You're going to find Medicaid programs going out, doing competitive purchasing, saving money and actually serving more people because we're able to run the program more effectively" ("All Things Considered," 2/7). TIMES notes that many congressional Republicans "were delighted that the governors embraced some of the central elements" of their plans. Delay said, "I'm willing to go with this as a giant step forward" (Richter/Hook/Rosenblatt/ Cooper, 2/8).

AND AGAINST: Kaiser Commission on the Future of Medicaid's Diane Rowland said that the governors' plan would provide assistance to fewer people than the current program does. She noted, "This proposal does not speak to children between the ages of 12 and 18. Under the current Medicaid law, by the year 2002, all children under poverty up to age 18 would have to be covered. This bill ends the guarantee at age 12, which means many adolescent children could be left uncovered by Medicaid" ("All Things Considered," 2/7).

MORE OPPOSITION: TIMES reports that another problem that could "undermine" the proposal is "its cost." The NGA plan would "clearly absorb" much of the GOP's "hoped for" Medicaid savings, meaning that "the GOP's target of $100 billion in savings from welfare likely would dwindle far below that figure." Sen. Rick Santorum (R-PA) said, "There's a lot of concern among some of our members that the governors went a little too far. In Medicaid, they gave away the store. In welfare, the structural changes are still there but they are spending $10 billion more ... in questionable areas" (Richter/Hook/Rosenblatt/Cooper, 2/8).

POLITICAL DELAY: A White House official said 2/7 that the president and GOP leaders are "unlikely" to resume budget negotiations this month. The presidential primary/caucus schedule this month means "there will be little time for budget

negotiations," according to McCurry (BLOOMBERG/INVESTOR'S BUSINESS DAILY, 2/8).