DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Deputy Assistant
Secretary for Legislation
(Congressional Liaison)

Washington, D.C. 20201

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H.R.2015

Balanced Budget Act of 1997 (Passed by the House)

SEC. 3472. ADDITIONAL FUNDING FOR STATE EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT- There are available for allotments under this section for each of the 5 fiscal years (beginning with fiscal year 1998) $20,000,000 for payments to certain States under this section.

(b) STATE ALLOTMENT AMOUNT-

(1) IN GENERAL- The Secretary of Health and Human Services shall compute an allotment for each fiscal year beginning with fiscal year 1998 and ending with fiscal year 2002 for each of the 12 States with the highest number of undocumented aliens. The amount of such allotment for each such State for a fiscal year shall bear the same ratio to the total amount available for allotments under subsection (a) for the fiscal year as the ratio of the number of undocumented aliens in the State in the fiscal year bears to the total of such numbers for all such States for such fiscal year. The amount of allotment to a State provided under this paragraph for a fiscal year that is not paid out under subsection (c) shall be available for payment during the subsequent fiscal year.

(2) DETERMINATION- For purposes of paragraph (1), the number of undocumented aliens in a State under this section shall be determined based on estimates of the resident illegal alien population residing in each State prepared by the Statistics Division of the Immigration and Naturalization Service as of October 1992 (or as of such later date if such date is at least 1 year before the beginning of the fiscal year involved),

(c) USE OF FUNDS- From the allotments made under subsection (b), the Secretary shall pay to each State amounts the State demonstrates were paid by the State (or by a political subdivision of the State) for emergency health services furnished to undocumented aliens.

(d) STATE DEFINED- For purposes of this section, the term `State' includes the District of Columbia.

(e) STATE ENTITLEMENT- This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under subsection (c).

OFFICE OF THE DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

FACSIMILE TRANSMISSION SHEET

TO: Ingrid Schroeder 395-3109
Pete Griffin 690-7203

Fax #: ( ) _____ Voice #: ( ) _____

FROM: Lucy H. Koh, Special Assistant to the Deputy Attorney General
Office of the Deputy Attorney General Room #4215
U.S. Department of Justice, Main Justice Building
Washington, D.C. 20530

FAX #: (202) 514-9077 Voice #: (202) 514 - 4203

THIS TRANSMISSION CONTAINS 8 SHEETS INCLUDING THIS SHEET

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Special Note (s): Ingrid: Please send to NSC + Mexico Desk at State by COB Tuesday. Thanks.
Pete: Please clear through HHS by COB Tuesday. Thanks.

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OFFICE OF THE DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

FACSIMILE TRANSMISSION SHEET

TO: Pete Griffin

Fax #: ( ) 690-7203 Voice #: ( ) 690-7753

FROM: Lucy H. Koh, Special Assistant to the Deputy Attorney General
Office of the Deputy Attorney General Room #4215
U.S. Department of Justice, Main Justice Building
Washington, D.C. 20530

FAX #: (202) 514-9077 Voice #: (202) 514 - 4203

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Additional Background

Special Note (s): Editorial + letter attached. The letter is an internal DOJ options memo from U.S. Attorney in San Diego Alan Bersin to Rahm Emanuel in the White House Press office. The President is going to San Diego October 16.

If any page (s) are missing, please call sender at the above voice number for re-transmission.

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DRAFT

OPTIONS FOR ADDRESSING THE COSTS OF MEDICAL TREATMENT FOR INJURED SUSPECTED ILLEGAL ENTRANTS

The Issue

The Border Patrol's current practice regarding illegal aliens found injured on the border is to transport them to local hospitals for treatment without taking them into custody to determine immigration status. Since the suspected illegal aliens are not "technically" in the Border Patrol's custody prior to being admitted to the hospital, the Border Patrol does not assume responsibility for the medical costs incurred.

There is little information available about the number of aliens who are treated and the costs of such treatment although the Border Patrol is trying to collect this information. The Border Patrol has collected the following thus far: The Eagle Pass Fort Duncan Medical Center in Eagle Pass, Texas estimates that it treats an average of three undocumented immigrants per week at the average cost of $3,000 per treatment. The hospitals estimated yearly cost is $468,000. These figures include all suspected undocumented immigrants and not just those found injured on the border and transported to the hospital by the Border Patrol. [A hospital board member (which hospital) in the Laredo Sector in Texas claimed that the costs of medical treatment for all undocumented immigrants (for which hospitals) was about $56 million in 1995 (?). The San Diego hospital estimates that the treatment of undocumented immigrants cost $10-15 million per year.]

In recent months, the issue has become highly visible in Southern California. In July, a Border Patrol agent testified about the Border Patrol's so-called "patient-dumping" practice during a Congressional hearing in San Diego. That same month a local medical director wrote to the President requesting financial assistance for dealing with these costs, and the San Diego Union Tribune editorial criticized President Clinton for not doing enough. The editorial and letter are attached.

Background

The Administration has made multiple efforts to address this problem through Medicaid reimbursement. In the Fiscal Year 1995 President's Budget, the President requested $300 million for Medicaid discretionary grants to help states with large numbers of undocumented migrants pay for emergency and certain other medical services. Congress rejected the President's request. In

the Fiscal Year 1996 President's Budget, the President requested $150 million for these discretionary grants. Congress again rejected the President's request.

During the protracted Fiscal Year 1996 budget process, House and Senate Republicans introduced a balanced budget bill which included severe Medicaid, Medicare, and welfare cuts and allocated $3.5 billion of the savings to reimburse the 15 states with the highest number of undocumented alien residents for those states' shares of emergency medical care costs. Thus, the federal government would pay 100% of the emergency medical care costs for undocumented alien residents. President Clinton vetoed this bill for many reasons, including the fact that cuts in Medicaid and Medicare were too harsh. The President released details of his Medicaid, Medicare, and health insurance reform proposals in his balanced budget proposal in December 1995, which included the $3.5 billion allocation for undocumented immigrants. Detailed legislative language was released in May 1996.

During the FY 97 budget reconciliation process in June of 1996, the Republicans introduced a combined Medicaid and welfare reform bill. Because of the lack of support for their Medicaid block grant proposal, the bill was split and only the welfare reform portion has become law. The Medicaid block grant proposal and the $3.5 billion died without seeing any action this year.

Options to Consider

Below are several options to address the costs of medical treatment for injured suspected illegal entrants that should be explored:

1. Reimburse the costs of treatment for aliens the Border Patrol determines are illegal through the Immigration Emergency Fund which contains roughly $7 million.

Advantages:

- The Fund may be the only way to reimburse states and localities this year.
- If the money is not used, Congress will rescind it. The Fiscal Year 1997 omnibus appropriations and immigration reform bill rescinded $34 million from the Fund.

Disadvantages:

- The Fund was established to provide funding in cases of extraordinary circumstances where elements of an

emergency exist. California officials' repeated claims that they are suffering an immigration emergency and are entitled to reimbursement from the Fund for the costs of illegal immigration have been rejected thus far. Opening up the Fund for this limited purpose could set an undesirable precedent and could deplete the Fund, which in turn could severely undermine our ability to cope with a future emergency influx of illegal migrants.

- Probably inadequate $7 million (CA needs $3.5 billion for undoc). Transfer more $

2. Modify the requirements for Medicaid reimbursement, so that states can be reimbursed for the costs of treating injured suspected illegal entrants.

Medicaid currently provides federal medical assistance payments at each state's federal-state matching rate, which for California is 50-50, for emergency medical services for undocumented immigrants otherwise eligible for Medicaid, i.e. those who meet eligibility, residency, and other requirements. The undocumented immigrants in question most likely do not meet eligibility requirements, such as age or disability, or the residency requirement, i.e. the intent to remain in the United States. Any attempt by the Administration to modify these requirements for the aliens in question would probably require legislation.

Advantages:

- Any legislative proposal could be announced quickly.

Disadvantages:

- In this climate of reducing benefits for **legal** immigrants, an increase in funds to reimburse states for medical benefits to **illegal** immigrants is unlikely. Even if we could find a way to modify the requirements administratively, it may be overturned by legislation. Undocumented persons are not a priority for Medicaid expansions.

3. Increase public visibility of current federal assistance to states.

The editorial and the medical director's letter give the impression that the federal government is providing no help whatsoever. There could be more visible public and intergovernmental outreach to dispel that misconception and explain the federal assistance currently provided.

Advantages:

- No new resources are required. It could be done quickly.

Disadvantages:

- Federal Medicaid money only matches state payments. Critics argue that since the federal government is failing to control the border, the federal government should pay 100%. In addition, we can't quantify the amount of federal assistance. There is no documentation of how much money is currently paid to partially reimburse states for the costs of treating undocumented immigrants. There is also no documentation of the number of undocumented immigrants for which states are partially reimbursed. Any amount of federal monies for state reimbursement will be criticized as inadequate. partial this does not address border crossers.

4. Encourage states to use Disproportionate Share Hospitals funds to reimburse hospitals for the costs of providing medical treatment to injured suspected illegal entrants.

Medicaid provides additional matching funds for states to distribute to Disproportionate Share Hospitals (DSH), i.e. hospitals that serve disproportionately large numbers of low income and uninsured patients who otherwise generate uncompensated care costs. States have flexibility under this program to address some of the problems raised by the attached editorial and letter.

Advantages:

- States already have discretion to use money for the purpose contemplated. No new resources or legislation is required.

Disadvantages:

- The amount of federal funds is limited. California is already receiving the maximum amount per year. In order to redirect more DSH funds to San Diego, the state of California would have to reduce DSH funding to other hospitals in the state. In addition, since DSH payments are subject to the 50% state match rate in California, critics will argue that the federal government should pay more than just 50%.
- [redacted] states can shift their DSH money. Does not deal w/ border crossers.

5. Return injured suspected illegal entrants to Mexico for medical treatment.

The U.S. Government could seek to negotiate an agreement with Mexico whereby injured suspected illegal migrants are taken to hospitals in Mexico unless the injury is life-threatening. The U.S. hospitals which treat the aliens with life-threatening injuries would be reimbursed by the U.S. Government.

The Department of State Office of Legal Adviser and the Department of Justice Office of Legal Counsel have concluded that while such an agreement would not violate any apparent international treaties or obligations, the agreement would be the subject of litigation in both domestic and international fora. Special attention in negotiating such an agreement should be given to pregnant women and children under 18 years of age. The exception for life-threatening illnesses is essential.

Advantages:

- Most of the illegal entrants apprehended by the Border Patrol in San Diego agree to voluntary departure and voluntarily return to Mexico. It would be better policy to have the Mexican Government share the medical costs of treating its injured nationals.

Disadvantages:

- The Border Patrol should not make on the spot immigration status determinations and medical urgency determinations. Such determinations could dangerously delay medical treatment.
- The Mexican Government may refuse to agree to such an arrangement.
- Where would nationals from other countries who enter the U.S. via Mexico be returned?

6. Require the Border Patrol to reimburse hospitals for the medical costs.

Currently, the Border Patrol does not take into its custody any injured alien who is not likely to escape; consequently, the Border Patrol is not financially responsible for the alien's medical care costs. The Border Patrol has been and is fully financially responsible for any required medical treatment for a sick or injured alien who has been arrested and taken into Border Patrol custody. The Border Patrol in the San Diego Sector has spent approximately $208,000 for the medical care of such aliens during Fiscal Year 1995, plus an additional $184,650 from October through mid-July in Fiscal Year 1996. This proposal would require the Border Patrol to arrest and officially take the injured aliens into custody and thus be financially responsible

for the aliens' medical treatment costs.

Advantages:

- The INS has been given vast new resources.

Disadvantages:

- The Border Patrol has limited funds. The proposed expenditure would divert resources away from vital law enforcement efforts.

7. Require the Border Patrol to resume custody of the injured suspected illegal entrant after medical treatment in order to determine the entrant's immigration status and to return the entrant to his or her country of origin.

Even if reimbursement is not provided, the least the Border Patrol could do is to remove the suspected illegal entrants from the United States.

Advantages:

- The Border Patrol would be enforcing the immigration laws and deterring illegal entry attempts.

Disadvantages:

- Fear that the Border Patrol is retrieving patients from the hospital may discourage legal immigrant and citizen children who may have undocumented parents from receiving emergency medical care which could jeopardize public health and safety.

8. Request appropriations for the reimbursement of states and localities for emergency medical services to undocumented immigrants and for emergency ambulance services to aliens injured while entering the U.S. without inspection.

The Fiscal Year 1997 Omnibus Appropriations and Immigration Reform Act, which was signed into law September 30, 1996, makes states and localities eligible for payment from the federal government for the costs of furnishing emergency medical services on or after January 1, 1997, to undocumented immigrants in a public hospital or facility or through contract with another hospital, subject to appropriations. No funds were appropriated for this purpose in Fiscal Year 1997. The Act also requires the Attorney General, subject to appropriations, to fully reimburse

states and localities for emergency ambulance services provided to any alien who is injured while entering the U.S. without inspection and who is under the custody of the state or locality as a result of a transfer or request by a federal authority. No funds were appropriated for this purpose in Fiscal Year 1997.

Advantages:

- Funding for these purposes will alleviate the burdens on states and localities with large undocumented immigrant populations, particularly border communities.

Disadvantages:

- No appropriations were provided for Fiscal Year 1997.

ADB

The San Diego
Union-Tribune.

Stop patient-dumping

Feds should finance medical care for illegals

San Diego hospital officials say that U.S. Border Patrol agents routinely deliver or route illegal immigrants to emergency rooms and then never return to take responsibility for the soaring costs of their treatment.

During a recent legislative hearing, a Border Patrol agent testified that the agency has an unwritten policy of "patient-dumping" — dropping off sick or injured illegals at emergency rooms and sticking hospitals with the bill.

Brian Bilbray

Although the Border Patrol's parent agency, the Immigration and Naturalization Service, denies the existence of any such policy, the facts speak for themselves.

During the last six months, Scripps Memorial Hospitals have treated about 40 illegals who were either brought or sent to the facility by Border Patrol agents. This scenario is being played out at other San Diego hospitals, which are compelled by law to provide emergency treatment to illegals.

Even though no one has documented the exact costs, it's reasonable to assume that San Diego hospitals are incurring losses in the millions of dollars each year. UCSD Medical Center in Hillcrest, for instance, spends upward of $35 million a year treating illegals who cannot afford to pay their medical bills. The estimated annual tab for hospitals statewide is around $400 million.

Since the federal government mandates emergency medical care for illegal immigrants, Washington should provide the money for their care.

Congress has tried to do precisely that, with prodding from Rep. Brian Bilbray, R-Imperial Beach. Bilbray proposed that a trust fund be established to finance this unfunded mandate. Over the next five years, the money would have been apportioned among the 15 states that incur substantial medical costs for treating illegals. California, with more illegals than any other state, was to receive $1.6 billion because it bears the brunt of these costs.

Problem is, the trust fund was folded into the seven-year, balanced-budget bill, which President Clinton vetoed.

Bilbray has persuaded the Republican leadership to include his trust fund in a Medicaid reform bill, which will be considered separately from a pending welfare measure. California's congressional delegation supports the fund, and Clinton has become a recent convert, of sorts, having inserted $3.5 billion in his competing budget bill.

It must be noted, however, that Clinton's initial budget contained no such funding. It's amazing how a presidential election year tends to concentrate the mind of an incumbent whose re-election hinges on California's 54 electoral votes.

Since the federal government is responsible for controlling the border and requires hospitals to provide emergency medical care for those who illegally cross border, it stands to reason that the feds should pay the tab for that expensive treatment.

This year alone, MediCal will pay for the births of 96,000 babies of illegal immigrants. What's more, these deliveries will account for 40 percent of all publicly funded births, which cost California taxpayers a cool $230 million. Bilbray is exactly right when he says the surest way to sensitize federal lawmakers to the illegal immigration problem is to make them foot its ever-increasing bill.

Congress should approve the Medicaid measure, which contains Bilbray's trust fund. And President Clinton

Mercy Healthcare San Diego

July 18, 1996

The President
The White House
Washington, D.C. 20500

Dear Mr. President,

I am the Trauma Director at Mercy Hospital, one of the six trauma centers in San Diego County. I need your help in dealing with the financial impact which illegal immigration has on our hospital and our trauma system.

Illegal immigrants traversing San Diego County from Mexico risk death and injury from falls, brush fires, motor vehicle accidents, and assaults. We stand ready to care for these injured men, women, and children. In one of many recent incidents, a van loaded with illegal immigrants crashed while evading the INS. Two were killed at the scene. Mercy Hospital cared for three of the fourteen injured at a cost of well over $100,000 in uncompensated expenses. *No questions were asked about who would pay for this care.*

This summer there is the added threat of severe wildfires in the east county. "Operation Gatekeeper" resulted in record numbers of illegal border crossings in these remote areas. Illegal immigrant families may be trapped by fast moving wildfires leaving scores of dead and seriously burned victims. This human tragedy would result in a crippling drain of financial resources at Mercy Hospital and the other five trauma centers. Each major burn victim can generate hundreds of thousands of dollars of uncompensated expenses for our hospitals. *There is no one to pay for this care.*

While we work very hard to control costs, our trauma system, which serves over 2,500,000 citizens, faces a severe threat from the uncompensated costs of health care for injured illegal immigrants. This remains an ongoing problem which will adversely effect the citizens of San Diego County until immigration reform has been implemented. *For now, our trauma system urgently needs at least $25,000,000 in federal funds designated each year for ongoing reimbursement for the costs of care and for catastrophic events.*

We look to your leadership to prevent this looming tragedy and the financial ruin of one of the nation's premier trauma systems. Please give this matter your urgent attention.

Sincerely yours,

Michael J. Sise, M.D.
Medical Director
Trauma Service

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Representative Henry Waxman
Representative Bob Filner
Attorney General Janet Reno
Secretary Donna Shalala
Commissioner Doris Meissner
U.S. Attorney Alan Bersin

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10/9/96 Mtg -

Residency requirements in a state - Driver's license, something of address on it).

Anti - Dumping - must stabilize treatment

Senate Bill

Sec. 209 permits a State that is certified by the Attorney General as having high illegal immigration to establish and operate a program for the placement of anti-fraud investigators in State, county, and private hospitals to verify the immigration status and income eligibility of applicants for medical assistance under the State plan prior to the furnishing of medical assistance.

We note that current law would permit a State to operate such a program, and thus the provision is unnecessary.

Sec. 210 would require the Office of Refugee Resettlement to allocate grants to ensure that each qualifying county shall receive the same amount of assistance for each refugee and entrant residing in the county as of the beginning of the fiscal year who arrived in the United States not more than 60 months prior.

The amendment's formula for the allocation of Targeted Assistance (TA) funds is consistent with the Administration's policy to limit the provision of Office of Refugee Resettlement funded services to a refugee's first five years in the United States. We support the exception for the Targeted Assistance discretionary program. We note, however, that the amendment may limit Congress' ability to set aside special TA funds for Cuban and Haitian entrants which it has historically done through the appropriations process.

SUBTITLE B--MISCELLANEOUS PROVISIONS

Sec. 211 requires the Attorney General to reimburse the full costs incurred by state or local authorities for emergency ambulance services provided to aliens injured while entering the U.S. without inspection. The obligation occurs only when the injured alien is taken into the custody of the state or local authority as a result of a transfer or other action by a federal authority. Lastly, the section allows the Attorney General to seek reimbursement for emergency medical services provided to aliens.

We support this provision because it encourages local authorities to provide customary emergency medical transport to aliens that have been detected or discovered, but not arrested, by the INS. Under current law, INS may only pay the medical transportation costs in instances where the alien is under arrest. This authority will alleviate the financial burden accruing to some border communities experiencing a large number of emergency medical transports. This provision will encourage rapid transport of aliens injured during an illegal entry without regard to the state of their immigration processing.

Sec. 212 appears to provide full Federal reimbursement to

U.S. Department of Justice

United States Attorney
Southern District of California

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321 South Waterman Avenue
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April 29, 1997

To: Seth Waxman
Acting Deputy Attorney General

via: Gerri Ratliff
Counsel to the Deputy Attorney General

Teresa Logue
Special Assistant to the Counsel
to the Deputy Attorney General

From: Alan D. Bersin
U.S. Attorney
Southern District of California

Re: "Patient Dumping"

Attached is a copy of a memorandum on "patient dumping" which has been circulated through INS and the Border Patrol. The issue, which periodically surfaces in the media, may soon come to the fore again since the California State Auditor is currently looking into the cost to the State involved in this practice. I understand also that the mayor of Poway has written to the Attorney General seeking redress from the federal government.

The appointment of a working group, along the lines suggested in the memorandum, would, I believe, surface the various issues and competing interests inherent in dealing with the problem of undocumented aliens injured near the border.

U.S. Department of Justice

United States Attorney
Southern District of California

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March 10, 1997

Memorandum

To: Doris Meissner
Commissioner
Immigration and Naturalization Service
Fax: (202) 307-9911

Fm: Alan D. Bersin
United States Attorney
Southern District of California

Judith S. Feigin
Legal Counsel to the Director

Re: "Patient Dumping" Near the Border

Introduction

In Southern California, where issues surrounding undocumented aliens have become especially charged, "patient dumping by the federal government" is a favorite target of political debate. While the term is used in a variety of contexts, this Memorandum addresses the discrete situation where the Border Patrol brings non-custodial undocumented persons into hospital emergency rooms and does not accept responsibility for the cost of subsequent medical care. Specifically, agents who come upon injured persons (often in the hills, sometimes in car accidents, etc.) make no effort to ascertain the status of the person and do not arrest the person in spite of adequate legal cause to do so but rather bring the injured to the emergency room as a matter of "good samaritan" practice.

Agents proceed in this manner given internal Border Patrol policy that precludes the agent from binding the government for medical costs in these circumstances. This Memorandum does not question the lawfulness of present INS practice but rather the prudence of current

federal policy in this area.

Public Perception

While in some few instances it may be impossible to ascertain alienage at the time (e.g., if the person is unconscious), that is not typically the case. The injured person is often in a situation which would give rise (indeed probable cause) to believe that he or she is undocumented, especially where the individual is found in an area notorious for alien smuggling, and have the attire and baggage common to those entering the country illegally.[1]

While the Border Patrol maintains that it is no more responsible for such persons than the county sheriff would be if he came upon a person injured in a car accident in the middle of San Diego, the public perception is quite different, and understandably so. There is not necessarily any reason to believe that the car accident victim has violated the law; however, the injured person in the hills would generally be of interest to the Border Patrol (even if only to arrange a voluntary return) were he not incapacitated. The Border Patrol's policy of intentionally avoiding alienage determination is therefore viewed as a charade designed to limit the federal government's liability.[2] Since most of these injured are brought to the medical center at the University of California (San Diego), the perception is that the State has to bear the entire financial burden. Moreover, due to media hyperbole, the view is that such "dumping" is a widespread phenomenon. In fact, both the reality and the economics are more complex than they have been portrayed.

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[1] It is of course possible even in these circumstances, that the injured person is a citizen or green card holder who is acting as a guide.

[2] In fact, many injured persons are treated at the scene and voluntarily returned to Mexico. In these instances, the Border Patrol determines alienage; it can therefore presumably do so with the more seriously injured, unless they are unconscious.

In addition to those immediately returned to Mexico, some are "repatriated" after receiving emergency treatment in the United States. According to the Mexican Consulate here, 75 patients from San Diego County were repatriated in 1995 and 63 in 1996. Mexico generally pays for transportation of these patients to Mexico where they receive medical care through the Ministry of Public Health if no private health insurance is available. It is uncertain how many of these repatriated patients fall within the "dumping" scenario.

Financial Perspective

The problem is not nearly as large nor as intractable as it has been described. Although numbers have been impossible to ascertain,[3] it appears that the federal government has been demonized over a relatively small amount of money. We have been behind the curve on this issue, when in fact we should be in front.

The economics of the situation are not quite as stark as they have been portrayed. In fact, a certain percentage, albeit small, of the cost is already covered by the federal government. While the precise method of cost reimbursement varies from state to state, in California it operates in the following manner:

Medicaid is a federal-state partnership to cover medical care for the indigent.[4] The Medicaid Program in California (Medi-Cal) covers certain groups of the indigent. It does not, however, cover undocumented aliens.

42 U.S.C. 1396r-4, the Disproportionate Share Hospital Payments Program (DSH), is a Medicaid program designed to allocate additional funds to hospitals that serve a disproportionate number of Medi-Cal low-income patients. Undocumented aliens are counted when determining eligibility for designation as a DSH provider. However, they do not count when determining the amount of DSH payments to be made to the institution.

There are two Medi-Cal DSH programs in California, to wit SB 1255 and SD 855.[5] SB 1255 funds are supplemental payments for services provided to Medi-Cal patients. Through the SB 1255 program, public

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[3] The Border Patrol has hundreds of "Incident Reports" from which it is theoretically possible to determine which injured aliens were treated immediately and returned to Mexico, and which were delivered to hospitals. UCSD, the hospital most affected by the problem in San Diego, itself does not have a system by which it can track patients on the basis of citizenship. (Mercy Hospital, the second largest recipient, has not responded to our repeated requests for information.) As a result of our queries on this point, UCSD intends to try to maintain records which would enable it to determine the precise numbers involved from 1997 forward. Their best estimate, for the year 1996, is that fewer than 20 patients, and less than $1,000,000 in medical care, meet the criteria set forth in this memorandum.

[4] In 1982 California transferred responsibility for medically indigent adults from the state to the counties.

[5] SB is a reference to the Senate Bill which introduced the program.

agencies, including the University, voluntarily transfer funds to the State. The funds are then used to secure federal Medicaid matching funds. The pool of funds is distributed by the State to hospitals which meet the following criteria: (1) they are a Medi-Cal selective provider contracting hospital; (2) they are a disproportionate share provider; and (3) they are a licensed provider of basic or comprehensive emergency medical services. The distributions are based on negotiations between the California Medical Assistance Commission and eligible hospitals. As a result of managed care and competition for Medi-Cal patients, the number of Medi-Cal inpatient days have been decreasing.

The SB 855 program provides supplemental payments to DSH hospitals which provide acute care inpatient services to Medi-Cal beneficiaries. The plan mandates that governmental entities with hospitals, such as counties, hospital districts and the University of California, transfer funds to the State Controller for deposit into the Medi-Cal Inpatient Payment Adjustment Fund created by SB 855. Unlike the SB 1255 program, these are mandatory transfers, the levels of which are determined by formula. These funds are used to secure matching federal Medicaid funds. The pool of funds is then distributed by the State to eligible DSH hospitals.

Distributions from the SB 855 program are subject to the provisions of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66. These set a ceiling on the distributions that can be made to individual hospitals and, cumulatively, to each State. A number of factors have reduced the amount of funds transferred while at the same time, the number of private hospitals eligible for the funds has increased. The result of these changes, for example, is that UCSD's share for payments from the fund dropped dramatically.[6]

UCSD Medical Center receives about 5.4% of its net patient revenue from Medicaid DSH payments.[7] This money is used to help cover the cost of Medi-Cal patients. Even so, there are still shortfalls. Thus, in 1995, UCSD lost approximately $11 million on its Medical patients; alternatively put, it received payment for approximately 84% of the cost of these patients.

While the use of DSH money is unrestricted, UCSD, as an accounting practice, applies it all to the cost of treating MediCal patients. None of it therefore covers the undocumented aliens discussed in this memorandum.

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[6] Recent state legislation, AB 2804, provides a mechanism to allow the state to get a one-time bonus for fiscal years 1995-1996. However, that interim fix has no bearing on the ultimate issues raised by this memorandum.

[7] Since this is a matching system, in fact about 10.8% of the money overall is from DSH payments.

Remedial Legislation

The Omnibus Appropriations Act of 1996, Pub. L. 104-208, is the ultimate panacea. It provides, in pertinent part:

> Subject to such amounts as are provided in advance in appropriate Acts, each State or political subdivision of a State that provides medical assistance for care and treatment of an emergency medical condition. . . through a public hospital or other public facility. . . to an individual who is an alien not lawfully present in the United States is eligible for payment from the Federal Government of its costs of providing such services, but only to the extent that such costs are not otherwise reimbursed through any other Federal program and cannot be recovered from the alien or another person.[8]

and

> Subject to the availability of appropriations, the Attorney General shall fully reimburse States and political subdivisions of States for costs incurred by such a State or subdivision for emergency ambulance services provided to any alien who --
>
> (1) is injured while crossing a land or sea border of the United States without inspection or at any time or place other than as designated by the Attorney General; and
>
> (2) is under the custody of the State or subdivision pursuant to a transfer, request, or other action by a Federal authority.[9]

While it appears that appropriations under the first provision can come from a variety of sources, the second provision refers specifically to DOJ funding. As of the date of this writing, no funds have been appropriated for either of these new statutory enactments.[10]

Proposals

The negative publicity attendant upon the current practice is particularly disturbing in light of the fact that some federal funding is already in place, and full funding is potentially available. Given the (relatively) limited funds involved, and the equities of the

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[8] This provision is codified in 8 U.S.C. 1369.

[9] This provision is codified in 8 U.S.C. 1370.

[10] INS is apparently considering designating a portion of funds to cover this emergency care.

situation, the federal government should provide greater reimbursement than it now does. The recurring negative publicity and politicizing of the issue is not in the federal government's interest. Nor are the equities in our favor.

It appears unlikely that funds will be appropriated under the 1996 Act for reimbursement purposes in the context. Therefore, interim alternatives must be found. Options available for consideration include utilization of Veterans and Indian hospitals for the treatment of injured illegal entrants.

Pursuant to 38 U.S.C. 1711(b), Veterans hospitals may furnish care or medical services as a "humanitarian service" in emergency cases, with reimbursement at rates prescribed by the Secretary. Indian health care hospitals can provide health services to individuals otherwise ineligible "in order to achieve stability in a medical emergency". 25 U.S.C. 1680(c)(1). There is no mention of reimbursement in the case of Indian hospitals.

There are obvious ramifications to proposing the use of such facilities for injured undocumented aliens. Veterans particularly have been zealous in protecting their unfettered access to these institutions and in the early 1990's were successful in blocking attempts to open the hospitals to the rural poor. However, the numbers of injured undocumented aliens is much more limited than the number of rural poor, and given the under utilization of the VA hospitals as the number of veterans declines, expansion of the patient pool to include non-veterans is an alternative to consider. The limited number of persons involved in the emergency situations here discussed should make it a more palatable option than many others. [11]

Whatever the ultimate proposal, it will involve the support and approval of a variety of agencies. We recommend that a working group, composed at least of representatives from INS, DOJ, HHS (specifically HCFA), OMB (Immigration, HHS, and DOJ components), VA, BIA, and the Domestic Policy Council should be convened to study this issue and recommend alternatives, if any, to present policy and practice.

cc: Robert Bach
Executive Associate Commissioner for Policy
Immigration and Naturalization Service

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11 Although the emergency care here discussed is a reimbursable item, the sensitivity of the issue may be especially acute at the moment given the Administration's recent decision to level the federal government's contributions to VA hospitals. If this happens, the VA will have to depend on private health insurance held by veterans and Medicare to absorb most increased costs. The Washington Post, "Health Plan Worries Veterans Lobby", February 10, 1997, p. A-14.

"(1) falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States, or any facsimile thereof;

"(2) knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal or facsimile thereof to or upon any certificate, instrument, commission, document, or paper of any description; or

"(3) with fraudulent intent, possesses, sells, offers for sale, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or facsimile thereof, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered,

shall be fined under this title, or imprisoned not more than 5 years, or both.

"(b) Notwithstanding subsection (a) or any other provision of law, if a forged, counterfeited, mutilated, or altered seal of a department or agency of the United States, or any facsimile thereof, is—

"(1) so forged, counterfeited, mutilated, or altered;

"(2) used, affixed, or impressed to or upon any certificate, instrument, commission, document, or paper of any description; or

"(3) with fraudulent intent, possessed, sold, offered for sale, furnished, offered to furnish, given away, offered to give away, transported, offered to transport, imported, or offered to import,

with the intent or effect of facilitating an alien's application for, or receipt of, a Federal benefit to which the alien is not entitled, the penalties which may be imposed for each offense under subsection (a) shall be two times the maximum fine, and 3 times the maximum term of imprisonment, or both, that would otherwise be imposed for an offense under subsection (a).

"(c) For purposes of this section—

"(1) the term 'Federal benefit' means—

"(A) the issuance of any grant, contract, loan, professional license, or commercial license provided by any agency of the United States or by appropriated funds of the United States; and

"(B) any retirement, welfare, Social Security, health (including treatment of an emergency medical condition in accordance with section 1903(v) of the Social Security Act (19 U.S.C. 1396b(v))), disability, veterans, public housing, education, food stamps, or unemployment benefit, or any similar benefit for which payments or assistance are provided by an agency of the United States or by appropriated funds of the United States; and

"(2) each instance of forgery, counterfeiting, mutilation, or alteration shall constitute a separate offense under this section.".

SEC. 562. TREATMENT OF EXPENSES SUBJECT TO EMERGENCY MEDICAL SERVICES EXCEPTION.

(a) IN GENERAL.—Subject to such amounts as are provided in advance in appropriation Acts, each State or political subdivision of a State that provides medical assistance for care and treatment of an emergency medical condition (as defined in subsection (d)) through a public hospital or other public facility (including a non-

profit hospital that is eligible for an additional payment adjustment under section 1886 of the Social Security Act) or through contract with another hospital or facility to an individual who is an alien not lawfully present in the United States is eligible for payment from the Federal Government of its costs of providing such services, but only to the extent that such costs are not otherwise reimbursed through any other Federal program and cannot be recovered from the alien or another person.

(b) CONFIRMATION OF IMMIGRATION STATUS REQUIRED.—No payment shall be made under this section with respect to services furnished to an individual unless the immigration status of the individual has been verified through appropriate procedures established by the Secretary of Health and Human Services and the Attorney General.

(c) ADMINISTRATION.—This section shall be administered by the Attorney General, in consultation with the Secretary of Health and Human Services.

(d) EMERGENCY MEDICAL CONDITION DEFINED.—For purposes of this section, the term "emergency medical condition" means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(1) placing the patient's health in serious jeopardy,

(2) serious impairment to bodily functions, or

(3) serious dysfunction of any bodily organ or part.

(e) EFFECTIVE DATE.—Subsection (a) shall apply to medical assistance for care and treatment of an emergency medical condition furnished on or after January 1, 1997.

SEC. 563. REIMBURSEMENT OF STATES AND LOCALITIES FOR EMERGENCY AMBULANCE SERVICES.

Subject to the availability of appropriations, the Attorney General shall fully reimburse States and political subdivisions of States for costs incurred by such a State or subdivision for emergency ambulance services provided to any alien who—

(1) is injured while crossing a land or sea border of the United States without inspection or at any time or place other than as designated by the Attorney General; and

(2) is under the custody of the State or subdivision pursuant to a transfer, request, or other action by a Federal authority.

SEC. 564. PILOT PROGRAMS TO REQUIRE BONDING.

(a) IN GENERAL.—

(1) The Attorney General of the United States shall establish a pilot program in 5 district offices of the Immigration and Naturalization Service to require aliens to post a bond in addition to the affidavit requirements under section 213A of the Immigration and Nationality Act and the deeming requirements under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1631). Any pilot program established pursuant to this sul tion shall require an alien to post a bond in an amount sufficient to cover the cost of benefits described in section 213A(d)(2)(B) of the Immigratio

October 11, 1996

TO: Jack
Th: Christie
FR: Linda

RE: Nonconcurrence, DOJ San Diego options paper

Options for addressing the costs of medical treatment for injured illegal immigrants.

The President is going to San Diego October 16. In response to media criticism that the Administration is not doing enough to help hospitals that provide uncompensated care to illegal immigrants found injured on the border and transported to the hospitals by the Border Patrol, DOJ drafted an options memo for Rahm Emanuel at the White House.

Of the options, the two most salient to DHHS are unacceptable in their current form for HCFA. Bruce Vladek is recommending that the Secretary nonconcur unless DOJ takes their revisions o n two options. We recommend that you nonconcur in support of HCFA's position.

- One proposed option is **a legislative proposal to change the Medicaid eligibility requirements** so that states could be reimbursed for the total cost of providing emergency services to aliens injured while crossing the border.

  HCFA very much opposes this proposal. In its current form, the option does not accurately reflect current policy with respect to alien eligibility, it does not fully represent the action required to make the proposed eligibility changes, and it does not adequately describe the problems that would follow.

  We agree with HCFA.

- Another option is to increase the visibility of existing federal assistance to states, and suggests **encouraging states to use DSH funds** to reimburse hospitals for these services as a possible "outreach message."

  In earlier drafts we attempted to have the DSH issue deleted but was not successful. HCFA wants the discussion of DSH deleted; the option does not provide any new flexibility or funding to the state and would likely not be met with enthusiasm.

  We agree with HCFA that the option is inappropriate. HCFA provides substitute language in their comments.

Other Presented Options:

- Legislative request for appropriations for the injured border entrants.
- Require border Patrol to reimburse hospitals; various mechanisms are proposed.
- Increase public visibility of existing and proposed federal assistance.
- Return injured alien to Mexico for medical treatment.

TO: **Christie**
FR: **Linda**

RE: **Comments due Thursday A.M. to Irene Bueno on the DOJ San Diego options paper**

Options for addressing the costs of medical treatment for injured illegal immigrants.

The President is going to San Diego October 16. In response to media criticism that the Administration is not doing enough to help hospitals that provide uncompensated care to illegal immigrants found injured on the border and transported to the hospitals by the Border Patrol, Rahm Emanuel and DOJ drafted an options memo for the WH.

HHS staff comments focussed on separating the issue of reimbursing for services provided to injured border crossers from the larger issue of financing hospital care for illegal immigrants, and maintaining the integrity of the Medicaid program.

Of the options, two are most salient to DHHS.

- One would be **a legislative proposal to change the Medicaid eligibility requirements** so that states could be reimbursed for the total cost of providing emergency services to aliens injured while crossing the border.

  We helped redraft this option and provided extensive bullets in the "disadvantages" category. *HCFA very much opposes this proposal and the final options paper should make clear that it has problems.*

- An option to **encourage states to use DSH funds** to reimburse hospitals for these services.

  The Department recommended deleting this option. It does not provide any new flexibility or funding to the state and would likely not be met with enthusiasm.

Other Presented Options:

- Legislative request for appropriations for the injured border entrants.
- Require border Patrol to reimburse hospitals; various mechanisms are proposed.
- Increase public visibility of existing and proposed federal assistance.
- Return injured alien to Mexico for medical treatment.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

The Administrator
Washington, D.C. 20201

OCT 11 1996

TO: The Secretary

FROM: Bruce C. Vladeck
Administrator

SUBJECT: Clearance of DoJ Options Paper for the White House to Address Costs of Medical Treatment for Injured Suspected Undocumented Immigrants

Background

The DoJ presents options to address the problem of uncompensated medical care costs resulting from INS Border Patrol agents delivering persons injured while attempting to cross the U.S. border to various U.S. hospitals in border communities. While the Border Patrol transports these individuals, in many cases they maintain that they have not "officially taken custody" of them and thus are not responsible for the costs of their medical care. In other cases, they do assume custody and pay for the care.

Most such individuals would not meet Medicaid eligibility requirements (residence in a State and financial and categorical eligibility). Therefore, current Medicaid law provisions which reimburse States at the usual matching rate for emergency care to undocumented persons ***otherwise eligible*** for Medicaid would not apply.

DoJ has become concerned with the cumulative costs to their programs and is looking for alternative funding sources. The recently enacted Omnibus Appropriations Act contains provisions (section 562) which authorize the Attorney General to reimburse hospitals for these and similar expenses not covered by Medicaid. While INS received significant new resources, no funds were specifically earmarked to pay for the new authority under section 562.

Recommendations Regarding DoJ Options Paper

The paper contains seven options for the White House to consider and potentially announce before or during the President's trip to San Diego next week. While my staff has provided technical assistance to DoJ staff on numerous occasions, DoJ has continued to characterize current Medicaid law and phrase options related to the Medicaid program in ways that are both factually inaccurate and potentially misleading from a policy perspective.

While there have been some improvements through various drafts, the product presented to us for clearance still does not, in my opinion, appropriately describe Medicaid-related options in a manner that accurately assesses the appropriateness of these options. Therefore, I strongly recommend that HHS nonconcur unless our suggested revisions to Medicaid-related portions of the document (attached) are adopted.

Our two most serious problems with the current version of the DoJ options paper are: (1) option 6 attempts to down-play the seriousness of the changes being proposed for Medicaid law, perhaps in an effort to make this option sound more plausible and appealing; and (2) option 5 continues to cite DSH as the best example of a public information strategy. We strongly recommend revisions of option 6 to clearly indicate the significant statutory changes which would be required and the inequitable effect they would have. We also strongly recommend revision of option 5 to delete DSH as an example and substitute a description of current Medicaid assistance and past Administration proposals. These changes and other revisions of Medicaid language are included on the attached mark-up.

Attachment: Mark-up of DoJ options paper

HHS Recommended Revisions

OPTIONS FOR ADDRESSING THE COSTS OF MEDICAL TREATMENT FOR INJURED SUSPECTED UNDOCUMENTED IMMIGRANTS

The Issue

The Border Patrol's current practice regarding suspected undocumented immigrants found injured on the border is to transport them to local hospitals for treatment without taking them into custody to determine immigration status. Since the suspected undocumented immigrants are not "technically" in the Border Patrol's custody prior to being admitted to the hospital, the Border Patrol does not assume responsibility for the medical costs incurred. In recent months, the issue has become highly visible in Southern California. In July, a Border Patrol agent testified about the Border Patrol's so-called "patient-dumping" practice during a California State Assembly hearing in San Diego. That same month a local medical director wrote to the President requesting financial assistance for dealing with these costs, and the San Diego Union Tribune editorial criticized President Clinton for not doing enough. The editorial and letter are attached.

This issue is related to a larger issue -- uncompensated medical care costs to hospitals that provide emergency medical treatment to undocumented immigrants. In recent years, ~~[in response to a request from states,]~~ the federal government has been assisting states financially to provide emergency care for undocumented immigrants who meet the Medicaid eligibility requirements, i.e. residence in a state with the intent to remain ~~indefinitely~~ and categorical eligibility such as low-income and aged, blind, disabled, pregnant women, children, etc. This paper will primarily focus on another subset of the larger issue, specifically, uncompensated care costs that are generated by undocumented immigrants, who generally do not meet Medicaid eligibility requirements, injured on the border and transported to the hospital by the Border Patrol.

financial and

Unfortunately, there is little hard data on the scope of the problem. Hospitals, HHS and INS generally do not track this information. However, an informal poll of all Border Patrol agents at all the stations in the San Diego Sector found that 119 suspected undocumented immigrants were found injured on the border and transported to hospitals during the month of September 1996. During the same period, Border Patrol agents in the Yuma Sector transported 25-30 such persons to hospitals, and agents in the El Centro Sector transported 10 such persons to hospitals. There are no available figures on how much the medical care costs for these persons.

Some cost figures are available for the medical treatment of all undocumented immigrants in certain areas. The Eagle Pass

Fort Duncan Medical Center in Eagle Pass, Texas estimates that it treats an average of three undocumented immigrants per week at the average cost of $3,000 per treatment. The hospitals estimated yearly cost is $468,000. The San Diego Council of Hospitals estimates that the treatment of all undocumented immigrants cost $10-15 million per year. These figures include all suspected undocumented immigrants and not just those found injured on the border and transported to the hospital by the Border Patrol.

Background

For several years states have been requesting assistance from the federal government to pay the state share of Medicaid for emergency medical services provided to undocumented immigrants who are otherwise eligible for such emergency care. The Administration has made multiple efforts to help states pay their share of these costs. Along with the Fiscal Year 1995 President's Budget, the President proposed $300 million for discretionary grants to help states with large numbers of undocumented immigrants pay for emergency medical services. Congress rejected the President's request. In the Fiscal Year 1996 President's Budget, the President requested $150 million for these discretionary grants. Congress again rejected the President's request.

During the protracted negotiations on the Fiscal Year 1996 budget, House and Senate Republicans introduced a balanced budget bill which included severe Medicaid, Medicare, and welfare cuts and allocated $3.5 billion of the savings to reimburse the 15 states with the highest number of undocumented immigrant residents for those states' shares of emergency medical care costs. The funds did not have a state matching requirement. The intention was for the federal government to pay 100% of the emergency medical care costs for undocumented residents in these 15 states (up to each state's share of the $3.5 billion). President Clinton vetoed this bill for many reasons, including the fact that cuts in Medicaid and Medicare were too harsh. The President released details of his Medicaid, Medicare, and health insurance reform proposals in his balanced budget proposal in December 1995, which included the $3.5 billion allocation to help states pay for emergency medical care under Medicaid for undocumented immigrants otherwise eligible for such care. Detailed legislative language was released in May 1996.

to help pay

for individuals otherwise eligible for Medicaid.

During the FY 1997 budget reconciliation process in the spring and early summer of 1996, the Republicans introduced a combined Medicaid and welfare reform bill. Because of the lack of support for their Medicaid block grant proposal, the bill was split, and only the welfare reform portion became law. The Medicaid block grant proposal and the $3.5 billion died without

seeing any action this year.

States have recently added a new request for assistance for undocumented immigrants being brought into the hospital by the Border Patrol who are injured while attempting to cross the border. Such immigrants generally would not meet the eligibility financial and requirements of Medicaid (residence in a state and categorical eligibility), and such costs would not be reimbursable from Medicaid. Of course, hospitals currently have no obligation to treat non-emergency patients, whether undocumented, legal immigrants, or citizens. However, if we wish to respond to this new request by the states, new strategies must be devised. Below are several options to address the costs of medical treatment for injured suspected undocumented immigrants that should be explored.

Options

1. **Request appropriations for the reimbursement of states and localities for emergency medical services to undocumented immigrants and for emergency ambulance services to aliens injured while entering the U.S. without inspection.**

The Fiscal Year 1997 Omnibus Appropriations and Immigration Reform Act, which was signed into law September 30, 1996, makes states and localities eligible for payment from the federal government for the costs of furnishing emergency medical services on or after January 1, 1997, to undocumented immigrants in a public hospital or facility or through contract with another hospital, subject to appropriations. No funds were appropriated for this purpose in Fiscal Year 1997. The Act also requires the Attorney General, subject to appropriations, to fully reimburse states and localities for emergency ambulance services provided to any alien who is injured while entering the U.S. without inspection and who is under the custody of the state or locality as a result of a transfer or request by a federal authority. No funds were appropriated for this purpose in Fiscal Year 1997.

Advantages:

- Funding for these purposes will alleviate the burdens on states and localities with large undocumented immigrant populations, particularly border communities.

Disadvantages:

- No appropriations were provided for Fiscal Year 1997 to date.

2. **Require the INS to reimburse hospitals for the medical costs.**

Currently, the Border Patrol does not take into its custody any injured alien who is not likely to escape; consequently, the INS is not financially responsible for the alien's medical care costs. The INS has been and is fully financially responsible for any required medical treatment for a sick or injured alien who has been arrested and taken into Border Patrol custody. The INS in the San Diego Sector has spent approximately $208,000 for the medical care of such aliens during Fiscal Year 1995, plus an additional $184,650 from October through mid-July in Fiscal Year 1996. This proposal would require the Border Patrol to arrest and officially take the injured aliens into custody and thus make the INS financially responsible for the aliens' medical treatment costs.

Advantages:

- The INS has been given vast new resources.

Disadvantages:

- The INS' vast new resources are already targeted to specific and unprecedented increases in staff and technology for border control, worksite enforcement, criminal alien removal, and immigration and naturalization services. Any substantial increases in alien medical care expenditures would divert resources away from other critical law enforcement and immigration and naturalization service efforts.

- The Border Patrol can not take into custody a person who is unconscious or incapacitated because the Border Patrol cannot communicate with him or her and determine the person's immigration status.

3. **Require the Border Patrol to resume custody of the injured suspected undocumented immigrant after medical treatment in order to determine the immigrant's immigration status and to return the immigrant to his or her country of origin.**

Even if reimbursement is not provided, the least the Border Patrol could do is to remove the suspected undocumented immigrants from the United States.

Advantages:

- The Border Patrol would be enforcing the immigration laws and deterring illegal entry attempts.

Disadvantages:

- The INS does not have medically equipped vehicles or trained personnel to take injured persons who have just received emergency medical treatment to an immediate border or to an international airport.
- The countries of some injured aliens may refuse to accept their return or may delay providing travel documents.
- Where would nationals from other countries who enter the U.S. via Mexico be returned?
- Fear that the Border Patrol is retrieving patients from the hospital may discourage legal immigrant and citizen children who may have undocumented parents from receiving emergency medical care which could jeopardize public health and safety.

4. **Reimburse the costs of treatment for aliens the Border Patrol determines are undocumented through the Immigration Emergency Fund which contains roughly $7 million.**

Advantages:

- The Fund may be the only way to reimburse states and localities this year.
- If the money is not used, Congress may rescind it. Congress rescinded $34 million of the Fund in Fiscal Year 1997.

Disadvantages:

- The Fund was established to provide funding in cases of extraordinary circumstances where elements of an emergency exist. California officials' repeated claims that they are suffering an immigration emergency and are entitled to reimbursement from the Fund for the costs of illegal immigration have been rejected thus far. Opening up the Fund for this limited purpose could set an undesirable precedent and could deplete the Fund, which in turn could severely undermine our ability to cope with a future emergency influx of undocumented migrants.
- $7 million will most likely be inadequate.

5. **Increase public visibility of current and proposed federal assistance to states.**

The editorial and the medical director's letter give the impression that the federal government is providing no help whatsoever. There could be more visible public and intergovernmental outreach to dispel that misconception and explain the federal assistance currently available to states and additional assistance that the Administration has proposed to help meet some of the costs of emergency care for undocumented immigrants.

~~[One outreach message might be to encourage states to use Disproportionate Share Hospitals funds to reimburse hospitals for the costs of providing medical treatment to injured suspected undocumented immigrants. Medicaid provides additional matching funds for states to distribute to Disproportionate Share Hospitals (DSH), i.e. hospitals that serve disproportionately large numbers of low income and uninsured patients who otherwise generate uncompensated care costs. States already have flexibility to use DSH money to reimburse hospitals for the costs of providing care to injured suspected undocumented immigrants. No new resources or legislation would be required. The disadvantage of this message, however, is that the amount of federal funds is limited, and California is already receiving the maximum amount per year. Thus, in order to redirect more DSH funds to San Diego, the state of California would have to reduce DSH funding to other hospitals in the state. In addition, since DSH payments are subject to the 50% state match rate in California, critics will argue that the federal government should pay more than just 50%.]~~

Advantages:

- No new resources are required. It could be done quickly.

Disadvantages:

- ~~[Federal Medicaid money only matches state payments. Critics argue that since the federal government is failing to control the border, the federal government should pay 100%. In addition,~~ we can't quantify the amount of federal assistance for undocumented immigrants, and any amount of federal monies for state reimbursement will be criticized as inadequate. Finally, this option doesn't contain any new money, and none of the federal assistance is specifically targeted to undocumented immigrants found injured on the border.

Substitute:

The primary outreach messages should describe:

- How Federal Medicaid funds currently help pay for emergency medical care for undocumented immigrants who meet Medicaid eligibility requirements; and

- The Administration's multiple efforts to provide additional Federal funds to help States pay their share of emergency medical costs for Medicaid-eligible undocumented immigrants.

Change the law to provide an exception to

6. ~~[Modify]~~ the residency and categorical eligibility requirements for Medicaid reimbursement, so that states can be partially reimbursed for the costs of treating injured suspected undocumented immigrants.

Medicaid currently provides federal medical assistance payments at each state's federal-state matching rate, which for California is 50%, for emergency medical services for undocumented immigrants who meet the eligibility requirements of Medicaid, i.e. residence in a state and categorical eligibility such as low-income and aged, blind, disabled, pregnant women, children, etc. The undocumented immigrants in question most likely do not meet the residency requirement, ~~[i.e.,]~~ the intent to remain in the United States. In addition, many probably do not meet the categorical eligibility requirements, such as aged or disabled. Any attempt by the Administration to modify these requirements for the aliens in question would ~~[probably]~~ require legislation.

living in a state with

Advantages:

- A legislative proposal to ~~[modify]~~ change the eligibility requirements could be announced quickly.

Disadvantages:

- Treating undocumented immigrants more favorably than either legal immigrants or U.S. citizens would be inequitable.
- In this climate of reducing benefits for legal immigrants, ~~[any]~~ increase ~~[in]~~ funds to reimburse states for medical benefits to illegal immigrants is unlikely legislation to be passed by Congress.
- This could provide an incentive for inappropriate classifications of individuals and services to capture the federal funding.

7. **Return injured suspected undocumented immigrants to Mexico for medical treatment.**

The U.S. Government could seek to negotiate an agreement with Mexico whereby injured suspected undocumented migrants are taken to hospitals in Mexico unless the injury is life-threatening. The U.S. hospitals which treat the aliens with life-threatening injuries would be reimbursed by the U.S. Government.

The Department of Justice Office of Legal Counsel and the Department of State Legal Adviser have advised that there does not appear to be any legal bar to negotiating such an agreement. Although the United States is a signatory to certain international agreements that contain provisions requiring the

- This would require legislation.

provision of medical care, the agreements have not been ratified and thus are not legally binding on the United States. Other international documents that address provision of medical care are viewed by the State Department as merely declarations of aspiration. Nevertheless, it could be argued, and may be difficult to refute, that an enlightened view of international humanitarian standards compels the conclusion that medical care must be provided to persons with life-threatening injuries. An exception should be included for such persons. In addition, a petition could be brought against the United States in the Inter-American Commission, which considers alleged violations of the American Declaration of Rights and Duties of Man, but whose opinions are not legally binding. The Declaration requires that special care be provided to children and pregnant women and that all persons have the right to medical care to the extent permitted by local resources.

Advantages:

- Most of the undocumented immigrants apprehended by the Border Patrol in San Diego agree to voluntary departure and voluntarily return to Mexico. It would be better policy to have the Mexican Government share the medical costs of treating its injured nationals.

Disadvantages:

- The Border Patrol should not make on the spot immigration status determinations and medical urgency determinations. Such determinations could dangerously delay medical treatment.

- The INS does not have medically equipped vehicles or trained personnel to take injured persons to an immediate border or to an international airport.

- The Mexican Government may refuse to agree to such an arrangement, and any announcement that we are seeking agreement from Mexico to return injured suspected undocumented migrants for medical treatment could damage our ability to work with Mexico to solve other migration related problems. At the May 1996 Binational Commission meeting chaired by Secretary of State Christopher on the U.S. side, we signed a memorandum of understanding in which both governments pledged to provide any individual detained with notice of his or her options and to ensure that specific notification to consular representatives is given in cases involving minors, pregnant women, and "people at risk." Those requiring medical treatment logically would fall into this category. We have also agreed to provide notification to the Government of Mexico in advance of

the announcement of changes in policy related to Mexican migrants. Thus, adequate consultation with the Government of Mexico would have to occur before any announcement.

- Where would nationals from other countries who enter the U.S. via Mexico be returned?

- U.S. citizens traveling to Mexico could experience serious problems in obtaining health care in Mexico in the aftermath of such an agreement since they should, pursuant to the proposed agreement and its reciprocal nature, return to the U.S. for treatment.

- Such an agreement with Mexico would probably encourage other nations to make similar demands. Currently, there is a well-established international practice that countries do not "dump" medical problems on each other even when the individual with a medical problem is a national of another country.

Congress of the United States
House of Representatives
Washington, D.C. 20515

June 30, 1997

The Honorable Donna E. Shalala
Secretary
U.S. Department of Health and Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201-0004

The Honorable Doris M. Meissner
Commissioner
U.S. Immigration and Naturalization Service
425 Eye St., N.W.
Washington, D.C. 20536

Dear Secretary Shalala and Commissioner Meissner:

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 contemplated that the Secretary of Health and Human Services and the Attorney General would develop appropriate procedures to verify the immigration status of individuals who use emergency medical services. (See section 562(b)).

As Members of Congress we continue to be very concerned about the financial burdens that illegal immigration places on taxpayers in this country. We would like to know what progress you are making toward the development of appropriate verification procedures as contemplated in the legislation.

Sincerely,

Lamar Smith
Lamar Smith

Elton Gallegly
Elton Gallegly

Ed Bryant
Ed Bryant

07/02/1997-0026

"(1) falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States, or any facsimile thereof;

"(2) knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal or facsimile thereof to or upon any certificate, instrument, commission, document, or paper of any description; or

"(3) with fraudulent intent, possesses, sells, offers for sale, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or facsimile thereof, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered,

shall be fined under this title, or imprisoned not more than 5 years, or both.

"(b) Notwithstanding subsection (a) or any other provision of law, if a forged, counterfeited, mutilated, or altered seal of a department or agency of the United States, or any facsimile thereof, is—

"(1) so forged, counterfeited, mutilated, or altered;

"(2) used, affixed, or impressed to or upon any certificate, instrument, commission, document, or paper of any description; or

"(3) with fraudulent intent, possessed, sold, offered for sale, furnished, offered to furnish, given away, offered to give away, transported, offered to transport, imported, or offered to import,

with the intent or effect of facilitating an alien's application for, or receipt of, a Federal benefit to which the alien is not entitled, the penalties which may be imposed for each offense under subsection (a) shall be two times the maximum fine, and 3 times the maximum term of imprisonment, or both, that would otherwise be imposed for an offense under subsection (a).

"(c) For purposes of this section—

"(1) the term 'Federal benefit' means—

"(A) the issuance of any grant, contract, loan, professional license, or commercial license provided by any agency of the United States or by appropriated funds of the United States; and

"(B) any retirement, welfare, Social Security, health (including treatment of an emergency medical condition in accordance with section 1903(v) of the Social Security Act (19 U.S.C. 1396b(v))), disability, veterans, public housing, education, food stamps, or unemployment benefit, or any similar benefit for which payments or assistance are provided by an agency of the United States or by appropriated funds of the United States; and

"(2) each instance of forgery, counterfeiting, mutilation, or alteration shall constitute a separate offense under this section.".

SEC. 562. TREATMENT OF EXPENSES SUBJECT TO EMERGENCY MEDICAL SERVICES EXCEPTION.

(a) IN GENERAL.—Subject to such amounts as are provided in advance in appropriation Acts, each State or political subdivision of a State that provides medical assistance for care and treatment of an emergency medical condition (as defined in subsection (d)) through a public hospital or other public facility (including a non-

profit hospital that is eligible for an additional payment adjustment under section 1886 of the Social Security Act) or through contract with another hospital or facility to an individual who is an alien not lawfully present in the United States is eligible for payment from the Federal Government of its costs of providing such services, but only to the extent that such costs are not otherwise reimbursed through any other Federal program and cannot be recovered from the alien or another person.

(b) CONFIRMATION OF IMMIGRATION STATUS REQUIRED.—No payment shall be made under this section with respect to services furnished to an individual unless the immigration status of the individual has been verified through appropriate procedures established by the Secretary of Health and Human Services and the Attorney General.

(c) ADMINISTRATION.—This section shall be administered by the Attorney General, in consultation with the Secretary of Health and Human Services.

(d) EMERGENCY MEDICAL CONDITION DEFINED.—For purposes of this section, the term "emergency medical condition" means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(1) placing the patient's health in serious jeopardy,

(2) serious impairment to bodily functions, or

(3) serious dysfunction of any bodily organ or part.

(e) EFFECTIVE DATE.—Subsection (a) shall apply to medical assistance for care and treatment of an emergency medical condition furnished on or after January 1, 1997.

SEC. 563. REIMBURSEMENT OF STATES AND LOCALITIES FOR EMERGENCY AMBULANCE SERVICES.

Subject to the availability of appropriations, the Attorney General shall fully reimburse States and political subdivisions of States for costs incurred by such a State or subdivision for emergency ambulance services provided to any alien who—

(1) is injured while crossing a land or sea border of the United States without inspection or at any time or place other than as designated by the Attorney General; and

(2) is under the custody of the State or subdivision pursuant to a transfer, request, or other action by a Federal authority.

SEC. 564. PILOT PROGRAMS TO REQUIRE BONDING.

(a) IN GENERAL.—

(1) The Attorney General of the United States shall establish a pilot program in 5 district offices of the Immigration and Naturalization Service to require aliens to post a bond in addition to the affidavit requirements under section 213A of the Immigration and Nationality Act and the deeming requirements under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1631). Any pilot program established pursuant to this subsection shall require an alien to post a bond in an amount sufficient to cover the cost of benefits described in section 213A(d)(2)(B) of the Immigration

Mtg - 7/3/97

Name	Org	Phone
Dru Johnson	HCFA/HHS	690-7762
vm-7/8 - Bonnie Washington	OMB	395-7788
John Morton	DOJ/ODAG	514-4203
Judy Faig, N	DOJ/EO USA	307-3211
Jim Carter	INS/HQBUD	305-0019
Alan Conroy	INS/HQ Border Patrol	616 0238
Jean Lee	HHS - ASL	690-6786
Traci Endo	HHS -	690-6786
Mark Magana	HHS-ASL	690-6786
WW-7/9 Irene Bueno	HHS - ASL	690.6786
Gerri Ratliff	DOJ/ODAG	514-3392
Teresa LaHaie	DOJ/JMD	616-3793
vm Steve Mentken	OMB/NW	395-4435
Bernadette Fernandez	HHS/ASPE	401-8398
Mike Makasetty	Indian Health Service 301	443-1261
Stephen Warnath	for WH. Domestic Policy	202 395-5550

Office of the Deputy Attorney General
U. S. Department of Justice

Washington, D.C. 20530

"Patient Dumping" Meeting -- July 3, 1997 - what is the problem

1. Background on the issue - just limited group.

2. Lack of statistics about magnitude of problem

   - o San Diego Board of Supervisors - testified at the hrg.
   - o Any complaints in Texas?

3. Is this a Federal problem?

   - o Border Patrol custody issue - reqs. can't arrest, ~~but~~ can't afford to arrest. We pay if we arrest. $1-2 million. medical costs.
   - o DSH (Medicaid program)
   - o Appropriations authorized if "cannot be recovered from the alien or another person" (8. U.S.C. 1369)/562
   - o Appropriations authorized for emergency ambulance services (8 U.S.C. 1370)/563
   - o Possible use of Veterans, Indian or DOD hospitals

4. Next steps

July

FLAT BILLING RATES

SUBJECT FY 97 Billing Rates

(INPATIENT)	Surgical Care Care	$1,923.00
	General Medicine Care	$1,046.00
	Neurology Care	$1,014.00
	Spinal Cord Injury	$ 977.00
	Blind Rehabilitation Care	$ 973.00
	Rehabilitation Medicine Care	$ 822.00
	Psychiatric Care	$ 501.00
	Intermediate Medicine Care	$ 428.00
	Extended Care Unit (Nursing Home Care)	$ 288.00
(OUTPATIENT)	Outpatient Clinic Visit	$ 194.00
	Dental ER Outpatient Visit	$ 121.00
	ER (Emergency Room) Visit	$ 194.00
	Prescription Refill	$ 20.00

"CATEGORY C VETERANS" will be charged for the cost of inpatient care they receive or $760.00 whichever is less, for the first 90 days of care during any 365 day period. For each additional 90 days of care, the "CATEGORY C VETERAN" would pay half the Medicare deductible. In addition, per diem co-payment of $10.00 for inpatient care and $5.00 for Extended Home Care. For each outpatient visit, the "CATEGORY C VETERAN" would pay 20 percent of the VA Outpatient billing rate (currently $194.00) or $38.80.

DIARY / IDEAS