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2000 Winter Meeting

COMMITTEE ON HUMAN RESOURCES

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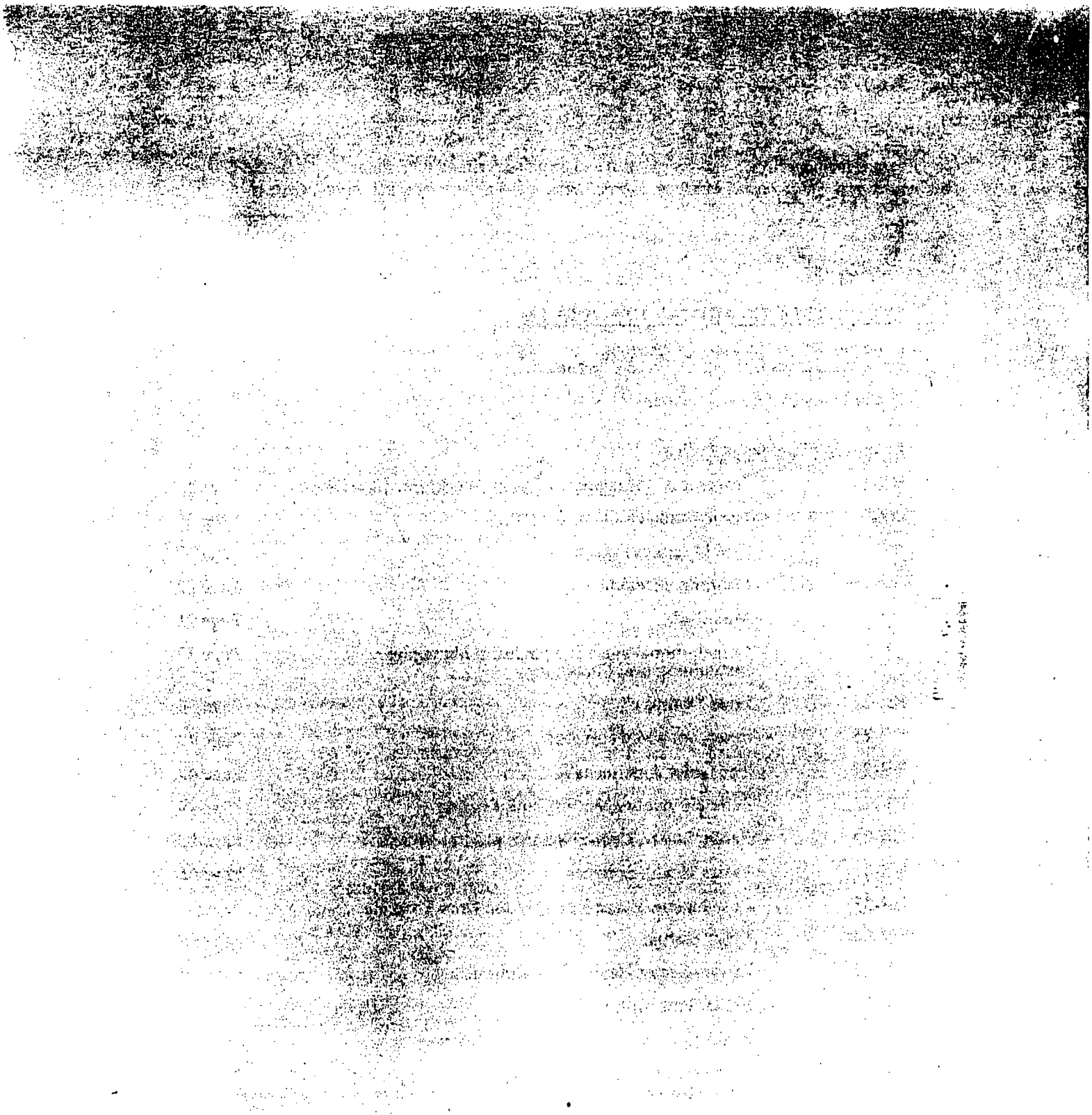
Proposed Changes in Policy

Reaffirmation of Existing Policy

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).



The Committee on Human Resources recommends the consideration of six new policy positions; amendments to twelve existing policy positions, two in the form of substitutes; and the reaffirmation of five existing policy positions, three with technical amendments. Policy proposals are time-limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. Governors' Principles to Ensure Workforce Excellence (Amendments to HR-1)

   This policy is amended to reflect passage of the Workforce Investment Act. In addition, the policy's sunset date is extended for two years.

2. Immigration and Refugee Policy (Amendments to HR-2)

   The policy is amended with language stating that Governors believe that the State Criminal Alien Assistance Program should be reauthorized, and the federal government should fairly reimburse states for the expense of incarcerating illegal criminal aliens.

   In addition, the entire text of policy EC-4, Health Care for Undocumented Immigrants, (which is scheduled to sunset) has been moved into HR-2 as a new section (2.2.6). Existing language stresses that since the federal government sets immigration policy, it should be responsible for the associated costs. Requiring states to fully fund health care for undocumented immigrants represents an unfunded mandate on the states.

3. Child Support Financing (Amendment in the form of a substitute to HR-14)

   This policy reiterates the Governors' concern that the federal government must maintain its commitment to funding for child support enforcement. In addition, it acknowledges that because of the financial instability and changing mission of the child support enforcement system, it may be appropriate to consider system reform at this time. As an option for reform, the policy suggests allowing states to pass through to families a greater share of child support collections. Any programmatic or financing changes in the child support system will have an impact on many related human service programs administered by the states.

4. Children's Health (Amendments to HR-15)

   The current policy is amended to add two new sections: one to stress state flexibility in regard to cost sharing for Native American children in S-CHIP; and one to acknowledge and reward innovative states that have already moved to cover families in S-CHIP. These proposals could lead to cost savings for states.

5. Medicaid (Amendments to HR-16)

   The Medicaid policy is amended to add a new section on the Drug Rebate Program (DRP). There are concerns that the DRP is not flexible enough to adequately help states as the nature of the pharmaceutical business changes and that the high cost of Medicaid prescription drugs is overwhelming state budgets. The proposals in this policy could result in significant savings for Medicaid programs.

6. Constitutional and Civil Rights in Managing Institutionalized Populations (New Policy Position, HR-20)

The proposed new policy strongly supports the religious and civil rights of individuals. However, it urges that legislation regarding religious freedom should exclude prison and jail inmates in deference to circumstances. In addition, the policy urges the federal government to respect a state's strong interest in independently operating its institutions with regard to enforcing the Civil Rights of Institutionalized Persons Act (CRIPA). As applied to states, religious freedom legislation could have hidden legal costs for states in providing security for various religious activities as defined by persons in institutions. The federal government's enforcement of CRIPA could be costly for states as they comply with the federal mandate.

7. Food Stamps (New Policy Position, HR-22)

This proposed new policy states the Governors' belief that reform in the Food Stamp Program could greatly improve its effectiveness by reducing the administrative burden on states and the federal government, and most importantly, by improving access to benefits for individuals and families in need. It outlines a number of specific options for reform within the Food Stamp Program. The policy also acknowledges the concern that food stamp caseloads have declined, and outlines a number of factors that have contributed to that decline. Because food stamps are federally funded, reform in the system may not necessarily have a direct fiscal impact on states but may increase federal spending as more individuals receive benefits.

8. Emergency Management (Amendments to HR-25)

This policy is amended by striking sections referring to the roles of Governors and local governments, and focusing primarily on the roles of states and the federal government. New language is added that urges the Federal Emergency Management Agency to update floodplain maps, to coordinate with the national weather service to ensure accurate snow data, and to work closely with the Emergency Management Assistance Compact organization regarding the coordination of available resources for response to disasters. In addition, the policy's sunset is extended for two years. FEMA would incur costs in updating floodplain maps. In the fiscal 2001 budget FEMA proposes to spend $134 million to initiate flood map modernization. There should be minimal costs for states to work with FEMA in updating maps. States currently administer EMAC at minimal costs.

9. The Older Americans Act (New Policy Position, HR-27)

This proposed new policy supports the reauthorization of the Older Americans Act and calls for increased state flexibility and federal commitments to continued funding. Although the program has not been reauthorized yet, Congress continues to provide funding for key programs; therefore, the policy has no fiscal impact for states.

10. Paternal Involvement in Child Rearing (Amendments to HR-28)

This policy recognizes that in families in which fathers to do not contribute their time and support, children are subject to a number of risk factors. In addition, it outlines a number of options for government involvement in encouraging fathers' participation in their children's lives. The policy is amended to say that any new federal funding stream to support fatherhood initiatives should be coordinated with, and supportive of, existing programs, and should not be funded at the expense of another vital human service program. Several Members of Congress and the administration have proposed establishing a new federal fatherhood program that would provide additional funding to states, local governments, and nonprofit organizations.

11. Public Safety, Crime Control, and Prevention (Amendments to HR-29)

This policy is amended with a section that urges the continuation of the Byrne program with more flexibility; a section that urges reauthorization and continuation of the state prison grants program with reduced requirements; and a section urging support for improvement of forensic science laboratories. The Byrne grant program is a block grant to states with a 10 percent match; the prison grants program was initiated in the 1994 crime bill, with states receiving funds only if they require prisoners to serve 85 percent of their sentence (some 30 states currently participate in the program); and the proposed fiscal 2001 budget has $15 million for forensic labs to reduce their offender DNA backlog.

12. Indian Health Services (Amendments to HR-31)

The policy reiterates the Governors' position that the Indian Health Service and other treaty-based trust issues with Native Americans are a federal responsibility and should not be shifted to the states. The policy is amended to stress that Governors remain willing to work closely with the federal government on improving Indian health through joint federal-state programs such as Medicaid and S-CHIP. In addition, the policy's sunset date is extended for two years. There are no fiscal impacts of the revised policy language.

13. Low-Income Home Energy Assistance Program (Amendments to HR-33)

The Low-Income Home Energy Assistance Program (LIHEAP) provides funds to states to assist low-income individuals in meeting their heating and cooling needs. The proposed amendments reflect support for increased flexibility between LIHEAP and other related federal programs in light of a new state match requirement in the weatherization program. In addition, the policy's sunset date is extended for two years. Because LIHEAP is a federally-funded program, cuts in funding would result in a cost-shift to states.

14. Synar Statute (New Policy Position, HR-34)

The Synar statute of the Substance Abuse and Mental Health Services Administration requires states to pass and enforce laws regarding the sale of tobacco products to minors. Failure to attain certain levels of vendor compliance results in a massive penalty to a state's Substance Abuse Prevention and Treatment (SAPT) block grant. This proposed new policy states that a series of changes to the administration of Synar or to the Synar statute itself must occur in close consultation with the states. If enacted, these policies could prevent states from facing a 40 percent cut in their SAPT block grant.

15. Private Sector Health Care Reform (Amendments to HR-37)

This policy stresses the Governors' support for state innovations in private sector health care. Minor amendments are suggested that call for a federal floor on medical records privacy and an increase in the flexibility with which states could receive ERISA waiver authority. In the absence of federal legislation, the U.S. Department of Health and Human Services has promulgated proposed rules on establishing national standards for medical records privacy. Depending on what form the final rules take, and whether Congress acts on the issue, there could be enormous costs to the states as they determine how their complex systems of privacy laws will need to be overturned or rewritten.

16. Senior Prescription Drugs (New Policy Position, HR-39)

This proposed new policy states that should Congress decide to expand prescription drug coverage to seniors, it should not shift that responsibility or its costs to the states. The policy also calls on the federal government to acknowledge and accommodate state programs and avoid disincentives to state innovation. The policy could prevent significant cost-shifts to states.

17. Building Successful Literacy Initiatives (New Policy Position, HR-40)

The proposed new policy outlines strategies for developing successful reading initiatives at the state and local levels. The policy has no fiscal impact.

18. Administrative Funds for Health and Human Services Program (Amendment in the form of a substitute to HR-46)

The current policy is amended in the form of a substitute that is more focused on administrative funds in health and human services programs. The new policy stresses that administrative funds in all health and human services programs (but especially in Medicaid, TANF, and Food Stamps) are vital to program success. The policy does specifically acknowledge that there may be Medicaid costs built into the TANF block grant base, but that any attempt to reduce Medicaid funding must be done only with careful consultation with the states. In addition, the policy's sunset date is extended for two years. The cost allocation proposal contained in the President's fiscal 2001 budget could cost states $2 billion over five years, either in reductions to Medicaid or from the TANF baseline.

19. Reaffirmation of Existing Policy

The committee proposes the reaffirmation of existing policies HR-5, Fair Labor Standards Act as Applied to Public Employees and Inmate Labor; HR-7, Public Health Services (with technical amendments); HR-21, Child Care and Early Education (with technical amendments); HR-43, Community Services Block Grant Program (with technical amendments); and HR-44, Postsecondary Education (reaffirmed for one year).

HR-1. GOVERNORS' PRINCIPLES TO ENSURE WORKFORCE EXCELLENCE

The Governors are vitally concerned with the competitive ~~economic~~ position of our states and the nation IN ADDRESSING THE CHALLENGES OF THE NEW ECONOMY, WHICH INCREASINGLY REQUIRE ~~. A world-class economy requires~~ both high-performance firms and workers. U.S. firms must upgrade production processes, improve products, seek new markets, and invest in workforce skills to compete successfully. Government should support these private sector modernization and quality improvement efforts and must radically restructure its own strategies for delivering education and training services in order to build a world-class workforce. To ensure that these efforts succeed, we must strengthen partnerships among business, labor, education, and all levels of government and make workforce development an integral component of national, state, and local economic development policies. The Governors recommend the following principles to help ensure workforce excellence.

- States and the federal government should promote the development of high-performance work organizations by providing technical, financial, and training assistance to firms seeking to implement quality management improvement and modernization initiatives. Firms and workers negatively affected by federal policy decisions, including defense downsizing and trade policy, should receive adjustment assistance faster and in a more flexible manner. Federal assistance should be provided through state-based networks AND INITIATIVES and SHOULD build on existing state and local programs.

- FURTHER ~~Wholesale~~ change in the nation's approaches to workforce development is needed in order to create a coherent, customer-driven, results-oriented workforce development system. This system should be understandable, accessible, and responsive to the needs of local and regional businesses, workers, job seekers, and students. Customers should be able to receive information about the full array of services available and be able to easily enter and re-enter the system at any point. This state-based system should be comprehensive, flexible, accountable, and designed to build on current strengths, and it should be managed at the local level to achieve desired results. A comprehensive national human investment policy should BE DEVELOPED TO guide and support state and local efforts to implement such a system.

- Job training and education programs should be available to the entire workforce and business community as part of a continuum of lifelong learning. At every stage in their lives, people should have the opportunity to equip and re-equip themselves for productive work through school, HOME STUDY, and work-based learning.
- Pathways for career development are needed for all young people. The workforce development system should effectively link education and work through career guidance, youth apprenticeship, and other options that enable young people to achieve the academic, occupational, and work-readiness skills needed for employment. Employers, unions, schools, colleges and universities, community-based organizations, and all levels of government must share the responsibility to ensure that such a system succeeds.
- Broadly agreed-upon, world-class workforce SKILL standards are essential to raising the level of achievement of individuals and to promoting continuous improvement in the quality of services provided AND RESULTS ACHIEVED. A national CONSENSUS PROCESS SHOULD BE USED TO DEVELOP ~~legislation should establish~~ national workforce development goals. Measurable standards, based on those goals, should be developed jointly by business, education, labor, and state and local governments and should account for the knowledge and skills needed to succeed in the modern workplace.
- STATES, IN COOPERATION WITH THEIR LOCAL PARTNERS, SHOULD EACH DEVELOP SIMPLE, DIRECT PERFORMANCE MEASURES THAT READILY ILLUSTRATE THE VALUE THAT THE WORKFORCE DEVELOPMENT SYSTEM ADDS TOWARD MEETING THEIR PARTICULAR ECONOMIC DEVELOPMENT GOALS. RESULTS ACHIEVED BY THE SYSTEM AND QUANTIFIED BY THESE POWERFUL MEASURES SHOULD BE CIRCULATED WIDELY AS EVIDENCE OF CONTINUOUSLY IMPROVING EFFECTIVENESS.
- Assessment of individual and institutional performance should be based ~~both~~ on A FEW OF THE MOST COMPREHENSIVE OF these NATIONAL standards, BUT PRIMARILY ~~and~~ on state and locally developed standards BASED ON GOALS THAT ARE RELEVANT TO THOSE LEVELS OF ACTUAL APPLICATION.

- National and state programs and policies should promote expanded private sector investment in workforce development and enhance the capacity of small and medium-sized firms to train their workers. Federal efforts should be designed to support state-based programs.
- Legislative action is STILL needed to integrate multiple, targeted, federal workforce development programs into a comprehensive and flexible system. FOR EXAMPLE ~~Specifically~~, currently funded and newly proposed worker readjustment programs should be consolidated and delivered through this system.
- Federal workforce development programs should be streamlined to eliminate barriers to effective service delivery caused by inconsistent definitions, planning and reporting requirements, and accountability measures. Incentives, including access to waiver authority and additional federal funds, should be provided to all states to establish comprehensive workforce development systems in partnership with local governments AND PRIVATE SECTOR LEADERS.

The Governors believe that the agreement developed IN 1998 by the bipartisan State and Local Workforce Coalition meets the principles described above. This agreement reflects months of negotiation and compromise among the National Governors' Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors, the organizations representing the government officials across the nation who operate the federal employment and training system. ~~The Governors strongly believe that Congress should enact this agreement into law.~~ The Governors believe Congress should ~~continue to work to~~ craft ADDITIONAL legislation providing FOR FURTHER comprehensive reform that closely reflects this agreement, including an EXPANDED opportunity for states to consolidate programs.~~, and should defer action until that has been achieved. We believe that this goal is within our grasp, as items in dispute are clearly identified and very limited. Governors and the Coalition have already demonstrated a willingness to negotiate and believe that such negotiations on the part of all parties should produce the serious comprehensive workforce development reform that we desire.~~ The Governors believe that nothing short of such reform, as reflected in the State and Local Workforce Coalition agreement, is CAPABLE OF ADDRESSING THE CHALLENGES OF THE NEW ECONOMY ~~acceptable~~ and that FURTHER ~~no~~

legislation is NEEDED TO ACHIEVE THE GOALS OF ~~preferable to a bill that does not closely reflect~~ the Coalition agreement.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–Winter Meeting 2000~~).

Adopted Winter Meeting 1993; reaffirmed Winter Meeting 1995; revised and reaffirmed Winter Meeting 1997; revised Winter Meeting 1998.

HR-2. IMMIGRATION AND REFUGEE POLICY

2.1 Immigration Policy

2.1.1 **Preamble.** The nation's Governors recognize the important contribution immigrants have made and continue to make to our nation. Although the federal government has the primary role in directing overall policy regarding immigration and refugees, the effects of such policy on local communities present challenges that cannot be ignored by the states. These challenges include demands for education, job training, social and health services, and other assistance designed to promote the integration of immigrants into our communities.

Decisions regarding the admission and placement of legal immigrants and refugees rest solely with the federal government. Similarly, the illegal entry of other individuals also is a direct responsibility of the federal government.

The federal government's unwillingness to provide adequate funding for costs attributable to migration and resettlement services has resulted in a dramatic shift of program costs from the federal government to state and local taxpayers. This inadequate federal commitment has strained the states' ability to provide the programs and services necessary to promote economic self-sufficiency within the immigrant and refugee community. The Governors recognize Congress' well-intentioned efforts and agree that sponsorship requirements can help prevent immigrants from becoming public charges. However, provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) now require states to verify immigration status and deny certain benefits to this population that represent a considerable cost transfer to some state and local governments. Indeed, several states have chosen to use state funds to provide critical assistance to certain immigrants. However, because immigration and refugee policy is under the sole jurisdiction of the federal government, the Governors believe that the federal government must be prepared to bear the costs of such policy. Since the passage of PRWORA, the federal government has restored Medicaid, food stamps, and Supplemental Security Income (SSI) benefits to many of those who had been denied eligibility under the original statute.

The Governors remain concerned about the effect of PRWORA on immigrants who were in the United States on the date of enactment, but who cannot meet the citizenship requirements because of age or disability. The nation's Governors urge Congress and the administration to work in partnership with the National Governors' Association to ensure that the immigration system and its requirements are fair to both citizens and noncitizens and meet the needs of aged and disabled legal immigrants who cannot naturalize and whose benefits may be affected.

Even though mandates have been terminated and states have been provided the option to establish eligibility for Temporary Assistance for Needy Families (TANF), Medicaid, and the Social Services Block Grant (SSBG), it is not clear that the judicial system will permit states to ban legal immigrants and others who are in need from critical services provided to other residents of the state. At the least, during an initial period of judicial deliberation, states could be required to sustain benefits.

Further, the Governors call upon Congress and the administration to consider whether those individuals who are receiving federal benefits and who have submitted an application to naturalize should continue to be eligible to receive these benefits while they are participating in the approximate two-year naturalization process.

The nation's Governors have expressed to the administration state concerns with the proposed rule implementing provisions of PRWORA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that require eligibility verification for federal public benefits. Both the process of verification and the definition of covered programs will have a significant impact on all applicants for various key human service programs, including those who may be eligible. Specifically, Governors believe that the definition of "federal public benefit" should be narrowed to exclude certain programs such as SSBG, Title IV-E Foster Care and Adoption Assistance, the Low Income Home Energy Assistance Program, and child care. Further, the proposed rule for the verification process could result in a significant cost shift to the states. Governors urge the administration to grant greater flexibility to the states in implementing the eligibility verification process.

2.1.2 **Principles.** Because immigration decisions have a broad influence upon our society and involve the states, the Governors urge Congress to consider the following principles in the deliberation and formulation of immigration policies.

- The decision to admit immigrants is a federal one that carries with it a firm federal commitment to shape immigration policy within the parameters of available resources we as a nation are determined to provide.
- The fiscal impact of immigration decisions must be addressed by the federal government. The states, charged with implementing federal policy, have shared and are sharing in the costs; however, there should be no further shift of costs to the states.
- Immigration policy shall be developed within the context of our national interest, which takes into consideration preservation of the family, demographic trends, economic development, labor market needs, and humanitarian concerns.
- Immigration decisions shall not discriminate against nor give preference to potential immigrants because of their nationality, race, sex, or religion.
- A basic responsibility of the federal government is to collect and disseminate timely and reliable statistical information on immigration and its consequences for the United States.
- Immigration policies and administrative systems should be modernized and reviewed periodically to ensure that they are fair and workable.
- Federal immigration policies should ensure that new immigrants do not become a public charge to federal, state, or local governments.
- A transferred prisoner's early release before the balance of the state-imposed maximum sentence is served should be calculated and governed under the laws of that state and not the prisoner's country of origin.
- The federal government must provide adequate information to and consult with states on issues concerning immigration decisions that affect the states.
- States should not have to incur significant costs in implementing federal laws regarding immigration status as a condition of benefits.

2.1.3 **Immigration Ceiling and Preference System.** The National Governors' Association supports control of legal immigration at a level consistent with our national interest and resources, under a ceiling adjusted periodically by Congress as conditions warrant. The ceiling should continue to exclude immediate relatives of United States citizens, refugees, asylees, and aliens whose adjustment of status is not subject to immigration quotas under current or future laws.

2.1.4 **Prohibition on the Hiring of Illegal Immigrants.** The Governors agree that to help control illegal immigration, the employment of illegal immigrants should be prohibited. To this end, enforcement mechanisms and verification systems must be enhanced. The appropriate federal agencies selected to enforce this prohibition should have the resources necessary to carry out their task. Employers should have access to a reliable verification system that will assist them in complying with the law. Such a system should minimize the administrative burdens on employers and should not discriminate against the employment of workers and potential workers.

2.1.5 **Legalization and Naturalization.** The Governors urge the following.

- States require maximum flexibility in determining and allocating resources to meet the needs of newly legalized aliens.
- The Immigration and Naturalization Service (INS) must be diligent in its efforts to ensure that felons are not naturalized and being given the benefits of citizenship rather than being deported.
- The naturalization process should be streamlined to be more efficient and accessible to eligible applicants wishing to become citizens, with all the rights and responsibilities thereof. In addition, as Congress allowed exemptions to naturalization tests for physically and mentally disabled applicants, there should be an exemption for those individuals who are eligible for naturalization except for the incapacity to communicate the desire to naturalize.
- The Immigration and Naturalization Service must take aggressive action to eliminate the backlog of naturalization applications, which now exceed 2 million nationwide.

2.1.6 **Supplemental Worker Program.** The "H" visas provide entry for nonimmigrant supplemental workers for a specific purpose in the event of certain labor shortages. A nonimmigrant is an alien legally in the United States for a temporary period of time. The largest classification of H visas is the H-1B workers in professional specialty occupations who may stay for a maximum of six years. Congress recently

increased the ceiling for H-1B workers for a period of three years. Congress also provided for demonstration programs to improve technical skills of American workers, along with grants for mathematics, engineering, or science enrichment courses, and a low-income scholarship program to assist Americans. Governors recognize the need for supplemental workers to assist employers in high tech and other specialty industries for a limited time period. The Governors commend Congress' effort to assist in developing the skills of American workers. However, they strongly urge that any new programs be coordinated with existing state-based efforts in skills and training. Most importantly, supplemental workers should not cause displacement of American workers.

2.1.7 **Cooperation with Western Hemisphere Countries.** A workable immigration program must recognize and involve trade and investment policies that are critical elements to reduce illegal immigration.

2.1.8 **Legal Immigration Law Enforcement.** The federal government should provide sufficient funding to the Immigration and Naturalization Service and other appropriate agencies to enforce the immigration laws, modernize management, and provide for an adequate and reliable data collection system.

2.1.9 **Exclusion/Asylum Proceedings.** Individual claims for asylum should be handled in a fair and expeditious manner. Prompt efforts should be made to address backlog problems.

2.1.10 **Emergency Authority and Contingency Plan.** As the President has contingency planning authority, the federal government must continue to develop contingency plans to deal with unanticipated flows of migrants, refugees, parolees, or asylum applicants. The states expect an immediate federal government response to such situations. The Governors must be consulted in determining the role of the states. The states anticipate full federal reimbursement of any state and local costs.

2.2 Illegal Immigration

2.2.1 **Law Enforcement.** Recognizing the need for stronger enforcement against illegal immigration and increased alien smuggling, Congress should continue to provide sufficient funding for the Immigration and Naturalization Service and other appropriate agencies to control our nation's border and to remove criminal aliens from the United States. The Governors strongly support provisions in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that will double the number of border patrol agents by 2001, enhance investigative and enforcement authority for alien smuggling and document fraud, and streamline the process of removal of criminal aliens and alien terrorists. The Governors call on the federal government to effectively use the resources provided for these purposes.

The Governors also are concerned about the increase in drug trafficking by illegal immigrants along the borders of the states and territories. Control of the flow of drugs across our borders is a federal responsibility, and smuggling drugs into the United States is a federal felony. The Governors are concerned that the federal government's current drug-smuggling policy is allowing a large number of people caught smuggling illegal drugs into the United States to be returned to Mexico without prosecution. The Governors urge the federal government to reverse this policy and to vigorously enforce our drug control laws.

2.2.2 **Prosecution and Removal of Undocumented Felons.** The Governors are concerned about the lack of resources in the Immigration and Naturalization Service devoted to the early identification of criminal aliens in state criminal justice systems. Currently, a large number of convicted undocumented felons do not come to the attention of the INS and escape formal deportation because of a lack of presence of INS officials in local facilities. The Governors believe that programs like the early identification pilot programs currently operating in several states should be expanded significantly to ensure that undocumented felons are formally deported.

In addition, the Governors believe that greater efforts should be made by the federal government to facilitate the transfer of criminal alien felons to their home countries to serve their sentences. Current transfer treaties are unworkable because they require the consent of the prisoner and they provide little incentive for the country of origin to cooperate with the United States in the enforcement of transfer treaties. Although the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 echoes these concerns, current federal implementation is lacking.

For this reason, the Governors continue to call on the federal government to negotiate and renegotiate prisoner transfer treaties to expedite the transfer of criminal aliens in the United States who are subject to deportation or removal. The negotiations for such agreements should focus on:

- ensuring that the transferred prisoners serve the balance of their state-imposed prison sentence;

- removing any requirement that the prisoners consent to be transferred to their countries of origin;
- structuring the process to require that the prisoners serve the remainder of their original prison sentence if they return to the United States; and
- considering economic incentives to encourage countries of origin to take back their criminal citizens.

Additionally, the Governors believe the federal government should:

- increase the use of interior repatriation with countries contiguous to the United States;
- place INS officials in state and local facilities for early identification of potentially deportable aliens—nearer the point of their illegal entry—to ensure formal deportation prior to release; and
- upon the request of a state Governor, place INS officers in state courts to assist in the identification of criminal aliens pending criminal prosecution.

Finally, the Governors are concerned about the large number of deported felons that are returning to the United States. A significant number of the criminal alien felons housed in state prisons and local jails are previously convicted felons who reentered the United States after they were deported.

The Governors urge the federal government to provide sufficient funds for proven positive identification systems, like the Automated Fingerprinting Identification System (AFIS), to allow for the expanded use of these systems in the rest of the nation.

2.2.3 **State Criminal Alien Assistance Program.** RECOGNIZING THAT CONTROL OF THE BORDERS IS WITHIN THE EXCLUSIVE JURISDICTION OF THE FEDERAL GOVERNMENT, the 1994 Crime Act authorized the State Criminal Alien Assistance Program (SCAAP) to provide financial assistance to states in paying the costs of illegal criminal aliens incarcerated in state correctional systems. In 1996 the act was amended to include local correctional facilities. The program reimburses state and local government for their costs from funds annually appropriated by Congress. States have had to wait several months to be reimbursed for expenses because the program must wait for all applicants before calculating reimbursements.

The Governors are pleased with recent congressional action that will expedite the release of SCAAP funds and will continue to work with Congress and the U.S. Department of Justice to ensure the timely disbursement of these funds.

IN ADDITION TO THE FEDERAL GOVERNMENT CONTINUING ITS COMMITMENT TO OTHER FEDERALLY FUNDED STATE CRIMINAL JUSTICE PROGRAMS, THE GOVERNORS BELIEVE THAT SCAAP SHOULD BE REAUTHORIZED, AND THE FEDERAL GOVERNMENT SHOULD FAIRLY REIMBURSE STATES FOR THE EXPENSE OF INCARCERATING ILLEGAL CRIMINAL ALIENS.

2.2.4 **Education Costs of Undocumented Aliens.** The Governors are concerned about the costs associated with ever-larger numbers of undocumented children in our school systems. In a number of states, this has led to classroom overcrowding and has seriously exacerbated the funding crunch faced by public

school systems. Because of the federal government's failure to provide funding for the education of undocumented children, Governors have had to cut back on other vital public services.

Therefore, the Governors call on the federal government to recognize its exclusive responsibility for costs associated with the unfunded mandate that is the result of failed immigration policies by establishing a direct billing mechanism to ensure that any educational services provided to undocumented children are financed entirely by the federal government.

2.2.5 **Study of Costs of Citizen Children.** Governors across the country are providing education, health, and social services to citizen children of undocumented immigrants at extremely high costs. However, the true costs are not known, as no systematic survey has been undertaken to examine these costs and the fiscal impacts on states of providing services to citizen children of undocumented immigrants. The Governors call upon Congress and the administration, working jointly with state budget officers, to undertake a study of these costs so that an accurate assessment can be made.

[Note: Material in brackets is existing language moved from policy EC-4.]

2.2.6 **[Health Care for Undocumented Immigrants.** The Governors recognize that every individual in the United States and U.S. territories must continue to have access to emergency and other public health care services. However, because the U.S. Constitution requires that our nation's immigration policy be placed under the exclusive jurisdiction of the federal government, all costs resulting from immigration policy should be paid by the federal government. The Governors believe that under no circumstances should state, territorial, and local governments be required to share in costs resulting from federal policy decisions that would provide health care and other federal entitlements to undocumented individuals.

The Governors oppose state, territorial, and local governments being forced to subsidize federal immigration policy. Therefore, the Governors call on the President and Congress to recognize the federal government's sole responsibility in immigration policy by repealing all current federal mandates that require state, territorial, and local funds to be used to provide health care and other public services to undocumented individuals. In its place, the Governors call upon Congress and the administration to develop a direct billing system to ensure that emergency or public health care needs that are provided to undocumented immigrants be financed fully by the federal government. The provision of health care to undocumented immigrants must remain a fundamental federal responsibility, financed exclusively with federal dollars, not an unfunded mandate or a cost shift to states, territories, local governments, or health care professionals.

With the passage of the Balanced Budget Act, the federal government took a first step toward fulfilling its responsibility for meeting the health care costs of undocumented immigrants. The new law creates an entitlement to states through which the twelve states with the largest populations of undocumented immigrants will receive $100 million from the federal government between 1998 and 2001 for emergency health care costs. The Health Care Financing Administration should work with the states to set up quickly a process for disbursing these funds. In claiming these funds, states should not be subjected to burdensome administrative requirements in providing documentation that could create barriers to providing emergency medical services.

The Governors call on the appropriations committees to take the next step. Through the immigration act, Congress has authorized federal payment for the emergency and ambulatory health care costs of undocumented immigrants. To the extent that needs exist beyond the new state entitlement program, funds should be made available through the appropriations process to fulfill this obligation.]

2.3 Refugee Policy

2.3.1 **Preamble.** International political conditions over the past two decades have forced numbers of people to leave their homes and seek refuge in other countries. The United States has provided leadership to the world community in addressing the needs of refugees and displaced persons. The nation's Governors are supportive of this effort to assist those individuals who have been displaced.

We believe that refugee issues are an international responsibility and that resettlement must be shared as equitably as possible. Further, there must be a genuine effort to protect refugees worldwide.

States play a major role in refugee resettlement. They must work with the refugees to assist in their adjustments to American life and to expedite their economic self-sufficiency. Effective resettlement of refugees requires the development of systems that provide culturally appropriate services to meet the

needs of ethnically diverse communities, as well as extensive networking with existing human service systems.

The Governors recognize that resettlement is not a one-time event, but a process of adjustment that may take months or years. In order for this process to be successful, federal, state, and local officials must work together with the private sector and local voluntary agencies to build a seamless continuum of services from initial reception through longer term needs, leading the way to self-sufficiency.

2.3.2 **Federal Responsibility.** The federal government has the total responsibility to meet the basic needs of refugees and entrants. The basic needs are as follows: eight months for cash and medical assistance and five years for social services and special education costs. The federal government also has the total responsibility for determining and accounting for secondary migration to areas of saturation. However, states should have an integral role in developing refugee resettlement programs, including the determination of primary and secondary migration.

If the federal government is unwilling to sufficiently fund the necessary services, then it is incumbent upon the federal government to decrease the flow of refugee admissions. Under no circumstances should there be any further shift of costs to state and local governments.

Overall, there have been significant funding reductions in refugee programs. These budget reductions represent a major federal policy change that shifts fiscal responsibility for meeting the basic needs of refugees and entrants from the federal government to states and localities. This fiscal policy change occurs at a time when state and local resources have experienced significant cuts in human service programs because of federal budget balancing. Because the states do not have the authority to set immigration quotas or limit secondary migration, they are unable to effectively control the additional costs incurred because of this change in policy.

Governors, Congress, and the administration should work together to identify the appropriate mechanism to address those aged and disabled refugees who are unable to become citizens. The new welfare law no longer provides federal benefits to this population after seven years, and shifts the responsibility to states to decide whether to provide state benefits to these refugees admitted to the U.S. by federal policy. The aged refugees, in particular, confront extraordinary difficulties in becoming naturalized citizens (e.g., inability to pass the tests or loss of documents). Even those refugees able to naturalize would be in jeopardy for a six- to nine-month period during the process of applying for citizenship.

Recently, efforts to privatize refugee resettlement have been under discussion. The Governors support maintaining the current premise that the decision to privatize should be left up to each individual state. Governors appreciate the consultations by the Office of Refugee Resettlement (ORR) in developing the notice of proposed rulemaking in the requirement for public/private partnership programs for refugee cash assistance and refugee medical assistance and the flexibility it appears to offer. Upon full review, states will continue to work with ORR to resolve any outstanding issues.

2.3.3 **Principles.** In keeping with the above precepts, Governors support the reauthorization of the Refugee Act of 1980, with the following principles as guidance for developing new legislation.

- The goal of resettlement assistance efforts is to help refugees achieve self-sufficiency as quickly as possible. The key to economic self-sufficiency is entry into unsubsidized employment at a living wage at the earliest possible time with concurrent removal from dependency on public aid.
- Social services are vital to reaching the goal of self-sufficiency, and federal funding should not be decreased as a means of reducing the federal refugee or entrant budget.
- Under the Fascell/Stone Amendment (Section 501 of the Refugee Education Assistance Act of 1980), Congress intended for Cuban and Haitian entrants to be treated as refugees for the purposes of federal benefits. Cuban and Haitian entrants should continue to receive similar "refugee" status as a temporary means to self-sufficiency.
- The federal government has reduced the period of eligibility for refugee cash and medical assistance from thirty-six months to eight months. At least twelve months are required to assist refugees in acquiring basic language skills, housing, and work to achieve rudimentary self-sufficiency. The federal government should provide adequate resources to ensure a full twelve months of access to refugee benefits.

- Stability of federal funding is crucial if states are to implement an effective resettlement program. In addition, the timely provision of funding is essential to enable states to discharge their administrative responsibilities in an expeditious manner, relative to funding decisions and program planning.
- States must be consulted in a timely manner when changes in the current program are being considered. A process for ongoing state participation in program review should be incorporated into the federal administrative structure.
- The federal government should synchronize admissions and appropriation cycles to allow for more effective management of the program.
- Because the refugee program is state-administered, it is essential that all funding should flow to the states to allow for centralized program planning, administration, accountability, and coordination of local planning efforts.
- Although the states are willing to consider changes in the current program that would improve the efficiency or effectiveness of the program, the Governors would oppose any attempt to convert funding for the program to a block grant.
- Privatization under the Wilson-Fish Amendment to the Refugee Act should be an option open to all states and not a federal mandate.

2.3.4 **Coordination and Consultation.** The Governors continue to be concerned about the lack of adequate consultation on the part of the voluntary agencies (VOLAGs) and their local affiliates in the initial placement of refugees and on the part of the federal government in the equitable distribution of refugees and entrants.

States have continually urged the federal government to establish a mechanism to ensure appropriate coordination and consultation. However, significant progress has not been made and the following mechanisms need to be considered to address this problem.

- There should be a requirement in the State Department/VOLAG contract to limit placement to areas conducive to resettlement. In addition, VOLAGs and their local affiliates should be required to have a letter of agreement that specifies that there has been consultation and planning for the initial placement of refugees and sets forth the continuing process of consultation. The requirement in the State Department/VOLAG contract to limit placement to areas conducive to resettlement should include concurrence by the state.
- INS, the U.S. Department of State (DOS), and the Office of Refugee Resettlement should coordinate with states receiving entrants and refugees. Entrants should be made eligible for DOS assistance for thirty days, or another mechanism should be developed to allow for a smooth transition of entrants into a community. The current system, in which an entrant simply arrives in the United States without any knowledge of the state, creates a tremendous burden on the community, leaves gaps in the provision of services, and provides no foundation for planning purposes.

The Governors should be closely involved in the congressional consultation process through which new refugee admissions levels are determined to ensure that program funding is provided to support the level of refugee admissions.

2.3.5 **Impact Aid.** Special impact aid to state and local governments should be provided to meet unusual burdens on communities. Impact aid should be provided in the event that any of the following occur:

- a refugee flow is unexpectedly large or sudden;
- the resettlement area is highly concentrated by initial placement of refugees, including secondary migrants;
- the resettlement area has unfavorable economic conditions;
- the refugee population has special needs; or
- there is a continuing stream of refugees to one geographic area.

2.4 Habitual Residents

For clarification purposes, the immigration and refugee policy provisions also pertain to habitual residents, as defined in the compacts of free association.

Time limited (effective Winter Meeting 1999–Winter Meeting 2001).
Adopted Winter Meeting 1988; revised Winter Meeting 1992, Winter Meeting 1993, Winter Meeting 1994, Winter Meeting 1995, Winter Meeting 1997, and Winter Meeting 1999 (formerly Policy C-14).

HR-14. CHILD SUPPORT FINANCING

14.1 BACKGROUND

CHILD SUPPORT IS AN INTEGRAL PART OF FINANCIAL STABILITY FOR MANY FAMILIES. FOR LOW-INCOME FAMILIES, RECEIVING CHILD SUPPORT PAYMENTS IS A CRUCIAL COMPONENT IN ACHIEVING AND MAINTAINING SELF-SUFFICIENCY. GOVERNORS ARE COMMITTED TO CONTINUE WORKING WITH THE FEDERAL GOVERNMENT TO IMPROVE THE CHILD SUPPORT SYSTEM AND ADVANCE THE MISSION OF THE PROGRAM.

FEDERAL, STATE, AND LOCAL GOVERNMENTS ALL PLAY A KEY ROLE IN THE CHILD SUPPORT SYSTEM. SUCCESS IN CHILD SUPPORT ENFORCEMENT RELIES HEAVILY ON A STRONG STATE-FEDERAL PARTNERSHIP. FURTHER, THE COORDINATION OF THE LARGE INTERSTATE CHILD SUPPORT CASELOAD IS ONE EXAMPLE THAT DEMONSTRATES THE NEED FOR THE FEDERAL GOVERNMENT'S INVOLVEMENT IN THE CHILD SUPPORT SYSTEM. IN 1996, AS PART OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT (PRWORA), STATES AGREED TO TAKE ON NUMEROUS NEW RESPONSIBILITIES DESIGNED TO IMPROVE THE CHILD SUPPORT SYSTEM. THESE MANDATES CAME WITH A FINANCIAL COMMITMENT FROM THE FEDERAL GOVERNMENT. IN MANY CASES, STATES HAVE INVESTED ADDITIONAL STATE FUNDS AND STAFF RESOURCES TO IMPLEMENT THE PRWORA MANDATES.

GOVERNORS BELIEVE THAT ANY REDUCTION IN THE FEDERAL GOVERNMENT'S FINANCIAL COMMITMENT TO CHILD SUPPORT ENFORCEMENT IS A BREACH OF THE 1996 WELFARE REFORM AGREEMENT AND COULD NEGATIVELY IMPACT STATES' ABILITY TO SERVE FAMILIES. FURTHER, THE CONTINUATION OF THE PRWORA REQUIREMENTS WITHOUT STABLE FEDERAL FUNDING CONSTITUTES AN UNFUNDED MANDATE, WILL RESULT IN A SIGNIFICANT COST SHIFT TO THE STATES, AND COULD JEOPARDIZE THE TIMELY AND EFFECTIVE IMPLEMENTATION OF SUCH MANDATES. GOVERNORS ARE ALSO CONCERNED THAT ANY NEW PROPOSED FEDERAL REQUIREMENTS, WITHOUT

ADEQUATE FEDERAL FUNDING, WILL CREATE A SUBSTANTIAL NEW BURDEN ON STATE CHILD SUPPORT SYSTEMS AND WILL HAVE A NEGATIVE IMPACT ON STATES' ABILITY TO PROVIDE SERVICES TO CHILDREN AND FAMILIES.

GOVERNORS ALSO BELIEVE, HOWEVER, THAT BECAUSE OF THE FINANCIAL INSTABILITY AND CHANGING MISSION OF THE CURRENT CHILD SUPPORT SYSTEM, IT MAY BE APPROPRIATE TO CONSIDER SYSTEM REFORM AT THIS TIME.

14.2 TRANSITION IN THE CHILD SUPPORT PROGRAM

THE MISSION OF THE CHILD SUPPORT PROGRAM IS IN A TIME OF TRANSITION. WHILE CHILD SUPPORT ENFORCEMENT WAS ORIGINALLY ESTABLISHED PRIMARILY FOR THE PURPOSE OF COST RECOVERY TO ASSIST STATE AND FEDERAL GOVERNMENTS TO PAY FOR WELFARE COSTS, GOVERNORS RECOGNIZE THAT THE CHILD SUPPORT SYSTEM IS NOW REGARDED AS MORE OF AN INCOME SUPPORT PROGRAM FOR FAMILIES. GOVERNORS BELIEVE THAT THE CHANGING MISSION OF THE CHILD SUPPORT PROGRAM FITS IN WITH THE BROAD GOALS AND PURPOSES OF WELFARE REFORM – TO MOVE FAMILIES TOWARD SELF-SUFFICIENCY. THIS CHANGING MISSION OF THE PROGRAM, HOWEVER, COULD ALSO LEAD TO SIGNIFICANT FISCAL INSTABILITY OF THE CHILD SUPPORT SYSTEM IF PROGRAM CHANGES ARE NOT CAREFULLY CONSIDERED. WHILE GOVERNORS RECOGNIZE THAT THE IDEAL GOAL OF THE CHILD SUPPORT PROGRAM MAY BE TO IMPROVE A FAMILY'S ECONOMIC SECURITY, MAKING DRASTIC CHANGES TO THE CHILD SUPPORT SYSTEM WITHOUT CONSIDERING THE FINANCIAL STABILITY OF THE PROGRAM WILL NOT LEAD TO BETTER OUTCOMES FOR THE FAMILIES SERVED.

THE POPULATION SERVED BY THE CHILD SUPPORT SYSTEM IS ALSO IN A TIME OF TRANSITION AND CAUSING SOME FINANCIAL INSTABILITY IN STATES. AS WELFARE CASELOADS ARE DROPPING, CHILD SUPPORT CASELOADS ARE RISING IN MANY STATES AS MORE FAMILIES DEPEND ON CHILD SUPPORT PAYMENTS TO MAINTAIN SELF-SUFFICIENCY. DECLINING WELFARE CASELOADS ARE LEADING TO NEW FINANCIAL CHALLENGES FOR THOSE STATES THAT RELY HEAVILY ON RETAINED TEMPORARY

ASSISTANCE FOR NEEDY FAMILIES (TANF) COLLECTIONS TO SUPPORT THE CHILD SUPPORT SYSTEM. OTHER FACTORS CONTRIBUTING TO THE FINANCIAL INSTABILITY FOR SOME STATES' CHILD SUPPORT ENFORCEMENT SYSTEMS INCLUDE THE NEW INCENTIVE FORMULA AND THE DECREASING FINANCIAL COMMITMENT FROM THE FEDERAL GOVERNMENT, MOST RECENTLY THROUGH THE REPEAL OF THE CHILD SUPPORT "HOLD HARMLESS" PROVISION ESTABLISHED IN PRWORA.

14.3 NEED FOR REFORM

GOVERNORS BELIEVE THAT BOTH THE FINANCING STRUCTURE AND THE CURRENT DISTRIBUTION RULES FOR CHILD SUPPORT COLLECTIONS ARE EXTREMELY COMPLEX AND ARE NOT NECESSARILY COORDINATED WITH THE GOALS OF WELFARE REFORM. THE COMPLEXITY OF CHILD SUPPORT DISTRIBUTION, SPECIFICALLY DISTRIBUTION OF ARREARAGES, CREATES A COSTLY ADMINISTRATIVE BURDEN FOR BOTH STATES AND THE FEDERAL GOVERNMENT. GOVERNORS BELIEVE THAT EASING THIS EXTENSIVE BURDEN THROUGH SOME TYPE OF SIMPLIFICATION MAY ALLOW A GREATER SHARE OF TIME AND RESOURCES TO BE FOCUSED ON IMPROVING THE ECONOMIC SECURITY OF FAMILIES. IN AN EFFORT TO INCREASE THE EFFECTIVENESS OF THE CHILD SUPPORT PROGRAM AND TO IMPROVE FAMILIES' SELF-SUFFICIENCY, GOVERNORS ARE INTERESTED IN CONSIDERING CHANGE WITHIN THE CHILD SUPPORT FINANCING STRUCTURE, SUCH AS AN OPTION FOR GREATER PASSTHROUGH.

14.3.1 PASSTHROUGH. ONE OPTION FOR CHANGE IN DISTRIBUTION OF CHILD SUPPORT COLLECTIONS IS FOR THE FEDERAL GOVERNMENT TO PROVIDE STATES THE OPTION TO PASS THROUGH A GREATER SHARE OF THE CHILD SUPPORT COLLECTED ON BEHALF OF TANF FAMILIES. WHILE GOVERNORS ARE SUPPORTIVE OF INCREASING OPTIONS AND FLEXIBILITY FOR STATES, THE FINANCIAL STABILITY OF THE CHILD SUPPORT SYSTEM MUST BE CONSIDERED IN THE DEBATE REGARDING GREATER PASSTHROUGH TO FAMILIES. PROVIDING CHILD SUPPORT SERVICES IS A STATE-FEDERAL PARTNERSHIP, HOWEVER, AND ANY PROPOSAL TO ALLOW FOR GREATER PASSTHROUGH MUST

INCLUDE A COMMITMENT FROM THE FEDERAL GOVERNMENT TO PROVIDE ITS SHARE OF CHILD SUPPORT COLLECTIONS TO FAMILIES AS WELL. IN ADDITION, SUCH A PROPOSAL SHOULD ALLOW STATES TO COUNT THE STATE SHARE OF COLLECTIONS PASSED THROUGH TO FAMILIES TOWARD THEIR TANF MAINTENANCE OF EFFORT REQUIREMENT, EVEN IF NOT DISREGARDED IN DETERMINING THE TANF BENEFIT LEVEL.

14.4 CONCLUSION

BECAUSE OF THE COMPLEXITY OF THE CHILD SUPPORT SYSTEM, ANY PROGRAMMATIC OR FUNDING CHANGES WILL HAVE AN IMPACT ON MANY RELATED HUMAN SERVICE PROGRAMS ADMINISTERED BY THE STATES. MORE IMPORTANTLY, SUCH CHANGES COULD HAVE A NEGATIVE IMPACT ON THE CHILDREN AND FAMILIES THE SYSTEM IS DESIGNED TO SERVE. GOVERNORS, THEREFORE, ARE ADAMANTLY OPPOSED TO FURTHER REDUCTIONS IN THE FEDERAL COMMITMENT TO CHILD SUPPORT ENFORCEMENT AND STRONGLY BELIEVE THAT CHANGES TO THE CHILD SUPPORT SYSTEM SHOULD NOT BE MADE WITHOUT SERIOUS DELIBERATION AND CONSULTATION WITH THE STATES.

~~**14.1 Background**~~

~~Child support is an integral part of financial stability for many families. For low-income families, receiving child support payments is a crucial component in achieving and maintaining self-sufficiency. Governors are committed to continue working with the federal government to improve the child support system and advance the mission of the program.~~

~~Federal, state, and local governments all play a key role in the child support system. The coordination of the large interstate child support caseload is one example that demonstrates the need for the federal government's involvement in the child support system. In 1996, as part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), states agreed to take on numerous new responsibilities designed to improve the child support system. These new mandates came with a financial commitment from the federal government. In many cases, states have invested additional state funds and staff resources to implement the PRWORA mandates.~~

~~Governors believe that any reduction in the federal government's financial commitment to the child support system would be a breach of the 1996 welfare reform agreement and could negatively impact states' ability to serve families. Further, the continuation of the PRWORA requirements without stable federal funding would constitute an unfunded mandate, result in a significant cost shift to the states, and could jeopardize the timely and effective implementation of such mandates.~~

~~The U.S. Department of Health and Human Services (HHS) recently conducted a series of consultations with stakeholders, including states, to examine the current financing structure of the child support system. Results from the consultations, and the corresponding study contracted by HHS, demonstrate the significant state investments in the child support system. Further, the consultations have~~

~~demonstrated that states have chosen to invest federal incentive funds in the child support system and other related human service programs.~~

~~14.2 Current Challenges~~

~~States currently face many new challenges in the child support system. Examples of these challenges include the following.~~

- ~~Although welfare caseloads are dropping, child support caseloads are rising in many states as more families depend on child support payments to maintain self-sufficiency. Declining welfare caseloads are leading to new financial challenges for those states that rely heavily on retained Temporary Assistance for Needy Families (TANF) collections to support the child support system.~~
- ~~The new child support incentive structure adds uncertainty to states' financial future. The new statute (P.L. 105-200) caps the federal incentive pool for the first time requiring states to compete with each other for these funds. The capped incentive pool will make it difficult for states to predict future federal revenues in the child support system.~~
- ~~States also face enormous systems challenges in the next year as they prepare the child support program systems, as well as those for all human service programs, for the Year 2000. "Y2K" compliance could be especially challenging in the child support program, as many states are still implementing the Family Support Act requirement of an automated statewide child support system.~~

~~14.3 Conclusion~~

~~For all of these reasons, Governors are greatly concerned with any attempt by the federal government to restructure child support financing at this time. Governors have appreciated the administration's efforts to examine the current structure and believe the consultations should continue as restructuring proposals emerge. Because of the complexity of the child support system, any programmatic or funding changes will have an impact on many related human service programs administered by the states. More importantly, such changes could have a negative impact on the children and families the system is designed to serve. Governors strongly believe, therefore, that changes to the child support system should not be made without serious deliberation and consultation with the states.~~

Time limited (effective Winter Meeting 1999–Winter Meeting 2001).
Adopted Winter Meeting 1999.

HR-15. CHILDREN'S HEALTH

15.1 Preamble

The Governors share the commitment of Congress and the Administration to making health insurance available to children in need. States have long been leaders in expanding health care access for children.

States have been increasing eligibility levels for pregnant women and children for many years through Medicaid expansions and other state-designed programs. However, the Balanced Budget Act of 1997 authorized unprecedented increases in health care coverage for uninsured children not eligible for Medicaid. Under the State Children's Health Insurance Program (S-CHIP), states are using state-designed programs, Medicaid expansions, or a combination of both approaches to make more children eligible for health care coverage. Of the fifty-two states and territories that have approved S-CHIP plans, twenty-five states are expanding Medicaid, twelve states are using a separate state insurance program, and fifteen states are using a combined approach.

Today, almost 20 million children receive health care services through Medicaid and S-CHIP. Through these two programs, fifty-four states and territories have expanded coverage well beyond federally mandated levels.

Given their commitment to children's health and extensive experience in operating programs that provide health care to tens of millions of children, the Governors stand ready to work with Congress and the Administration to continue improving opportunities for states to expand health care access for uninsured children.

Strategies to extend coverage to currently uninsured children classify this population into two subsets: children who lack any connection to the insurance marketplace and children who are eligible for Medicaid or S-CHIP but are not enrolled in these programs. Consequently, the Governors' policy recommendations focus first on areas for improvement in S-CHIP and then on outreach.

15.2 Medicaid and S-CHIP Eligibility

Despite initial guidance to states that a majority of uninsured children would be eligible for S-CHIP, some states are discovering that a substantial number of uninsured children are not those in the S-CHIP income eligibility range. Instead, these children are eligible for, but not enrolled in, Medicaid. In fact, in some states, S-CHIP outreach has brought in nine Medicaid-eligible children for every S-CHIP-eligible child. This phenomenon is largely attributable to families that do not want to be enrolled in the welfare-associated Medicaid program. Many families have asked to participate in the state-designed programs, even volunteering to pay premiums and copayments. However, federal law prohibits states from enrolling Medicaid-eligible children in S-CHIP. States should not have to force beneficiaries into Medicaid when it is clear they want to be enrolled in a separate program. Such a policy may lead families not to enroll in any program, leaving children uninsured. The Governors call on Congress to make technical changes to the program to give states the option of allowing beneficiaries to voluntarily turn down Medicaid in favor of a separate S-CHIP program.

15.3 State Flexibility

For states to fully implement this program and cover the maximum number of children possible, they must be provided additional flexibility to expand access to employer-based insurance and family coverage, limit "crowd-out," and design innovative programs with regard to cost-sharing and other issues.

States have embraced many different approaches to expanding health insurance coverage for children through S-CHIP. As envisioned by the authors of the program, this flexibility has expanded coverage and fostered innovations in program design and development. State policymakers are dedicated to designing the most effective programs possible to meet the needs of citizens in their states. The Governors call on Congress and the Administration to work with states to ensure greater flexibility in reaching the common goal of expanding meaningful health insurance to children.

15.4 Guaranteed Funding

The design, development, and implementation of a health insurance program such as S-CHIP takes time. For states to enroll children, educate families about the benefits of a managed care delivery system, ensure that necessary services are received, and ensure that claims are submitted and subsequently paid, Governors must be confident that a stable funding stream will be available to provide health care services to beneficiaries. Any attempt to decrease funding will jeopardize states' ability to serve current populations, much less increase the number of children covered.

The authors of the S-CHIP legislation allocated $24 billion to this program over five years and a total of $48 billion over ten years. As states and territories develop their long-term goals for coverage and state spending, it is vital that Congress maintains its commitment to fully fund the federal share of S-CHIP. By law, this program is an entitlement to states and territories, which have up to three years to spend their annual allotments. If those funds are not spent in that period, they revert to a general pool that becomes available to other states that have expended their entire allotments. The territories should be allowed to share in this general pool. Current law provides one-fourth of 1 percent of the entire S-CHIP allotment for all of the territories.

In addition, states that have already significantly expanded coverage to the majority of their uninsured children should be permitted to use new program funds to offset existing state expenditures for expanded children's health insurance coverage.

15.5 Administrative Expenses

The effort required to start up any program is substantial. Initial capitalization and one-time funding is extremely limited when tied to a percentage of medical premiums. Under S-CHIP, states can only spend up to 10 percent of the cost of medical coverage for all administration and outreach. Consideration should be given to allow a larger percentage of funds to support administrative burdens for the first two or three years, or until a program reaches maturity. After maturity, administration could be reduced.

At a minimum, outreach should be removed from the 10-percent cap and addressed separately. Outreach is vitally important to all stakeholders, but the Health Care Financing Administration (HCFA) has based the 10-percent cap on expenditures, which are based on enrollment. Enrollment ultimately depends on effective outreach. The current system fails to recognize the importance of building outreach into the front end of S-CHIP.

15.6 Benefits

If a state chooses to develop a separate S-CHIP program, that program must have a benefits package that is actuarially equivalent to a benchmark package. If, however, states want to pursue the option of subsidizing employer coverage, it is prohibitive to monitor all potential employer benefits to determine whether such coverage is actuarially equivalent. The Governors call on Congress and the Administration to develop an alternative that is more efficient and effective, such as waiving the actuarial equivalence test for employer buy-in coverage.

15.7 Outreach

The Governors believe that children entitled to Medicaid or S-CHIP benefits should receive those benefits. Accordingly, states have implemented strategies designed to increase participation in these programs. Efforts include dropping the assets test, adopting presumptive eligibility, shortening application forms, expediting eligibility determinations, allowing application by mail, guaranteeing twelve months of coverage per eligibility period, and providing continuous eligibility for newborns. In addition, since the early 1990s, states have developed outreach campaigns designed to promote enrollment while educating the public about the importance of prenatal and primary health care services. These outreach activities include community enrollment centers and "one-stop shops." Additional outreach strategies are described in State Children's Health Insurance Program: 1998 Annual Report, the 1999 report of the National Governors' Association and National Conference of State Legislatures.

Despite efforts to increase participation, some eligible children still have not been enrolled. The Governors note that these children would be instantly enrolled should a need prompt them to seek health care services. Lack of enrollment could inappropriately discourage families from seeking preventive health care services for their children.

Exact estimates of the number of children who are eligible but not enrolled are difficult to develop. The Governors call on the U.S. General Accounting Office and the U.S. Department of Health and Human Services (HHS) to provide states with a more detailed and accurate explanation of the group of children who they believe are eligible but not currently enrolled. This explanation should include the number and characteristics of uninsured children, and it may require a national survey that is state-specific.

Uncoordinated federal outreach efforts would be administratively cumbersome and would fail to achieve the desired results. For example, although the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) serves a large number of children who are in need of health care coverage, the U.S. Department of Agriculture has determined that WIC administrative funds can be used only to provide information about S-CHIP and enroll children under very limited circumstances. Changing this policy and encouraging cooperation between the states and HHS will help states maximize their outreach and enrollment efforts.

15.8 Waiver Authority

States must have the flexibility to design and implement programs that reduce the number of uninsured children in each state. To reach this goal, the S-CHIP statute provides a number of options for states, including the option to pursue research and demonstration projects through the Section 1115 waiver process. To maximize outreach and extend coverage to more children, states must be permitted to use this waiver authority without artificial restrictions.

15.9 Family Coverage

Many states would like to expand their S-CHIP programs to allow the parents of S-CHIP-eligible children to enroll in the state program. Even if a state is willing to expend its own funds to do this, it still has to pursue a federal waiver and demonstrate cost-neutrality, which is not feasible in most cases. S-CHIP is a promising vehicle to promote the goal shared by the Governors, Congress, and the Administration—decreasing the number of Americans without health insurance. The Governors encourage Congress and the Administration to provide opportunities outside the waiver process to enable states to enroll entire families in S-CHIP. IF CONGRESS DECIDES TO EXPAND S-CHIP COVERAGE TO FAMILIES, STATES THAT HAVE ALREADY DONE SO MUST NOT BE PENALIZED FOR HAVING MOVED FORWARD.

15.10 NATIVE AMERICAN COST SHARING

THE GOVERNORS RECOGNIZE THAT THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TOWARD AMERICAN INDIANS AND ALASKAN NATIVES PROHIBITS THESE INDIVIDUALS FROM CONTRIBUTING TO COST SHARING IN FEDERAL HEALTH PROGRAMS. THE GOVERNORS ASSERT THAT THIS IS A FEDERAL RESPONSIBILITY THAT MUST NOT BE MANDATED ON ALL STATES. THE GOVERNORS WOULD SUPPORT A STATE OPTION THAT WOULD PERMIT STATES TO ELIMINATE COST SHARING FOR THIS

POPULATION. S-CHIP AGENCIES THAT CHOOSE THIS OPTION SHOULD ALSO HAVE THE OPPORTUNITY TO BE REIMBURSED FOR COSTS THAT WOULD HAVE BEEN COVERED BY ENROLLEE COST SHARING. IN TERMS OF ADMINISTRATION OF THIS NEW REQUIREMENT, STATES WISH TO PRESERVE THE OPTION TO ACCEPT SELF-CERTIFICATION OF ETHNIC STATUS DURING THE INITIAL APPLICATION, AS ADDITIONAL REQUIREMENTS MAY BE A BARRIER TO ENROLLMENT.

Time limited (effective Annual Meeting 1999–Annual Meeting 2001).
Adopted Annual Meeting 1997; revised Annual Meeting 1999.

HR-16. MEDICAID

16.1 Preamble

The Medicaid program is a state/federal program that serves as the primary source of acute health care coverage and long-term care for the poor. Because it is a national program providing access to health care for more than 40 million beneficiaries, the Governors believe that quality services must be provided as efficiently and effectively as possible.

In 1998 approximately $184 billion was spent in the Medicaid program. Of that amount, about $80 billion was state funds. Medicaid is now one of the largest components of state budgets, comprising 20 percent of state spending. Medicaid spending has grown in both absolute and relative terms, and as a result of this growth, Medicaid is now the second-largest expenditure in state budgets. As a result, states are experiencing great difficulty in finding the money to fund Medicaid. Even more important, perhaps, is that increased Medicaid spending makes it difficult, if not impossible, to increase funding for other priorities. Finding ways to control Medicaid spending is a major priority for the Governors.

Medicaid financing and administration are shared jointly by the federal government and the states. This federal-state partnership of financial responsibility must be maintained without further cost shifts from the federal government to the states and without expansions of federal programmatic mandates that increase state costs or limit state flexibility. In recent years, federal policymakers have narrowed the administrative flexibility of states and made legislative and regulatory changes that mandate greatly increased state expenditures. As a result, states increasingly view their relationship with the federal government not as a partnership, but as a relationship in which states have been forced to accept federal mandates that have great impact on state budgets and health policy initiatives.

Congress helped to alleviate some of this pressure with its passage of the Balanced Budget Act of 1997 (BBA). The repeal of the Boren Amendment, the phase-out of the requirement for cost-based reimbursement for federally qualified health centers and rural health clinics, and the ability for states to operate mandatory managed care programs without a waiver were all much-appreciated programmatic improvements. Clearly, congressional intent was to provide states with more flexibility to develop and operate Medicaid managed care programs, and specifically to give states the ability to do so through the state plan amendment option without requiring a waiver. The Health Care Financing Administration (HCFA) has significantly restricted state flexibility to develop and administer Medicaid managed care initiatives by increasing its federal oversight role in promulgating regulations that go far beyond congressional intent.

There are enough real and pressing problems presented by the Medicaid program without creating new regulatory burdens. The Governors continue to believe that urgent changes are needed to promote effectiveness and efficiency. Therefore, the Governors call on Congress and the administration to work to immediately address the problems with this program. Included among those solutions must be an overall reduction in the federal statutory and regulatory micro-management that has typified the program in the last decade.

16.2 Federal Financing

16.2.1 **The Federal Commitment to the Medicaid Program.** The Governors are extremely concerned about various recent proposals that would actually reduce the federal commitment to the Medicaid program. Proposals to reduce the federal matching percentage for administrative costs of the program, or to, in any way, weaken the foundation of the federal-state partnership that guides the operation of the Medicaid program, are unacceptable. Medicaid has contributed significant savings to the historic balanced budget agreement, and there is simply no way for additional funds to be cut without seriously jeopardizing patient protections and such important functions as "Year 2000" (Y2K) contingency planning, Medicaid fraud control units, and third-party liability recoveries. The Governors are committed to conducting outreach to potentially eligible children and the elderly; cuts in needed administrative funding would interfere with their ability to do so.

Further, the Governors firmly hold that Medicaid should not be included in efforts to balance the budget, nor be used as a funding source for other purposes. Governors already have contributed to significant budgetary savings by controlling Medicaid growth rates. In the late 1980s and early 1990s, Medicaid spending grew at an annual average of more than 20 percent. From 1995 to 1997, Medicaid growth has been held to an average of less than 4 percent. The Congressional Budget Office recently

revised its Medicaid spending projections to reflect an average annual growth rate between now and 2008 of 7.4 percent.

These reductions in growth rates were made possible by taking advantage of the limited flexibility currently afforded by the Medicaid program to contain costs. However, economic pressures and other factors beyond state control will continue to be driving forces propelling Medicaid spending growth. States have maximized the efficiencies possible in their current managed care programs and will not be able to absorb any Medicaid cuts within existing program parameters. Additional flexibility will be needed to move beyond the results already achieved.

Any unilateral federal cap on the Medicaid program will shift costs to state and local governments that they simply cannot afford. The Governors adamantly oppose a cap on federal Medicaid spending in any form. If Congress and the administration are serious about reducing the costs of the program, they must reexamine the authorizing legislation that has brought the program to the condition it is in today and restructure the program to make it consistent with congressional spending strategies.

16.2.2 **Medicaid Mandates.** The Unfunded Mandates Reform Act of 1995 is designed to protect states from the cost shifts that occur when the federal government requires states to enact expensive new policies but fails to provide the funding necessary for implementation. The Governors unequivocally oppose unfunded federal mandates and call on Congress to clarify the original intent of the act with regard to Medicaid mandates. State Medicaid programs have historically been vulnerable to unfunded mandates and should particularly benefit from mandate relief. Governors call on Congress to enact statutory language to clarify that a cut or cap on the Medicaid program, without giving states new or expanded flexibility, is an unfunded mandate.

16.2.3 **Medicaid and Medicare.** As Congress and the administration debate possible Medicare reforms, the impact of those changes on Medicaid programs must be carefully considered. The Governors cannot support Medicare reform strategies, such as increased cost-sharing obligations for the dually eligible, that result in cost shifts to the states. The long-term financial needs of Medicaid and Medicare must be considered jointly to successfully prepare each program for the increased demands that will accompany the aging of the baby boomer generation. Although the aged, blind, and disabled represent roughly a quarter of the Medicaid caseload, they currently consume roughly three quarters of program spending. The Governors strongly support allowing demonstrations for the integration of acute and long-term care services for the elderly, as discussed in NGA's Long-Term Care Policy, HR-17. States should be allowed to build on the innovations they have developed in home- and community-based care programs. These programs have been proven to provide cost-effective services that are preferable for both beneficiaries and their families. With some ability to integrate Medicaid and Medicare funding streams, benefit packages, and delivery systems, states could vastly improve on the current fragmented systems of care.

16.2.4 **Disproportionate Share Hospital (DSH) Program.** Medicaid's DSH funds are an important part of statewide systems of health care access for the uninsured. The Governors strongly believe that DSH funds must continue to be distributed through states, and without further cuts, to ensure that the program effectively complements other federal and state sources of health care funding.

16.2.5 **Budget Neutrality.** For some individuals, government assistance comes in many forms: Medicaid, Medicare, Supplemental Security Income, and food stamps, as well as benefits from the Ryan White Care Act, the Maternal and Child Health Block Grant, and the Social Services Block Grant, to name a few. Just as it can be overwhelming for individuals to manage all the benefits for which they are eligible, it can also be very difficult for states to coordinate multiple benefits. The Governors call on Congress and the administration to recognize that expenditures in one program often realize savings in others. The Medicaid prescription drug benefit is responsible for preventing hospitalizations for the elderly, thereby saving the Medicare program from additional costs. State-funded respite care can prevent nursing home placements, thereby saving money for the Medicaid program. Funding for protease inhibitors for people who are HIV positive will prevent the onset of AIDS and provide savings to a number of other health and social welfare programs. Currently, states are unable to factor in such cost savings when applying for Medicaid waivers. The flexibility to consider budget neutrality across federal programs would enable the Medicaid program to help people with disabilities return to the workforce, integrate and coordinate care for seniors, and prevent the onset of AIDS in people infected with HIV.

16.3 Programmatic Recommendations

16.3.1 **Allow States Greater Flexibility to Establish Managed Care Networks.** There is a national trend in health care service delivery toward organized systems of care. These systems or networks have been shown to provide cost-efficient, quality care while ensuring that the patient has a reliable source from which to seek primary care and to which specialty care can be directed. Systems of coordinated care have particular benefits for Medicaid beneficiaries. These systems ensure a medical home for beneficiaries, encourage primary and preventive care, and discourage the use of emergency rooms and specialists for routine medical care.

Although the BBA contained many measures designed to give states more flexibility, the subsequent proposed regulations, if enacted, would not only fail to provide that flexibility, but would in fact place a greater regulatory burden on state Medicaid programs. The proposed rules would create so many barriers for states to implement mandatory managed care through the state plan amendment option that it would not become a valid option at all. Further, the decision to apply an entirely new set of prescriptive regulations to currently existing 1915(b) and 1115 waivers could very well result in the end of Medicaid managed care. The extension of this regulatory burden to even the relatively simple "gatekeeper" premise of primary care case management programs may prevent physicians and group practices from becoming Medicaid providers and thereby jeopardize continuity of and access to care for many families.

If the nation is serious about controlling health care costs, it is essential to give states the opportunity to establish networks in Medicaid (including fully and partially capitated systems) through the regular plan amendment process. The Governors recognize the special significance of consumer protections and assurance of solvency in establishing these systems of care.

Congress should clarify that under federal law, the states' obligation to provide services is satisfied if the state enters into a contract with a provider or HMO that covers the necessary benefits. Beyond that, any dispute by a client regarding covered services should be resolved as a contractual matter between the client and the provider or HMO under state law. Many states have alternative dispute resolution processes that should be exhausted before recourse to the state court system. There should be no private right of action for providers or health plans regarding payment rates.

16.3.2 **Managed Care and Quality Standards.** Governors are committed to ensuring that every Medicaid recipient receives high-quality health care. Managed care has been an effective strategy for meeting that goal by providing high-quality, cost-effective health care services to millions of recipients.

Given the expertise states have developed with Medicaid managed care, the Governors had hoped to work closely with the administration as quality issues were debated. Unfortunately, HCFA developed proposed rules on Medicaid managed care without any meaningful state input. The prescriptive approach will create systemic difficulties in implementing any form of managed care, particularly in the area of quality standards. A single reference in the BBA about grievance standards became many pages of prescriptive regulations and mandates for the states. The Governors recommend that states be allowed to establish meaningful goals and be given the tools to hold plans accountable for meeting those goals, rather than constraining all parties by prescribing in minute detail the step-by-step approach that must be followed. Many states have specific grievance and appeal procedures spelled out in their plan contracts, and/or have state laws in this area. None of them would conform in all respects to these proposed regulations.

Any time Congress mandates coverage of a particular benefit or sets requirements around the terms of that benefit, careful consideration must first be given to the fiscal impact of the change on Medicaid. Even requirements limited to the private sector can have a strong Medicaid impact through contractual relationships with HMOs. Governors oppose any changes in the health care market that will result in unfunded mandates to the states.

16.3.3 **Waivers.** Currently, each state must produce and defend waiver requests even if other states have already received approval to implement similar waivers. Obtaining redundant federal approval is an inefficient use of resources at both the state and federal level. States should be allowed to import any waiver in place in another state without securing additional federal approval.

16.3.4 **Boren-Like Provisions.** The repeal of the Boren Amendment in the BBA was one of the most important programmatic improvements to the Medicaid program in many years. States are now able to negotiate reimbursement rates for nursing homes and other facilities that more accurately reflect market pressures.

The same ambiguity that has caused problems for states in the Boren Amendment exists in other parts of the Medicaid statute as well. For example, Section 1902(A)(30) allows states to set reimbursement rates to safeguard against unnecessary utilization of care and to ensure that payments are "consistent with efficiency, economy, and quality of care." To clarify this undefined terminology, courts have begun to establish parameters for reimbursement rates. Given the past problem of court interpretations of "Boren-like" provisions in statute, Section 1903 (M)(2)(A)(III) also appears vulnerable to litigation. This section ambiguously requires state contracts with HMOs to be made on an "actuarially sound basis." The Governors recommend that all such reimbursement provisions be repealed in order to preclude any litigation over provider or health plan payment rates. In all instances, provisions should include the opportunity to allow the market to establish rates, as through the competitive bidding process or direct negotiation.

16.3.5 **Allow States to Manage Costs in the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program By Providing Services Within Their State Medicaid Plan and Selecting Less Costly Alternatives for Diagnosis and Treatment Without Risking Quality.** Under current policy, states have no ability to limit the range or cost of services required in the EPSDT program. This open-ended requirement is driving up the cost of the Medicaid budget at uncontrollable rates. The U.S. Department of Health and Human Services should work with the states to develop and finalize rules that allow states to efficiently manage case costs and utilize the least expensive alternatives for providing services without reducing the quality of care.

16.3.6 **Ensure that States Will Not Be Expected to Implement Any Medicaid Program Changes Until the Health Care Financing Administration Has Published Final Regulations to Guide Program Administration.** In too many cases, HCFA has failed to publish regulations associated with statutory changes in the Medicaid program or has done so after many years of delay. Too often, states have had to implement statutory changes and in some cases, have been held financially accountable for unclear laws, even though HCFA failed to provide clarification through implementing regulations. Lack of timely action by HCFA in issuing regulations has resulted in particular difficulties in the area of spousal impoverishment protection. States should not be held liable for operating under state law or state interpretation of federal statutes until the federal regulations are adopted. This policy would replace arbitrary HCFA interpretations that have no basis in law. Nor should states be bound by informal policy directives that are issued in violation of the formal rulemaking process.

16.3.7 **Promote Cost Control and Efficiency.** States should be encouraged to continue innovations in provider payment methods. Though Medicare and most private payers have moved away from cost-based reimbursement, federal legislation has mandated that certain Medicaid providers be paid on the basis of costs. Mandatory "reasonable cost" reimbursement strategies should be repealed.

16.3.8 **Assume Full Financial Responsibility for All Low-Income Medicare Beneficiaries Who Are Not Otherwise Medicaid-Eligible.** Since 1988, the federal government has increasingly passed on to the states the responsibility to protect low-income Medicare beneficiaries (e.g., the Qualified Medicare Beneficiary Program, the Specified Low-Income Medicare Beneficiary Program, and the new groups of beneficiaries created by the BBA, the Qualifying Individuals). Currently, Medicaid is responsible for meeting the Medicare cost-sharing obligations of many low-income beneficiaries and for providing a full range of benefits to others. The Governors want to ensure that elderly beneficiaries receive the best possible care, but the Medicare program is a federal program and the federal government should bear all of its costs. Should Medicare not assume full financial responsibility, Congress should consider the implications of this cost shift when it makes changes to the eligibility provisions of the Medicare program.

16.3.9 **Make Audit and Disallowance Policies More Equitable.** Under current law, federal audit and disallowance requirements do not discriminate between violations of "obscure policies" and those that have direct harm to beneficiaries. The statute should be revised to prohibit federal practices that impose heavy penalties when the violation constitutes no beneficiary harm. States should be held harmless against possible penalties or disallowances for reasonable interpretations of law based on departmental guidance prior to the issuance of regulations.

16.3.10 **Allow Greater Flexibility in Medicaid Home- and Community-Based Care (HCBC) Programs.** Home- and community-based care is an important alternative to institutional care for the elderly and people with chronic and disabling conditions. Currently, every state in the country has at least one

HCBC program providing a broad range of medical and social services to beneficiaries. Existing Medicaid statute requires states to establish and administer these programs through waivers. The statutes must be revised to give states the authority to administer HCBC programs through a plan amendment process. However, states must be able to retain the authority to control the number of beneficiaries receiving Medicaid home- and community-based care. Finally, Congress and the states must work together to restructure the Medicaid program to eliminate the incentive to place beneficiaries in institutional care when community care would be more appropriate and cost-effective.

16.3.11 **Children Eligible for Medicaid.** Recently there has been a great deal of attention focused on the population of children eligible for Medicaid but not currently enrolled in the program. Governors agree that health care is essential to the well-being of children. Accordingly, children entitled to Medicaid benefits should receive those benefits.

Exact estimates of the number of children who are Medicaid-eligible but not enrolled are difficult to develop. Eligible children may not be enrolled in Medicaid for a number of reasons. For example, a child may have health insurance coverage through a noncustodial parent. Many states already have implemented a range of innovative outreach strategies targeted to those who need benefits but may not be aware of their Medicaid eligibility. These strategies include enrollment centers located out in communities, "one-stop shops," and simplified presumptive eligibility processes.

Should the federal government consider additional strategies to reach out to families of children eligible for Medicaid but not receiving benefits, those strategies must be developed in conjunction with the states. Uncoordinated outreach efforts would be administratively cumbersome and would fail to achieve the desired results. For example, while the Special Supplemental Nutritional Program for Women, Infants, and Children (WIC) serves a large number of children who are in need of health care coverage, the U.S. Department of Agriculture has determined that WIC administrative funds can only be used to provide information about the State Children's Health Insurance Program (SCHIP) and enroll children under very limited circumstances. Changing this policy would help states maximize their outreach and enrollment efforts.

Outreach efforts also must be designed in a way that discourages employers from discontinuing private sector insurance coverage for children. The Governors believe strongly that no Medicaid outreach strategy should create an opportunity for shifting private sector insurance costs to the public sector.

Because the group of children currently eligible for Medicaid but not enrolled has proved difficult to accurately quantify and has been resistant to previous outreach efforts, the Governors would oppose tying receipt of Medicaid funds to achieving increased enrollment targets. The full results of these outreach efforts may take some time to develop, as states experiment with methods that will be most effective for reaching the families in those states.

16.3.12 **Flexibility for Optional Eligibility Groups.** States interested in expanding or restructuring Medicaid eligibility for optional beneficiary categories should have the flexibility to customize a package of optional benefits to meet the particular needs of the optional group. This flexibility would require the waiver of benefit comparability and statewideness standards related to the amount, duration, and scope of benefits. States have shown that the provision of a few well-placed services, such as respite care, minor home modifications, or limited amounts of personal care can significantly delay the onset of debilitating conditions and keep beneficiaries in their homes for longer periods of time. Not only is this sound public policy, but the potential savings for the individual, the family, and the state and federal governments is significant.

16.3.13 **The Americans with Disabilities Act.** The Americans with Disabilities Act of 1990 (ada) is a civil rights law prohibiting discrimination against the disabled. Recent court decisions have interpreted ada in a way that means that states must provide community placements for virtually all of the mentally and physically disabled persons eligible to receive state services. Governors believe these decisions have extended ada's reach beyond anything Congress intended. Without reconsideration of this caselaw and constructive clarification of the reasonable and permissible limits on states' ADA obligations, the proliferation of costly litigation against states will continue and the integrity of the state Medicaid programs will be jeopardized.

16.3.14 **DRUG REBATE PROGRAM.** UNDER CURRENT MEDICAID LAW, COVERAGE OF PRESCRIPTION DRUGS IS AN OPTIONAL SERVICE. ALL STATES HAVE ELECTED TO COVER PRESCRIPTION DRUGS, BUT IN ORDER TO DO SO, THEY MUST ABIDE BY THE RULES OF THE DRUG REBATE PROGRAM (DRP). ESTABLISHED IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990, THE DRP PROVIDES AN INCENTIVE FOR STATES BY REQUIRING THE DRUG COMPANIES TO OFFER DISCOUNTS ON PRESCRIPTION DRUGS. IN RETURN, STATES ARE ESSENTIALLY OBLIGATED TO COVER ALL U.S. FOOD AND DRUG ADMINISTRATION-APPROVED PRESCRIPTION DRUGS DEVELOPED BY THE PARTICIPATING DRUG COMPANIES. ALTHOUGH THE STATUTE SETS OUT A LIST OF DRUGS THAT MAY, AT STATE OPTION, BE EXCLUDED FROM COVERAGE, THE LIST IS OUTDATED AND NO MECHANISM EXISTS TO UPDATE THE LIST.

THERE ARE INCREASING CONCERNS FROM STATES THAT THE DRP NO LONGER ADEQUATELY MEETS THE NEEDS OF STATE MEDICAID PROGRAMS. CURRENTLY, EVEN ENTITIES SUCH AS CHAIN DRUG STORES CAN RECEIVE DISCOUNTS FROM THE MANUFACTURERS, WITHOUT THE PRESCRIPTIVE COVERAGE GUIDELINES CONTAINED IN THE DRP. STATES ARE CLEARLY NOT ABLE TO EFFECTIVELY UTILIZE THEIR PURCHASING POWER TO LEVERAGE THE LOWEST POSSIBLE PRICES FOR PHARMACEUTICALS.

16.3.14.1 **RECOMMENDATIONS**

- REWRITE THE DRUG REBATE STATUTE TO PROVIDE STATES WITH MORE FLEXIBILITY IN DETERMINING WHICH TYPES OF DRUGS THEY COULD COVER.
- INCREASE THE RETURN THAT STATES RECEIVE ON THEIR INVESTMENT IN PHARMACEUTICAL COVERAGE. SUCH A RETURN COULD TAKE THE FORM OF INCREASED REBATES FROM GENERIC DRUGS, INCREASED REBATES FOR CERTAIN VERY EXPENSIVE DRUGS, OR A LARGER ACROSS-THE-BOARD REBATE. THIS COULD ALSO TAKE THE FORM OF ENHANCED FEDERAL FINANCIAL

PARTICIPATION OR INCREASED MANUFACTURERS' INCENTIVES FOR REDUCING COSTS ON CERTAIN TYPES OF VERY EXPENSIVE DRUGS.

- ENCOURAGE MULTI-STATE, PUBLIC/PRIVATE OR INTERNATIONAL PURCHASING ALLIANCES, OR OTHER INNOVATIVE WAYS TO BETTER LEVERAGE STATE BUYING POWER.
- ENSURE THAT MEDICAID MANAGED CARE DOES NOT IMPOSE ARTIFICIAL RESTRICTIONS THAT PROHIBIT STATES FROM REALIZING THE MAXIMUM POTENTIAL BENEFIT OF THE DRUG REBATE.

Time limited (effective Winter Meeting 1999–Winter Meeting 2001).
Adopted Winter Meeting 1995; revised Winter Meeting 1997 and Winter Meeting 1999.

HR-20. CONSTITUTIONAL AND CIVIL RIGHTS IN MANAGING INSTITUTIONALIZED POPULATIONS

20.1 PREAMBLE

THE GOVERNORS STRONGLY SUPPORT THE RELIGIOUS RIGHTS AND THE CIVIL RIGHTS OF INDIVIDUALS. THESE INCLUDE THE FIRST AMENDMENT RIGHTS THAT PROTECT AN INDIVIDUAL'S FREEDOM TO WORSHIP, AND THE CIVIL RIGHTS OF INDIVIDUALS WHO ARE INSTITUTIONALIZED UNDER SPECIAL CIRCUMSTANCES. HOWEVER, GOVERNORS BELIEVE THAT THERE SOMETIMES MUST BE A BALANCE BETWEEN THESE FREEDOMS AND RIGHTS, AND THE INTEREST OF THE STATES IN MANAGING INSTITUTIONALIZED POPULATIONS.

20.2 RELIGIOUS FREEDOM

ANY FUTURE LEGISLATION REGARDING RELIGIOUS FREEDOM SHOULD SPECIFICALLY EXCLUDE PRISON AND JAIL INMATES OR ANY PERSON HELD OR INCARCERATED AS A PRETRIAL DETAINEE. LIKEWISE, SINCE THE RELIGIOUS FREEDOM RESTORATION ACT (RFRA) WAS INVALIDATED BY THE SUPREME COURT, ANY LIABILITY THAT MAY HAVE ACCRUED TO STATE AND LOCAL GOVERNMENTS AS A RESULT OF THE MISAPPLICATION OF RFRA TO INDIVIDUALS WHO ARE INCARCERATED IN A STATE OR LOCAL CORRECTIONAL, DETENTION, OR PENAL FACILITY SHOULD BE ELIMINATED.

20.3 CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

WITH REGARD TO THE CIVIL RIGHTS OF INDIVIDUALS, CONGRESS ADOPTED THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT (CRIPA) TO SECURE THE RIGHTS OF INDIVIDUALS WHO ARE INSTITUTIONALIZED IN GOVERNMENT INSTITUTIONS. UNDER CRIPA, THE U.S. DEPARTMENT OF JUSTICE (DOJ) HAS THE AUTHORITY TO LITIGATE ALLEGED CIVIL RIGHTS VIOLATIONS AND TO ENTER INTO CONSENT DECREES OR SETTLEMENT AGREEMENTS WITH STATE GOVERNMENTS AS AN ENFORCEMENT MECHANISM OF THE ACT. THEREFORE, TO ENSURE RESPECT FOR A STATE'S STRONG

INTEREST IN INDEPENDENTLY OPERATING ITS INSTITUTIONS, THE GOVERNORS URGE CONGRESS TO ENACT INTO LAW THE FOLLOWING PRINCIPLES TO GUIDE DOJ IN ITS CRIPA INVESTIGATIONS OR ACTIONS.

- REQUIRE DOJ TO DEVELOP STANDARDS AND PROMULGATE RULES IMPLEMENTING CRIPA UNDER THE FEDERAL ADMINISTRATIVE PROCEDURES ACT.
- REQUIRE THAT ANY DOJ PRELITIGATION INVESTIGATION INTO A STATE INSTITUTION BE PRECEDED BY COMPLAINTS THAT PROVIDE A FACTUAL BASIS TO ESTABLISH A THRESHOLD FOR CRIPA INVESTIGATION WITH RESPECT TO THE FACILITY. IN ADDITION, THE IDENTITY OF THE COMPLAINANTS SHOULD BE PROVIDED TO THE STATE'S LEGAL AUTHORITIES. THESE VERIFIED FACTS, ALONG WITH THE IDENTITY OF THE COMPLAINANTS, SHOULD BE PROVIDED TO THE STATE PRIOR TO LITIGATION SO THAT THE ACCURACY OF THE ALLEGATIONS CAN BE INVESTIGATED AND ANY APPROPRIATE REMEDIAL ACTION CAN BE TAKEN WITHOUT THE NEED FOR LITIGATION.
- CLARIFY THAT THE ONLY RELIEF THAT DOJ MAY SEEK UNDER CRIPA IS THAT WHICH IS NARROWLY DRAWN, EXTENDS NO FURTHER THAN IS NECESSARY TO CORRECT THE VIOLATION OF THE FEDERAL CIVIL RIGHT, AND IS THE LEAST INTRUSIVE MEANS NECESSARY TO CORRECT THE PROVEN VIOLATION OF A FEDERAL RIGHT. THESE STANDARDS SHOULD APPLY ACROSS THE BOARD TO ALL CRIPA INVESTIGATIONS AND ACTIONS.
- CLARIFY THAT BEFORE DOJ FILES SUIT IN A CRIPA ACTION, STATES MUST BE PROVIDED AN OPPORTUNITY TO SUBMIT A REMEDIAL PLAN FOR CORRECTING ALLEGED CONSTITUTIONAL VIOLATIONS. DOJ SHOULD PROCEED IN FILING SUIT ONLY IF THE STATE'S PLAN FAILS TO REMEDY THE FLAGRANT CONSTITUTIONAL VIOLATION THAT IS ALLEGED.

- CLARIFY THAT DOJ, IN ORDER TO MAINTAIN AND SUBSEQUENTLY PREVAIL IN A CRIPA ACTION IN FEDERAL COURT, MUST FIRST ALLEGE AND THEN PROVE ACTUAL HARM TO INSTITUTIONALIZED PERSONS AS A RESULT OF THE ALLEGED UNCONSTITUTIONAL CONDITIONS WITHIN AN INSTITUTION.
- PROVIDE THAT IN ALL CRIPA ACTIONS, DOJ AND THE COURTS MUST GIVE SUBSTANTIAL WEIGHT TO ANY ADVERSE IMPACT ANY RELIEF MIGHT CAUSE ON THE PUBLIC SAFETY AND THE OPERATION OF THE INSTITUTION AT ISSUE.
- REQUIRE THAT ANY SETTLEMENT AGREEMENT ENTERED UNDER THE AUTHORITY OF CRIPA THAT IMPOSES AN OBLIGATION ON A STATE OR LOCAL FACILITY LAST NO LONGER THAN TWO YEARS AFTER THE DATE OF THE ORIGINAL AGREEMENT.

Time limited (effective Winter Meeting 2000–Winter Meeting 2002).

HR-22. FOOD STAMPS

22.1 BACKGROUND

THE NATION'S GOVERNORS BELIEVE THAT THE FOOD STAMP PROGRAM PROVIDES A KEY BENEFIT TO MANY LOW-INCOME INDIVIDUALS AND FAMILIES, INCLUDING THE ELDERLY AND THE DISABLED. FURTHER, GOVERNORS SUPPORT THE NOTION OF PROMOTING FOOD SECURITY FOR ALL CITIZENS. HOWEVER, GOVERNORS BELIEVE THAT REFORM IN THE FOOD STAMP PROGRAM COULD GREATLY IMPROVE THE EFFECTIVENESS OF THE PROGRAM BY REDUCING THE ADMINISTRATIVE BURDEN ON STATE AND FEDERAL GOVERNMENTS, AND MOST IMPORTANTLY, BY IMPROVING ACCESS TO BENEFITS FOR INDIVIDUALS AND FAMILIES IN NEED.

THE FOOD STAMP PROGRAM MEETS DUAL PURPOSES—PROVIDING BOTH NUTRITIONAL ASSISTANCE AND AN INCOME SUPPLEMENT TO LOW-INCOME INDIVIDUALS AND FAMILIES. GOVERNORS RECOGNIZE THAT ORIGINALLY THE FOOD STAMP PROGRAM WAS DESIGNED AS A MEANS TO ALLEVIATE HUNGER. AND WHILE SUPPORTING THE CONTINUATION OF THIS GOAL, GOVERNORS ALSO BELIEVE THAT FOOD STAMP BENEFITS FOR MANY RECIPIENTS SHOULD BE VIEWED IN A BROADER CONTEXT OF MOVING INDIVIDUALS TOWARD SELF-SUFFICIENCY. AS SUCH, FOOD STAMPS SHOULD BE REGARDED AS AN ESSENTIAL INCOME SUPPLEMENT. WITH THE ADVENT OF WELFARE REFORM, MORE LOW-INCOME FAMILIES ARE IMPROVING THEIR ECONOMIC STATUS BY MOVING FROM WELFARE TO WORK. GOVERNORS BELIEVE THE FOOD STAMP PROGRAM IS A KEY COMPONENT IN STATES' EFFORTS TO ASSIST IN INDIVIDUALS' TRANSITION FROM WELFARE TO WORK AND TOWARD SELF-SUFFICIENCY.

AS WITH MANY OTHER HUMAN SERVICE PROGRAMS, SUCCESS IN THE FOOD STAMP PROGRAM RELIES HEAVILY ON A STRONG STATE-FEDERAL PARTNERSHIP. ALTHOUGH FOOD STAMP BENEFITS ARE 100 PERCENT FEDERALLY FUNDED, STATES ADMINISTER THE PROGRAM. FURTHER, THE ADMINISTRATIVE FINANCING IS SHARED 50-50.

GOVERNORS BELIEVE STRENGTHENING THE STATE-FEDERAL PARTNERSHIP WILL HELP TO IMPROVE THE EFFECTIVENESS OF THE FOOD STAMP PROGRAM.

22.2 CASELOAD DECLINE

DUE TO A NUMBER OF FACTORS, THE NUMBER OF INDIVIDUALS RECEIVING FOOD STAMPS HAS DECLINED OVER THE PAST FEW YEARS. GOVERNORS RECOGNIZE THE CONCERN THAT SOME INDIVIDUALS WHO ARE ELIGIBLE FOR FOOD STAMPS MAY NOT BE RECEIVING BENEFITS. REGARDLESS OF DIFFERING VIEWS ON WHETHER THIS DECLINE IS AN APPROPRIATE MEASURE OF SUCCESS IN WELFARE REFORM, GOVERNORS WANT TO ENSURE THAT ACCESS TO FOOD STAMP BENEFITS IS AVAILABLE FOR THOSE WHO ARE ELIGIBLE. WHILE SOME VIEW A DECLINE IN FOOD STAMP CASELOADS AS A SIGN THAT MORE FAMILIES ARE ACHIEVING SELF-SUFFICIENCY, OTHERS BELIEVE A DROP IN THE FOOD STAMP CASELOAD SIGNALS A MISSED OPPORTUNITY TO PROVIDE A CRUCIAL HUMAN SERVICE BENEFIT.

FACTORS CONTRIBUTING TO THE DROP IN THE FOOD STAMP CASELOAD INCLUDE THE FOLLOWING:

22.2.1 INDIVIDUALS CHOOSING NOT TO ACCESS THE SYSTEM. GOVERNORS RECOGNIZE THAT MANY INDIVIDUALS MAKE A CHOICE NOT TO ACCESS THE FOOD STAMP SYSTEM. WHILE ENSURING ACCESS TO BENEFITS IS IMPERATIVE, PERSONAL CHOICE ULTIMATELY DICTATES WHETHER AN INDIVIDUAL SEEKS ASSISTANCE. FOR MANY, THE STIGMA OF FOOD STAMPS AS A WELFARE PROGRAM REMAINS DESPITE FEDERAL EFFORTS TO PROMOTE FOOD STAMPS AS A NUTRITION ASSISTANCE PROGRAM. IN ADDITION, EXTENSIVE FEDERAL RESTRICTIONS AND REQUIREMENTS LEAD TO MANY INDIVIDUALS CHOOSING NOT TO ACCESS THE FOOD STAMP PROGRAM. FOR SOME, THE HASSLE OF DEALING WITH THE FOOD STAMP PROGRAM OUTWEIGHS THE BENEFIT.

22.2.2 PROGRAM REQUIREMENTS CONFLICT WITH WELFARE REFORM. WITH THE ADVENT OF WELFARE REFORM, A GREATER NUMBER OF LOW-INCOME INDIVIDUALS ARE WORKING. IF THE GOAL IS TO ENCOURAGE THESE INDIVIDUALS TO ACCESS THE FOOD

STAMP SYSTEM, THE FEDERAL PROGRAM REQUIREMENTS NEED TO BE ADJUSTED TO BE MORE RECIPIENT-FRIENDLY. FOR EXAMPLE, CURRENT FOOD STAMP POLICIES REQUIRE FREQUENT IN-PERSON ELIGIBILITY RECERTIFICATION INTERVIEWS, WHICH USUALLY REQUIRE A DAY AWAY FROM WORK. IN ADDITION, CURRENT RULES REQUIRE RECIPIENTS TO REPORT NEARLY EVERY CHANGE IN WAGE AMOUNTS, WHICH ARE LIKELY TO FLUCTUATE OFTEN.

22.2.3 **CONFUSION AMONG IMMIGRANTS REGARDING ELIGIBILITY.** THE 1996 WELFARE REFORM LAW RESTRICTED ACCESS TO FOOD STAMP BENEFITS FOR MANY IMMIGRANTS. HOWEVER, BENEFITS FOR CERTAIN CATEGORIES OF ELIGIBILITY HAVE NOW BEEN RESTORED, AND MANY OF THESE INDIVIDUALS MAY NOT BE AWARE OF THIS RESTORATION.

22.3 NEED FOR REFORM

AS WELFARE REFORM HAS PROGRESSED THROUGHOUT THE COUNTRY, POLICIES WITHIN THE FOOD STAMP PROGRAM HAVE PRIMARILY REMAINED STAGNANT. WHILE GOVERNORS BELIEVE THE CURRENT FOOD STAMP SYSTEM PROVIDES A KEY BENEFIT FOR INDIVIDUALS AND FAMILIES, MANY OF THE OUTDATED POLICIES SHOULD BE RECONSIDERED IN LIGHT OF WELFARE REFORM. THE CURRENT FOOD STAMP PROGRAM IS INCREASINGLY COMPLEX TO ADMINISTER, AND THE PROGRAM'S QUALITY CONTROL (QC) SYSTEM LARGELY IGNORES MEASURES TO SUPPORT WORKING FAMILIES. FEDERAL RESTRICTIONS, SUCH AS THE REQUIREMENT THAT STATES MUST CONTINUE TO SPEND 80 PERCENT OF THEIR FOOD STAMP EMPLOYMENT AND TRAINING (E & T) FUNDS ON A DECREASING SEGMENT OF THE POPULATION, DIMINISHES THE EFFECTIVENESS OF THE E & T PROGRAM. THESE INCREASING ADMINISTRATIVE COMPLEXITIES WEAKEN THE ULTIMATE PURPOSE OF THE PROGRAM, WHICH IS TO SERVE LOW-INCOME INDIVIDUALS AND FAMILIES.

GOVERNORS BELIEVE THAT EXPLORING OPTIONS FOR FOOD STAMP REFORM WILL PROVE TO BE BENEFICIAL TO ALL LOW-INCOME CITIZENS IN NEED. IT IS IMPORTANT TO

NOTE THAT NOT ALL INDIVIDUALS ELIGIBLE FOR FOOD STAMPS ARE CONNECTED WITH THE TIME-LIMITED BENEFITS SUCH AS THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM. FOR CERTAIN INDIVIDUALS SUCH AS THE ELDERLY AND THE DISABLED, FOOD STAMPS MAY BE AN ONGOING BENEFIT, RATHER THAN A TEMPORARY INCOME SUPPLEMENT WHILE MOVING FROM WELFARE TO WORK. BEARING IN MIND THE VARIOUS POPULATIONS SERVED AND THE DIFFERING MISSIONS OF FOOD STAMPS, GOVERNORS BELIEVE OVERALL SYSTEM REFORM WILL GREATLY IMPROVE THE CURRENT EFFECTIVENESS OF THE FOOD STAMP PROGRAM.

22.4 OPTIONS FOR REFORM

OPTIONS FOR FOOD STAMP REFORM COULD INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

22.4.1 **INCREASE WAIVER AUTHORITY.** GOVERNORS BELIEVE THAT, AS WITH OTHER HUMAN SERVICE PROGRAMS, STATES SHOULD BE ENCOURAGED TO DEVELOP INNOVATIVE APPROACHES TO ADMINISTERING FOOD STAMP BENEFITS. FLEXIBILITY SUCH AS THAT PROVIDED IN THE TANF BLOCK GRANT PROGRAM HAS DEMONSTRATED THE ABILITY FOR GOVERNORS TO ADMINISTER PROGRAMS IN A WAY THAT BEST MEETS THE NEED OF INDIVIDUALS IN THEIR STATES. CURRENT WAIVER AUTHORITY IN THE FOOD STAMP SYSTEM IS EXTREMELY RESTRICTIVE AND BURDENSOME, LEADING TO NUMEROUS WAIVER REQUESTS BEING DENIED. GOVERNORS URGE CONGRESS AND THE ADMINISTRATION TO BROADEN CURRENT WAIVER AUTHORITY AND ALLOW FOR STATE DEMONSTRATION PROJECTS.

22.4.2 **DECREASE THE ADMINISTRATIVE BURDEN ON RECIPIENTS.** FIRST, IN ORDER TO BETTER SERVE LOW-INCOME WORKING FAMILIES, THE RESTRICTIVE PAPERWORK REQUIREMENTS SHOULD BE MADE MORE RECIPIENT-FRIENDLY. WHILE FREQUENT AND DETAILED INCOME REPORTING IS ADMINISTRATIVELY COMPLEX FOR THE STATES, GOVERNORS BELIEVE IT IS EVEN MORE BURDENSOME FOR THE INDIVIDUALS THE PROGRAM IS DESIGNED TO SERVE. FOR EXAMPLE, REQUIRING FREQUENT FACE-TO-

FACE REDETERMINATIONS OFTEN DISRUPTS AN INDIVIDUAL'S WORKDAY, DECREASING EFFECTIVENESS ON THE JOB. GOVERNORS URGE CONGRESS AND THE ADMINISTRATION TO SIMPLIFY THE CURRENT FOOD STAMP RULES TO REFLECT THE CHANGING FOOD STAMP POPULATION IN LIGHT OF WELFARE REFORM. WHILE GOVERNORS APPRECIATE RECENT CHANGES THAT WERE MADE TO REDUCE THE ADMINISTRATIVE BURDEN ON RECIPIENTS, FURTHER SYSTEM IMPROVEMENTS COULD BE MADE, SUCH AS PROVIDING STATES WITH THE OPTION TO DISREGARD THE VALUE OF A VEHICLE IN DETERMINING FOOD STAMP ELIGIBILITY.

22.4.3 **IMPROVE PROGRAM BENEFITS FOR THE ELDERLY AND THE DISABLED.** CHANGES IN THE CURRENT FOOD STAMP RULES COULD ALSO BENEFIT THOSE NOT CONNECTED TO TANF, SUCH AS THE ELDERLY AND THE DISABLED. FOR EXAMPLE, THE MINIMUM FOOD STAMP BENEFIT LEVEL IS CURRENTLY SET AT $10. COMPLEX PAPERWORK FOR A VERY SMALL BENEFIT MAY DISCOURAGE MANY ELDERLY AND DISABLED FROM ACCESSING FOOD STAMP BENEFITS.

22.4.4 **STREAMLINE THE QUALITY CONTROL (QC) PROCESS.** GOVERNORS BELIEVE THAT THE EXISTING QC SYSTEM FOR FOOD STAMPS IS EXTREMELY BURDENSOME AND CONFLICTS WITH THE BROADER PUBLIC POLICY GOAL OF ENCOURAGING LOW-INCOME INDIVIDUALS TO MAINTAIN STEADY EMPLOYMENT. NOTWITHSTANDING THE NEED FOR ACCOUNTABILITY WITHIN THE FOOD STAMP SYSTEM, THE CURRENT QC REQUIREMENTS DIMINISH THE TIME AND RESOURCES THAT COULD BE MORE APPROPRIATELY DEDICATED TO PROVIDING BENEFITS TO INDIVIDUALS IN NEED. FURTHER, AS MORE FOOD STAMP RECIPIENTS ARE GOING TO WORK, THEIR INCOME LEVELS BEGIN TO MORE FREQUENTLY FLUCTUATE. THESE INCOME FLUCTUATIONS OFTEN LEAD TO THE INCREASED CHANCE FOR A FOOD STAMP WORKER TO "ERROR." STATES ARE ESSENTIALLY PENALIZED, THEREFORE, AS A RESULT OF MORE INDIVIDUALS WORKING. GOVERNORS URGE CONGRESS AND THE ADMINISTRATION TO

WORK WITH STATES TO DEVELOP A MORE APPROPRIATE SYSTEM FOR MEASURING OUTCOMES IN THE FOOD STAMP PROGRAM.

22.4.5 **ADJUST THE EMPLOYMENT AND TRAINING PROGRAM.** WITHIN A STATE'S ALLOCATION FOR THE FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM, 80 PERCENT OF THE FUNDS MUST BE SET-ASIDE FOR ABLE-BODIED ADULTS WITHOUT DEPENDENTS (ABAWDS). UNFORTUNATELY, VERY FEW ABAWDS ARE NOW IN THE FOOD STAMP SYSTEM, AND THEREFORE THE E & T MONEY REMAINS UNDERUTILIZED. GOVERNORS URGE CONGRESS TO PROVIDE STATES WITH GREATER FLEXIBILITY TO MORE EFFECTIVELY USE THE FOOD STAMP E & T FUNDS TO ASSIST IN MOVING ADDITIONAL POPULATIONS INTO THE WORKFORCE.

Time limited (effective Winter Meeting 2000–Winter Meeting 2002).

HR-25. EMERGENCY MANAGEMENT

25.1 Preamble

Comprehensive emergency management consists of the judicious planning, assignment, and coordination of all available resources in an integrated program of hazard mitigation, preparedness, response, and recovery activities for emergencies of any kind (all hazards), whether from human or natural sources, at all levels of government. The inherent responsibilities of government include the need to educate and inform citizens about their responsibility to plan for and take precautions to ensure their safety.

All emergency-related program activities are not the responsibility of one agency or level of government; they should be integrated and coordinated. Effective emergency management involves interaction between the Governor's office, the state emergency management office, the state planning office, the state budget office, the state legislature, other state agencies, local governments, the private sector, volunteer organizations, and the federal government.

~~In developing an emergency management program, states may consider intergovernmental linkages that ensure that all emergency-related activities are handled at the lowest appropriate level of government; assist local emergency programs as requested and appropriate; facilitate the acquisition of needed federal resources to support state emergency programs; encourage establishment of and voluntary participation in interstate agreements to facilitate emergency management activities; and encourage local jurisdictions to work together to address the integrated management of all types of hazards.~~

The need exists to provide critical training in emergency management through the best possible methods, ~~including regional training where feasible,~~ and to maintain the Emergency Management Institute and the National Fire Academy, owing to their critical and specialized support to emergency management.

Sound emergency management requires regular review by state and local government officials of the performance, effectiveness, and coordination of a state's emergency-related program in light of public need and the utilization of resources.

~~25.2 Role of the Governor~~

~~The Governor has the authority and responsibility to promote the general welfare and provide for the common good of the citizens of the state and has special powers and resources that can be used in emergency situations.~~

~~The Governor establishes policy and performance standards for the state's comprehensive emergency management program. Just as national emergency management must have the interest, support, and confidence of the President, the state emergency management program should have the interest, support, and confidence of the Governor. Further, Governors may wish to see that a high degree of professionalism is maintained in the state's emergency management operation, with the individual who is responsible for the state's program having direct access to the Governor.~~

~~Governors should require the periodic review of the vulnerability of the state to all hazards. The state should ensure that the emergency management program coordinates long-term mitigation, preparedness, response, and recovery activities with all agencies. To achieve the vital ability to communicate and coordinate activity in the event of an emergency, there is a recognized need to establish and maintain state-of-the-art facilities, equipment, and communications systems.~~

~~The Governor's program should develop and maintain comprehensive emergency management activities that, when needed, provide leadership and supplement and facilitate local efforts before, during, and after emergencies. The state must be prepared to maintain or accelerate current services and provide new services to local governments that may be unable to manage all aspects of an emergency. To supplement these activities, the state may cooperate, and when necessary, seek help from and share resources with other states. Further, the state is responsible for facilitating the request for federal assistance when needed.~~

~~25.3 The Local Government Role~~

~~Local governments have the primary responsibility for preparation and response to most emergencies. States should encourage local governments to use their resources and to share resources with other local jurisdictions and the state. Local governments should review their capabilities to protect the public from all hazards and, as needed, undertake comprehensive, all-hazard emergency management program improvements.~~

25.2 The Federal Role

Protection of the population of the United States against the potentially catastrophic effects of natural and human-caused disasters has long been recognized as requiring a partnership of federal, state, and local governments. Presidents and Congresses have encouraged improved national emergency management capability, which is coordinated by the Federal Emergency Management Agency (FEMA). They have recognized that states and local communities across the nation are increasingly exposed to a wider range of natural and technological hazards.

Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288) provides for a comprehensive emergency management system that is capable of ensuring a timely and coordinated response. This system must become more flexible through consolidation and better regulation to accommodate the unique needs of individual states and local jurisdictions. This federal, state, and local emergency management system needs further development and continued maintenance to include support for state-of-the-art facilities, equipment, and communications systems. It is imperative that Congress provide sufficient funds based on each state's risk and vulnerability to ensure the continued viability of the "all-hazards" approach to emergency management.

The Stafford Act recognizes winter storms as a potential disaster condition and provides for federal aid, consistent with all other natural disaster conditions. Under certain conditions, severe winter storms can have the same paralyzing effect on a community as a hurricane, an earthquake, a tornado, or any other severe weather condition. Severe winter storms can cause widespread destruction of property, threaten and claim many lives, and seriously impair essential municipal services.

The Governors support a federal response plan that focuses the resources and capabilities of the federal government on the needs of disaster victims and their communities. This plan should form the basis for a national response system that integrates the efforts of local, state, and federal governments. The system should be exercised annually in coordination with the states, local governments, and volunteer and private organizations.

The federal response to presidentially declared emergencies and disasters is provided through the Stafford Act, as amended. This statute allows for up to 100 percent federal reimbursement for eligible disaster assistance costs.

The Governors support this level of supplemental federal assistance and do not support changes or cost-sharing proposals that fail to address such basic issues as the state's total liability; the fiscal conditions and resources of state and local government; the impact of multiple disasters occurring over a short period of time; and the effects of catastrophic disasters.

The Governors believe that the Stafford Act provides the President with sufficient flexibility to negotiate and determine appropriate levels of cost sharing. Further, the federal government should not impose restrictive guidelines regarding state and local division of any portion of the nonfederal share. It must be recognized that assistance programs authorized under the Stafford Act are a shared responsibility between state and federal emergency management agencies. The substantial administrative costs of assistance programs can be reduced by increasing the states' role in managing public assistance programs and by eliminating federal micromanagement of programs. States should take the leadership role in the management and operation of the recovery effort. Further, the federal government should expedite funding of recovery activities to ensure that there is no disruption in the state and local efforts to restore communities.

The Governors recommend that CONGRESS AND FEMA SHOULD not attempt to lower the overall cost of disaster aid by limiting or reducing aid to victims. FEMA is encouraged to consider

methods to expedite delivering aid to victims that will reduce the administrative delivery costs of the public assistance and the hazard mitigation programs. The Governors further recommend that FEMA work with states to allow programs to be state administered, freeing up resources so states can handle their own disasters. In order to achieve this recommendation, the Governors urge FEMA to work with the state emergency management directors through the National Emergency Management Association to identify realistic and responsible ways to reduce costs while continuing to meet the needs of victims.

The Governors support the systematic review of major disaster events by all levels of government. Lessons learned in this review will provide opportunities to enhance and improve the national ability to mitigate and prepare for future disasters. The Governors endorse state and local government programs that lower the risk of major loss of life and economic destruction through better preparedness and mitigation activities, such as predisaster activities, appropriate land use, ~~and~~ construction codes, AND UPDATED FLOODPLAIN MAPPING.

The Governors recommend that the President and Congress cooperate with the National Governors' Association, the National Emergency Management Association, the National Association of Counties, and the INTERNATIONAL ASSOCIATION OF EMERGENCY MANAGEMENT ~~National Coordinating Council on Emergency Management~~ in developing and/or evaluating changes to program structure, funding, and procedures for the administration of federal assistance to states as well as to the development of regulations that affect federal funding distribution mechanisms. States should be provided greater flexibility in determining the type of activities available and in applying the limited resources available. We recommend that FEMA continue its drive to be customer-oriented in the delivery of state services for both disaster- and nondisaster-related activities.

In developing policy regarding how FEMA will handle natural disasters such as storms, hurricanes, and snow, FEMA should be equitable in its issuance of regulations and in making declaratory policy. REGARDING SNOW, FEMA SHOULD COORDINATE WITH THE NATIONAL WEATHER SERVICE TO ENSURE ACCURATE DATA ON ACTUAL AND HISTORICAL SNOWFALL, WHICH IS REQUIRED IN MAKING A REQUEST FOR SNOW ASSISTANCE. FEMA should base its policy on the reality of each disaster, the damage caused, and the process necessary for full recovery.

The Governors believe a severe winter storm disaster can be a broad public health and safety issue and should be treated the same as other federally declared disasters. FEMA's 1996 proposed rule on snow policy appears to be based on a different standard and is inconsistent with this objective.

25.3 The Role of the Private Sector

The private sector has a major role in providing resources and expertise in emergency preparedness, response, recovery, and mitigation. Governments at all levels should establish meaningful partnerships for emergency management with the private sector, including groups such as the Hazardous Materials Advisory Councils, which are organizations of small, medium-sized, and large companies that provide assistance to public emergency agencies through resources, materials, and training. These partnerships will help mitigate the casualties and economic costs of emergencies suffered by the private sector.

The Governors recognize that any industry that creates an extraordinary threat to public safety, such that specific measures must be taken by government to mitigate that threat, should bear a reasonable share of any associated costs.

The Governors recognize and appreciate the valuable contributions made by other private and volunteer organizations such as the American Red Cross, Voluntary Organizations Active in Disasters, THE SALVATION ARMY, and others, which provide essential services to victims regardless of their eligibility for federal or state assistance.

25.4 Disaster Mitigation and Insurance

~~Disasters such as Hurricane Andrew, the Midwest floods, the Northridge earthquake, and others have called attention to the structural, social, and economic impacts of catastrophic disasters. Federal and state governments must continue working together to develop systems for dealing with all disasters.~~

Throughout the emergency management process, states are encouraged to work with the federal government and private industry to determine the feasibility and desirability of a cost-effective program to assist the insurance industry in better responding to natural disasters. The states should be permitted flexibility in prioritizing and determining eligibility for mitigation activities based on the states' unique needs assessments.

The private sector, especially the insurance industry, should be encouraged to work closely with states in developing and enforcing policies to mitigate disasters and emergencies, such as providing incentives to prevent or reduce damage, particularly before an emergency or disaster. This will require coordination among state emergency management directors, state insurance commissioners, and Governors and their policy staffs.

~~States should be encouraged to create mutual cooperative agreements with all parties that help facilitate response and recovery activities based on specific threats or risk to individual states.~~

Some options that may be considered include: providing comprehensive nationwide mitigation to prevent or minimize the consequences of wind, flood, and earthquake disasters of all sizes; augmenting the emergency management infrastructure at the state, local, and federal levels by providing all-hazards funding for personnel, training, and facilities and equipment; providing natural disaster insurance for eligible commercial and residential properties at the lowest possible actuarial rates; and establishing an excess reinsurance fund that would enable the insurance industry to continue making insurance available, regardless of the severity of disasters. The program would be funded by insurance and reinsurance premiums.

Finally, resources must continue to be allocated to augment the emergency management infrastructure at the state, local, and federal levels to improve response to disasters, especially in areas at risk for catastrophic disasters.

25.5 Hazard Mitigation

Under current Federal Emergency Management Agency regulations, no structures can be erected on land purchased under the Section 404 Hazard Mitigation program. When Community Development Block Grant funds are used to purchase land for the purpose of hazard mitigation, similar restrictions apply. Although Governors recognize the sound nature of these prohibitions as they apply to residential or commercial structures, they believe that FEMA and the U.S. Department of Housing and Urban Development should amend their regulations to exempt any structures, such as dikes, that will serve to mitigate future disasters.

25.6 Mutual Assistance Through State Compacts

Realizing the necessity of sharing mutual assistance in times of emergencies and disasters, states and territories have been entering into the Emergency Management Assistance Compact (EMAC), to facilitate mutual assistance among states during emergencies and disasters. The 104th Congress granted its consent to EMAC.

The Governors fully endorse EMAC and encourage every state to consider entering into the compact as soon as practical. Participation in the compact should be voluntary. Each Governor must be given an adequate opportunity to evaluate his or her individual state's needs and capabilities in making a determination to participate.

THE GOVERNORS ENCOURAGE FEMA AND OTHER FEDERAL RESPONSE AGENCIES TO WORK MORE CLOSELY WITH THE EMAC ORGANIZATION REGARDING THE COORDINATION OF AVAILABLE RESOURCES FOR RESPONSE TO DISASTERS.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–Winter Meeting 2000~~).

Adopted Annual Meeting 1995; revised Annual Meeting 1997, Winter Meeting 1998, and Winter Meeting 1999.

HR-27. THE OLDER AMERICANS ACT

27.1 PREAMBLE

THE NATION'S GOVERNORS STRONGLY SUPPORT THE OLDER AMERICANS ACT (OAA) AND URGE CONGRESS TO REAUTHORIZE THIS IMPORTANT ACT. CREATED IN 1965, THE OAA HAS HELPED TO DEFINE AND BROADEN THE RANGE OF ASSISTANCE AVAILABLE TO SENIORS. THIS LAW HAS ESTABLISHED THE PRIMARY FRAMEWORK IN THE STATES FOR THE DELIVERY OF VITAL SUPPORT AND NUTRITIONAL SERVICES TO SENIORS. FOR EXAMPLE, THIS LAW PROVIDES ASSISTANCE TO THE ELDERLY SUCH AS CONGREGATE AND HOME-DELIVERED MEALS, TRANSPORTATION, PERSONAL CARE, HOMEMAKER CHORE SERVICES, RESPITE CARE, INFORMATION, AND LEGAL SERVICES.

THE AUTHORIZATION FOR THE OAA EXPIRED IN 1995, AND THE LAW HAS NOT BEEN REAUTHORIZED IN THE PAST FIVE YEARS. THE LACK OF LEGAL AUTHORITY PUTS OAA PROGRAMS AND FUNDING AT RISK. GOVERNORS BELIEVE THAT THE REAUTHORIZATION OF THE OAA IS CRUCIAL FOR ENSURING THAT SENIORS CONTINUE TO RECEIVE KEY OAA SERVICES. FURTHER, GOVERNORS BELIEVE THAT THE REAUTHORIZATION OF THE OAA WOULD DEMONSTRATE A FEDERAL COMMITMENT TO THESE IMPORTANT PROGRAMS.

GOVERNORS RECOGNIZE THAT THE SERVICES PROVIDED THROUGH THE OAA WILL BECOME MORE CRITICAL AS THE DEMOGRAPHICS IN THIS COUNTRY ADD PRESSURE TO THESE PROGRAMS IN THE COMING YEARS. THE DEMOGRAPHIC TREND IS MOVING TOWARD AN UNPRECEDENTED INCREASE IN THE ELDERLY POPULATION ACROSS THE COUNTRY.

27.2 ISSUES FOR REAUTHORIZATION

27.2.1 FLEXIBILITY. GOVERNORS SUPPORT GRANTING STATES GREATER FLEXIBILITY WITHIN THE OAA WHEN IT IS REAUTHORIZED. THIS FLEXIBILITY WOULD ALLOW GOVERNORS TO TAILOR OAA PROGRAMS IN A MANNER TO BETTER MEET THE NEEDS OF EACH INDIVIDUAL STATE.

27.2.2 **FUNDING.** THE FEDERAL GOVERNMENT AND STATES WORK AS PARTNERS IN CARRYING OUT THE RESPONSIBILITIES OF THE OAA. GOVERNORS URGE CONGRESS TO CONTINUE THIS PARTNERSHIP AND MAINTAIN AT A MINIMUM CURRENT FEDERAL FUNDING COMMITMENTS TO ALL STATES AND OAA PROGRAMS.

27.2.3 **NUTRITIONAL SERVICES.** THE OAA ELDERLY NUTRITION PROGRAM SERVES NEARLY 240 MILLION CONGREGATE AND HOME-DELIVERED MEALS TO OVER 3 MILLION PEOPLE EACH YEAR. TITLE III SHOULD BE MODERNIZED TO GIVE STATES GREATER FLEXIBILITY TO TRANSFER FUNDS BETWEEN THE CONGREGATE AND HOME-DELIVERED MEALS NUTRITION PROGRAMS. CURRENTLY, STATES ARE PERMITTED TO TRANSFER ONLY 30 PERCENT OF FUNDS WITH APPROVAL BY THE ASSISTANT SECRETARY FOR AGING. THIS CHANGE WOULD GIVE STATES THE FLEXIBILITY TO MEET THE NEEDS OF THEIR SENIORS.

27.2.4 **INFORMAL CAREGIVING.** RESEARCH INDICATES THAT OVER 7 MILLION PEOPLE IN THE UNITED STATES PROVIDE ABOUT 120 MILLION HOURS OF INFORMAL, UNPAID CARE TO 4.2 MILLION DISABLED OLDER ADULTS EACH WEEK. MOST OF THIS INFORMAL CAREGIVING IS PROVIDED BY FAMILY MEMBERS. SEVERAL OF THE OAA REAUTHORIZATION PROPOSALS INTRODUCED IN THE 106TH CONGRESS INCLUDE PROVISIONS AIMED AT PROVIDING SUPPORT SERVICES FOR FAMILY CAREGIVERS. SOME GOVERNORS HAVE ALREADY RECOGNIZED THE NEED TO SUPPORT THESE CAREGIVERS AND HAVE DEVELOPED PROGRAMS TO ADDRESS THE MATTER. IF CONGRESS CHOOSES TO LEGISLATE IN THIS AREA, GOVERNORS RECOMMEND THAT ANY FEDERAL PROPOSALS BE STRUCTURED IN A WAY THAT PROVIDES STATES WITH MAXIMUM FLEXIBILITY AND COMPLEMENTS STATE EFFORTS CURRENTLY UNDERWAY.

Time limited (effective Winter Meeting 2000–Winter Meeting 2002).

HR-28. PATERNAL INVOLVEMENT IN CHILD REARING

28.1 Preamble

~~The deterioration of child well-being during the past three decades is an urgent domestic concern. In all major categories of child well-being -- violent crime, neglect and abuse, suicide rates, test scores, and poverty -- there is evidence that children are worse off now than they were just thirty years ago.~~

The Governors recognize ~~that too many children are in trouble and~~ that strong families and communities are essential elements for providing a secure future for children. Within that context, there is growing evidence that suggests that in families in which fathers do not contribute their time and support, children are far more likely to endure myriad risk factors.

Children with absent fathers are more likely to drop out of school, become teenage parents, DEVELOP DRUG OR ALCOHOL PROBLEMS, or become involved in violent criminal behavior. When both mother and father are positively and actively engaged in a child's life—providing not only financial support but love, guidance, and discipline—that child has a better chance of success.

The Governors also recognize that under certain circumstances, fathers are not involved in the lives of their children. In such instances, efforts can be undertaken to provide supports, as needed, to assist single mothers in meeting parental obligations and PROVIDING ~~provide~~ fatherhood role models for children.

28.2 OPTIONS FOR GOVERNMENT INVOLVEMENT ~~Recommendations~~

The nation's Governors recognize that government alone cannot reverse the growing trend of father absence. What is needed is a fundamental change in society to provide greater emphasis on the role of fathers in child rearing. However, governments at all levels can and should take immediate action to help reduce the number of out-of-wedlock pregnancies and encourage active participation by fathers of all ages in raising their children. Such action COULD INCLUDE ~~includes~~:

- providing additional education and information ~~to the courts, all levels of government, and the public at large~~ about the importance of fathers participating in raising their children;
- developing strategies, such as parent education programs AND STATE-DIRECTED MEDIA CAMPAIGNS, to educate youth and young adults about the responsibilities and lifelong obligations of fatherhood;
- ESTABLISHING A NONGOVERNMENTAL NATIONAL CLEARINGHOUSE TO COLLECT AND DISSEMINATE INFORMATION REGARDING RESPONSIBLE FATHERHOOD;

- expanding efforts to prevent unintended and out-of-wedlock teen pregnancies; ~~particularly in cases involving adult males;~~
- providing children with appropriate adult male role models, such as mentors, in the absence of a caring father;
- ensuring that young men are given opportunities to feel successful and valued, which will lead to the development of self-confidence and preparation for fatherhood;
- encouraging the involvement of the community, including the religious community, civic community, ~~and~~ business community, AND MENTORS in addressing the IMPORTANCE ~~desirability~~ of father involvement;
- developing strategies that include both parents in activities focused on THEIR children, such as training service providers and educators to include both parents in their service delivery;
- working with private employers and the education community to provide education and job training opportunities to unemployed, underemployed, and low-skilled fathers; and
- ~~strengthening~~ paternity establishment and child support enforcement efforts.

28.3 FEDERAL FUNDING FOR FATHERHOOD INITIATIVES

The nation's Governors have played a leadership role at both the national and state levels in developing and implementing comprehensive strategies to strengthen the American family AND SPECIFICALLY THROUGH INITIATIVES TO STRENGTHEN THE ROLE OF FATHERS IN THEIR CHILDREN'S LIVES. WHILE MANY GOVERNORS USE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND OTHER FEDERAL PROGRAM FUNDS TO SUPPORT STATE-SPECIFIC FATHERHOOD INITIATIVES, ADDITIONAL INVESTMENT IN FATHERHOOD WOULD BROADEN THE POPULATION OF FATHERS THAT CAN BE SERVED. ~~Further efforts in this area should include special emphasis on encouraging fathers to play a role in raising their children.~~

ANY NEW FEDERAL FUNDING STREAM DESIGNATED FOR FATHERHOOD INITIATIVES SHOULD:

- SUPPORT PROGRAMS IN STATES, AT THE DISCRETION OF EACH GOVERNOR, THAT ENCOURAGE APPROPRIATE INVOLVEMENT OF BOTH PARENTS IN THE LIFE OF A CHILD, WITH PRIORITY GIVEN TO PROGRAMS THAT SPECIFICALLY ADDRESS THE ISSUE OF FATHERHOOD;

- BE COORDINATED WITH EXISTING FATHERHOOD PROGRAMS, AS WELL AS WITH OTHER FEDERAL FUNDS THAT CAN BE USED FOR FATHERHOOD INITIATIVES, SUCH AS TANF; AND
- NOT BE FUNDED AT THE EXPENSE OF ANOTHER VITAL HUMAN SERVICE PROGRAM.

Time limited (effective Annual Meeting 1999–Annual Meeting 2001).
Adopted Annual Meeting 1995; revised Annual Meeting 1997 and Annual Meeting 1999.

HR-29. PUBLIC SAFETY, CRIME CONTROL, AND PREVENTION

29.1 **Preamble**

Each level of government—federal, state, and local—plays a role in fighting criminal activities. Preventing crime, particularly violent crime, requires strong and effective action and cooperation by law enforcement officials at all levels of government. Each level of government is responsible for working with communities to promote public safety, because every citizen has a right not to be victimized by crime and to live in a safe environment without fear of violent crime. Government must also recognize the needs of crime victims, witnesses, and their families. The Governors believe that federal, state, and local governments must work together to control crime and eliminate violence based on race, gender, religion, nationality, disability, age, sexual orientation, or other inappropriate bias. Support for the incapacitation of violent criminals does not mean abandoning the goals of rehabilitation, deterrence, and prevention.

The Governors also believe that citizen involvement in crime prevention is a key element in the fight against crime. They endorse the National Citizens' Crime Prevention Campaign, which is a coalition of citizens, law enforcement agencies, and private organizations designed to support crime prevention programs.

29.2 **Principles for the Federal Role in Controlling Crime**

THE GOVERNORS RECOGNIZE THAT ACCORDING TO THE FEDERAL BUREAU OF INVESTIGATION (FBI), STATE CRIME STATISTICS, AND OTHER DATA SOURCES, THE CRIME RATE HAS BEEN DECLINING. VIOLENT CRIME AMONG BOTH ADULTS AND JUVENILES IS ON THE DECLINE. HOWEVER, IT IS TOO EARLY TO DECLARE VICTORY. ALTHOUGH THE CRIME RATE IS DOWN FROM PREVIOUS DECADES, IT IS STILL HIGH FOR OUR CIVIL SOCIETY. RATHER THAN DECLARE VICTORY, WE MUST CONTINUE TO USE EVERY AVAILABLE RESOURCE TO ENSURE THAT OUR COMMUNITIES ARE SAFE FOR OUR CITIZENS.

[Note: Material in brackets is existing language moved from 29.2.4.]

[Because of its extensive resources and national scope, the federal government is best positioned to provide the resource assistance necessary for states to implement effective policies. ~~locally.~~ However, the Governors oppose new requirements that place unreasonable additional costs on states to secure federal assistance.] IN SEEKING FUNDING FOR NEW FEDERAL PROGRAMS OR INITIATIVES, CAREFUL ATTENTION SHOULD BE PAID TO ENSURE THAT FUNDS ARE NOT DIVERTED FROM EXISTING STATE AND LOCAL PROGRAMS THAT HAVE PROVEN EFFECTIVE.

29.2.1 **Avoid federalizing the criminal justice system.** In recent years, the federal government has created or has considered creating penalties for a wide range of crimes and activities that are typically prosecuted at the state level. The nation's Governors are concerned that some attempts to expand federal criminal law into traditional state functions would have little effect in eliminating crime but could undermine state and local anticrime efforts. Further, the Governors are concerned that federal concurrent

jurisdiction in criminal justice efforts can be used by the federal government as a means to impose undue mandates on state and local governments that work to disrupt state and local crime-fighting efforts.

29.2.2 **Provide research, statistics, and evaluations of alternative methods of criminal justice policy.** The nation's Governors recognize and welcome the federal government's unique capabilities and resources in the fight against crime and recognize that federal assistance is important in achieving success. For example, the federal government has the resources to undertake both basic and applied research. Therefore, it should continue to provide adequate support for research on criminal justice issues identified by state and local crime control and law enforcement officials.

29.2.3 **Increase intergovernmental coordination and information sharing.** The Governors recognize that the federal government has invested in the establishment of a number of national automated criminal justice information networks, including the Federal Bureau of Investigation's National Fingerprint File and Information Identification Index and the National Crime Information Center 2000. These networks add to the law enforcement community's potential to more efficiently and effectively fulfill its duties.

The Governors also believe that there needs to be a greater level of intergovernmental coordination and information sharing between states and the federal government to help state and local law enforcement officials contain and reduce criminal ~~gang~~ activity and enhance prevention and early intervention activities.

The nation's Governors encourage the continued development of information networks at the federal level. However, national information network planning, and state participation in such networks, should take the following factors into account:

- states' resource constraints and resource demands;
- states' policies and procedures for information access and dissemination; and
- states' primary role in the allocation of federal resources for technology and information systems development to ensure effective statewide integration and interoperability.

29.2.4 **Continue federal resource assistance to states for the implementation of criminal justice policies.**

29.2.4.1 **BYRNE PROGRAM.** THE EDWARD BYRNE MEMORIAL BLOCK GRANT IS THE PRIMARY FORM OF FEDERAL SUPPORT FOR STATE AND LOCAL ANTICRIME INITIATIVES, WHICH INCLUDES THE HIRING AND REHIRING OF LAW ENFORCEMENT OFFICERS. THE GOVERNORS DO NOT SUPPORT ANY ATTEMPT BY THE FEDERAL GOVERNMENT TO REDUCE FUNDS FROM THE EDWARD BYRNE MEMORIAL BLOCK GRANT. THE GOVERNORS ALSO DO NOT SUPPORT SETASIDES WITHIN THE BYRNE GRANT FUNDING FOR SPECIFIC PURPOSES OR ADDING NEW AND BURDENSOME ELIGIBILITY CRITERIA TO THE RECEIPT OF THESE FEDERAL FUNDS. FURTHER, THE GOVERNORS BELIEVE SUCCESSFUL STATE AND LOCAL INITIATIVES SHOULD BE ALLOWED TO RECEIVE BYRNE GRANT FUNDING BEYOND THE CURRENT FOUR-YEAR STATUTORY ELIGIBILITY LIMITATION. HOWEVER, THESE PROGRAMS SHOULD CONTINUE TO MEET ALL OTHER ORIGINAL ELIGIBILITY AND ACCOUNTABILITY OBJECTIVES.

29.2.4.2 **STATE PRISON GRANTS.** THE GOVERNORS BELIEVE THAT PARTICIPATION IN A FEDERALLY FUNDED STATE PRISON GRANT PROGRAM SHOULD NOT BE BASED ON A

FEDERALLY IMPOSED STRINGENT SET OF CRIMINAL PROCEDURES AND SENTENCING REQUIREMENTS. STATE GOVERNMENTS ALSO SHOULD NOT BE REQUIRED BY THE FEDERAL GOVERNMENT TO PASS LAWS THAT WOULD RESULT IN MORE COSTS TO STATES THAN THE BENEFITS REALIZED FROM PARTICIPATING IN A FEDERAL PRISON PROGRAM. STATES SHOULD BE GIVEN MAXIMUM FLEXIBILITY TO USE PRISON GRANT FUNDS FOR APPROPRIATE CORRECTIONAL PURPOSES. EFFORTS BY STATES, PAST AND PRESENT, TO COMBAT VIOLENT CRIME, IN CONJUNCTION WITH STATE PRISON CAPACITY, SHOULD BE CONSIDERED IN HOW PRISON GRANT FUNDS ARE ADMINISTERED TO ASSIST STATES. FURTHERMORE, GOVERNORS BELIEVE THAT THE PRISON GRANTS PROGRAMS SHOULD BE REAUTHORIZED AND CONTINUED.

29.2.4.3 **FEDERAL ASSISTANCE TO LOCAL GOVERNMENTS AND AGENCIES.** Although certain federal programs, such as crime control, provide local governments with resources for priority needs, the nation's Governors oppose the federal government providing direct assistance to local units of government without the approval of a state coordinating agent and/or agency designated by the Governor. Any aid, whether financial or in kind, must be flexible and be coordinated with the state to ensure state and local cooperation. ~~Finally, a corollary issue with regard to federal funding of criminal justice programs relates to the source of funds. In seeking funding for new federal programs or initiatives, careful attention should be paid to ensure that funds are not diverted from existing state and local programs that have proven effective.~~

29.2.4.4 **IMPROVEMENT OF FORENSIC SCIENCE LABORATORIES.** THE GOVERNORS ARE CONCERNED THAT GROWING DEMANDS ON CRIME LABORATORIES WILL NEGATIVELY IMPACT THE QUALITY OF THE FINDINGS OF THE LABS. LABORATORY ACCREDITATION IS GENERALLY ACCEPTED AS A FUNDAMENTAL STEP IN ACHIEVING QUALITY ASSURANCE AND CONSISTENCY IN FORENSIC SCIENCES. ACCREDITATION OF ALL CRIME LABORATORIES WOULD LEAD TO A UNIFORMLY HIGH LEVEL OF TOTAL QUALITY PROCESSES AND PRACTICES, SUPPORTING FORENSIC ANALYSIS THAT IS CREDIBLE TO A COURT OF LAW.

SCIENTIFIC BREAKTHROUGHS SUCH AS DNA TECHNOLOGY AND BULLET IMAGING SYSTEMS ARE PROVIDING POWERFUL NEW INFORMATION FOR INVESTIGATORS TO USE AS COURTROOM EVIDENCE. ALTHOUGH THESE ADVANCED TECHNOLOGIES HAVE BECOME PIVOTAL ELEMENTS IN SOLVING CRIMES, IMPLEMENTING, TRAINING, AND MAINTAINING SUCH NECESSARY PROGRAMS HAS BECOME A SIGNIFICANT FINANCIAL BURDEN FOR STATES AND LOCALITIES. FEDERAL SUPPORT IS NECESSARY TO ENSURE THAT THE NATION'S FORENSIC SCIENCE INFRASTRUCTURE IS IMPROVED IN A CONSISTENT, TIMELY, AND EFFICIENT MANNER. FURTHERMORE, FEDERAL REGULATION OF DNA TESTING IN CRIME LABORATORIES, MANDATED IN THE 1994 CRIME BILL, HAS ALSO LED TO UNFUNDED MANDATES ON STATE AND LOCAL GOVERNMENTS.

THE NATION'S GOVERNORS APPRECIATE THE FEDERAL GOVERNMENT'S SUPPORT OF THE NATION'S CRIME LABORATORIES AND URGE CONTINUED SUPPORT SO THEY WILL BE ABLE TO DELIVER RELIABLE SERVICES IN A TIMELY MANNER TO MEET GROWING PUBLIC SAFETY NEEDS AND DEMANDS.

29.2.5 **Continue federal assistance to help law enforcement respond to gang activities.** Gangs and the violence and drug trafficking they foster have become a major problem throughout the nation. Gangs are increasing and expanding across state lines at an alarming rate. Elaborate networks of gang activity, particularly involving the distribution and sale of illegal drugs, are active in every state, in society at large, and within correctional facilities. Gangs control large territories where they terrorize many communities.

Rapidly expanding criminal gang activity and the growing interstate make-up of gangs overburden and outpace the abilities of state and local law enforcement agencies in some localities to cope with these crimes. Consequently, there is an urgent need for specialized assistance, especially technical assistance, from the federal government. Yet this assistance must be coordinated with state and local law enforcement efforts.

The Governors oppose the federalization of criminal laws that are traditionally subject to state jurisdiction. However, the Governors also believe that U.S. attorneys should increase their efforts to prosecute gang members for violating federal laws.

Efforts designed to effectively impact criminal gang activity must be highly coordinated and cooperative, utilizing:

- intrastate and interstate task forces and working groups;
- federal law enforcement and intelligence resources, including expanded coordination between federal law enforcement agencies involved in combating criminal activities; and
- information-sharing technologies.

Governors are the officials best positioned to coordinate such activities, including the distribution and use of federal resources.

Time limited (effective Annual Meeting 1999–Annual Meeting 2001).
Adopted Annual Meeting 1998; revised Annual Meeting 1999.

HR-31. INDIAN HEALTH SERVICES

31.1 Preamble

The U.S. government has a trust responsibility for Indian peoples, and this trust responsibility extends to the provision of health care. The federal government has established and financially supports the Indian Health Service and has made special provisions in the current Medicaid program to ensure that the federal government bears all of the costs of care provided through Indian Health Service facilities. States do not have treaty-based trust responsibilities to provide health care to Native American peoples and, consequently, have no proper role in the financial support or operation of Indian Health Service facilities. HOWEVER, STATES ARE COMMITTED TO PRESERVING AND IMPROVING THE HEALTH OF NATIVE AMERICANS AND WILL CONTINUE TO WORK WITH THE FEDERAL GOVERNMENT TO MEET BENEFICIARIES' NEEDS IN STATE-FEDERAL HEALTH PROGRAMS.

31.2 Recommendations

Any proposed changes to publicly funded health care in the United States must take into consideration this long-standing balance of roles and responsibilities among federal, tribal, and state governments with regard to the provision and financing of health care for Native Americans. Toward that end, the Governors reaffirm our belief that:

- states not be required to subsidize the U.S. government trust responsibility;
- the Indian Health Service and tribal governments be directly funded by the U.S. government at a level that does not require a state subsidy to provide health services; and
- if states continue to be involved in the provision of health services to individuals covered by the federal trust responsibility, 100 percent federal funds be made available to states for such medically necessary care without regard to the provider of the service or the location of the provider.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–Winter Meeting 2000~~).
Adopted Winter Meeting 1996; revised Winter Meeting 1998.

HR-33. LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

33.1 Preamble

The Governors believe that the federal Low-Income Home Energy Assistance Program (LIHEAP) is an important federal assistance program AND ~~. They~~ believe that FUNDING ~~LIHEAP~~ should be maintained. LIHEAP provides energy assistance to low-income households to meet home heating and cooling needs. The program currently serves close to 5 million primarily elderly, disabled, and working poor households, including former welfare recipients. The average household income of most recipients is less than $8,000 per year. LIHEAP also acts as a lever, helping to encourage utilities and other sources to establish fuel funds and other sources of assistance to help low-income households pay their fuel bills.

33.2 State Responsibility

Under current law, states have maximum flexibility to allocate LIHEAP resources, set eligibility levels, and determine administrative structures. One indication of the success of this approach is that states are able to allocate funds using a limited administrative funding level of 10 percent.

33.3 Implementation

The federal government should continue to provide advanced funding for LIHEAP. Without advanced funding, the potential for delay in program appropriations can create severe problems in states where the winter heating season can begin as early as October.

33.4 Contingency Fund

Emergency funds should continue to be available upon the request of the President in the event of unforeseen increases in energy prices, national disasters, and other emergencies. THE GOVERNORS ~~We~~ urge the President to release these funds in a timely manner so that they may be used during periods of greatest need.

33.5 FLEXIBILITY AND RELATED PROGRAMS

THE NATION'S GOVERNORS RECOGNIZE THAT COORDINATION BETWEEN LIHEAP AND OTHER RELATED FEDERAL PROGRAMS, SUCH AS WEATHERIZATION, COULD GREATLY BENEFIT THOSE IN NEED OF ASSISTANCE. RECENTLY, CONGRESS ENACTED A CHANGE IN THE FINANCING STRUCTURE OF THE WEATHERIZATION PROGRAM THAT DEMONSTRATES A WEAKENING OF THE FEDERAL COMMITMENT TO THE PROGRAM. SPECIFICALLY, BEGINNING IN FISCAL 2001, STATES WILL BE EXPECTED TO CONTRIBUTE

STATE FUNDS TO WHAT HAS HISTORICALLY BEEN CONSIDERED A FEDERALLY FUNDED WEATHERIZATION PROGRAM. GOVERNORS ARE CONCERNED ABOUT THIS COST SHIFT, AND BELIEVE THAT STATES SHOULD BE PROVIDED FLEXIBILITY IN ORDER TO MEET THE NEW MATCH REQUIREMENT. IN ADDITION, GOVERNORS SHOULD BE PROVIDED THE FLEXIBILITY TO COORDINATE LIHEAP AND WEATHERIZATION PROGRAMS AT THE STATE AND LOCAL LEVEL IN ORDER TO BETTER SERVE LOW-INCOME HOUSEHOLDS. FOR EXAMPLE, STATES SHOULD HAVE THE OPTION TO INCREASE THE AMOUNT THEY ARE ALLOWED TO TRANSFER FROM LIHEAP TO WEATHERIZATION.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–Winter Meeting 2000~~).
Adopted Winter Meeting 1996; revised Winter Meeting 1998.

HR-34. SYNAR STATUTE

34.1 PREAMBLE

IN 1992, CONGRESS ESTABLISHED THE SYNAR STATUTE WITHIN THE SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT, WHICH IS ADMINISTERED BY THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA). THE GOAL OF SYNAR IS TO REDUCE TOBACCO SALES TO MINORS. STATES ARE REQUIRED TO ENACT LAWS PROHIBITING TOBACCO SALES TO MINORS AND TO ACHIEVE AN 80 PERCENT COMPLIANCE RATE AMONG STATE TOBACCO VENDORS BY 2001. THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ISSUED REGULATIONS FOR SYNAR ENFORCEMENT IN 1996 THAT ESTABLISHED BASELINE AND ANNUAL TARGET RATES FOR EACH STATE. IF STATES DO NOT REACH THEIR ANNUAL COMPLIANCE RATES, THEY SUFFER A 40 PERCENT CUT IN THEIR SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT.

THE GOVERNORS ARE STRONGLY COMMITTED TO REDUCING YOUTH SMOKING AND TO RESTRICTING UNDERAGE ACCESS TO TOBACCO PRODUCTS. AS SUCH, THE GOVERNORS HAVE COMMITTED SUBSTANTIAL STATE FINANCIAL RESOURCES AND SERIOUS STRATEGIC PLANNING FOR THE ENFORCEMENT OF THE SYNAR STATUTE. DESPITE GOOD-FAITH EFFORTS, MANY STATES HAVE EXPERIENCED SERIOUS CHALLENGES TO IMPLEMENTING AND ENFORCING THE SYNAR STATUTE AND TO ACHIEVING AND MAINTAINING COMPLIANCE. THE PENALTY FOR NONCOMPLIANCE WITH SYNAR IS A SEVERE 40 PERCENT CUT TO THE STATE'S SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT. CUTTING PROGRAMS THAT SEEK TO PREVENT AND TREAT SERIOUS SUBSTANCE ABUSE CANNOT POSSIBLY FURTHER THE GOALS OF THE SYNAR STATUTE. CONGRESS AND HHS HAVE BOTH THE AUTHORITY AND RESPONSIBILITY TO RECTIFY PERSISTENT PROBLEMS WITH THE ADMINISTRATION AND STRUCTURE OF THE SYNAR STATUTE.

CONGRESS HAS ALREADY TAKEN AN IMPORTANT FIRST STEP IN CREATING EFFECTIVE SYNAR ENFORCEMENT BY INSERTING LANGUAGE INTO THE FISCAL 2000 APPROPRIATIONS BILLS THAT WOULD PREVENT STATES THAT COMMIT SUBSTANTIAL FINANCIAL RESOURCES TO THE GOALS OF SYNAR FROM SUFFERING SEVERE PENALTIES TO THEIR SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT. BUT SUBSTANTIAL, LONG-TERM CHANGES IN THE ADMINISTRATION OF SYNAR AND IN THE SYNAR STATUTE ARE VITAL TO ENSURE THAT THE STATES AND THE FEDERAL GOVERNMENT CAN MEET THEIR COMMON GOAL OF REDUCING TOBACCO SALES TO MINORS, WITHOUT JEOPARDIZING VITAL SERVICES TO VULNERABLE POPULATIONS IN NEED OF SUBSTANCE ABUSE TREATMENT AND PREVENTION SERVICES.

CHANGES TO THE ADMINISTRATION OF SYNAR OR TO THE SYNAR STATUTE SHOULD BE COOPERATIVELY DESIGNED WITH THE STATES TO PROMOTE PERFORMANCE AND ACCOUNTABILITY. EFFECTIVE ENFORCEMENT POLICIES SUPPORT EFFORTS TO ACHIEVE RESULTS; INEFFECTIVE EFFORTS ARE DESIGNED ONLY TO PUNISH. THROUGH SYNAR, THERE EXISTS THE OPPORTUNITY TO STRENGTHEN, NOT WEAKEN, THE STATE-FEDERAL PARTNERSHIP THAT SUPPORTS SUBSTANCE ABUSE PREVENTION AND TREATMENT PROGRAMS FOR OUR NATION'S CITIZENS. IF SYNAR IS TO BE A TRULY EFFECTIVE PROGRAM, THE FOLLOWING CHANGES MUST BE ADOPTED:

- CONGRESS MUST ESTABLISH A SYNAR ENFORCEMENT STRUCTURE THAT DOES NOT THREATEN, INTERRUPT, OR ELIMINATE CRITICAL SUBSTANCE ABUSE TREATMENT AND PREVENTION PROGRAMS FOR VULNERABLE POPULATIONS.
- HHS MUST WORK IN CONSULTATION WITH THE STATES TO FORMALIZE FAIR PROCEDURES CONCERNING BLOCK GRANT APPROVAL, TARGET NEGOTIATION, AND PENALTY DETERMINATION.
- CONGRESS OR HHS MUST COMMISSION LONG-TERM, STATE-BASED STUDIES TO DETERMINE THE PREVALENCE OF TOBACCO SALES TO MINORS AND VALIDATE THE LINK BETWEEN SALE OF TOBACCO TO MINORS AND YOUTH SMOKING

RATES. SYNAR TARGET RATES SHOULD BE REVISED BASED UPON NEW AND MORE RELEVANT DATA.

- HHS MUST PROVIDE STATES WITH THE OPPORTUNITY TO TRULY NEGOTIATE AND RENEGOTIATE BASELINE AND ANNUAL TARGET RATES, AS ALLOWED FOR IN THE SYNAR REGULATIONS.
- HHS SHOULD PROVIDE TARGETED TECHNICAL ASSISTANCE TO STATES THAT ARE EXPERIENCING TECHNICAL DIFFICULTIES AND PROMOTE BEST PRACTICES THROUGH THE DEVELOPMENT OF MODEL PROTOCOLS TO ASSIST STATES IN THE ENFORCEMENT OF SYNAR.

34.2 PENALTY STRUCTURE

WHILE THE GOVERNORS ARE STRONGLY COMMITTED TO REDUCING TEEN SMOKING AND TOBACCO SALES TO MINORS, SEVERE CUTS TO A STATE'S SUBSTANCE ABUSE TREATMENT AND PREVENTION BLOCK GRANT WILL ONLY FURTHER HINDER THESE EFFORTS. CUTTING THESE FUNDS WILL RESULT IN A CRITICAL REDUCTION OR EVEN ELIMINATION OF VITAL CLINICAL PROGRAMS AND SERVICES FOR INDIVIDUALS WITH SERIOUS SUBSTANCE ABUSE PROBLEMS AND MENTAL ILLNESSES. SUCH CUTS WOULD ALSO LIMIT A STATE'S ABILITY TO PREVENT SUBSTANCE ABUSE, BECAUSE 20 PERCENT OF THE BLOCK GRANT IS USED FOR PREVENTIVE SERVICES. IN ADDITION TO ELIMINATING TREATMENT AND PREVENTIVE SERVICES FOR THIS VULNERABLE POPULATION, SUCH FUNDING CUTS MAY LEAD TO REDUCTIONS IN REIMBURSEMENT RATES FOR PROVIDERS AND EMPLOYEES CURRENTLY WORKING HARD TO ALLEVIATE SUBSTANCE ABUSE AND MENTAL ILLNESS MAY LOSE THEIR JOBS.

THE NATION'S GOVERNORS SUPPORT CONGRESSIONAL INTENT IN THE SAMHSA SYNAR STATUTE BUT URGE CONGRESS TO DEVELOP ENFORCEMENT STRATEGIES THAT PROMOTE PERFORMANCE AND BEST PRACTICES. RATHER THAN FINANCIALLY PENALIZING STATES THAT FACE DIFFICULT ENFORCEMENT CHALLENGES, AN EFFECTIVE ENFORCEMENT POLICY WOULD SUPPORT STATES IN THEIR EFFORTS TO

ACHIEVE AND MAINTAIN THEIR TARGETS AND REWARD RESULTS. CUTTING FUNDS TO COMBAT SUBSTANCE ABUSE WILL ONLY FORCE STATES TO FALL FURTHER AND FURTHER BEHIND TARGETED REDUCTIONS IN SALES OF TOBACCO TO MINORS.

ADDITIONALLY, THE GOVERNORS SUGGEST THAT, IN THE SPIRIT OF THE STATE-FEDERAL PARTNERSHIP TO REDUCE TOBACCO SALES TO MINORS, HHS ADOPT A POLICY CREATING A PROBATIONARY PERIOD FOR STATES HAVING DIFFICULTY MEETING TARGET COMPLIANCE RATES. UNDER SUCH A PROBATIONARY SYSTEM, STATES THAT EXPERIENCE DIFFICULTY IN REACHING OR MAINTAINING COMPLIANCE WOULD BE PLACED ON "PROBATION" FOR A TWO-YEAR PERIOD. DURING THIS TIME, SAMHSA WOULD WORK CLOSELY WITH THE STATE, PROVIDING TAILORED TECHNICAL ASSISTANCE, IN AN ATTEMPT TO CORRECT EXISTING PROBLEMS. SUCH A STRATEGY WOULD SERVE TO STRENGTHEN THE RELATIONSHIP BETWEEN STATE AND FEDERAL AGENCIES THAT SHARE THE GOAL OF REDUCING TOBACCO SALES TO MINORS AND WOULD ALSO SERVE TO PREVENT REDUCTIONS IN SERVICES FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT.

34.3 SAMHSA PROCEDURES

ALTHOUGH SYNAR WAS ENACTED IN 1992, THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES DID NOT RELEASE GUIDELINES FOR IMPLEMENTATION UNTIL 1996. WHEN REGULATIONS WERE ISSUED, THEY WERE PRESCRIPTIVE IN TERMS OF COMPLIANCE RATES AND TARGETS, BUT NOT HELPFUL IN TERMS OF PROVIDING TARGETED TECHNICAL ASSISTANCE OR IN EXPLAINING THE PROCESS OF DETERMINING SYNAR COMPLIANCE. SAMHSA MUST WORK TO ESTABLISH REASONABLE PROCESSES RELATING TO TARGET RATE NEGOTIATIONS, BLOCK GRANT APPROVAL, AND PENALTY DETERMINATIONS IF STATES ARE TO HAVE THE ABILITY TO ADEQUATELY ENFORCE THE SYNAR STATUTE. ADDITIONALLY, HHS MUST WORK TO ACHIEVE UNIFORMITY IN TERMS OF GUIDANCE AMONG THE TEN REGIONAL OFFICES. STATES ARE CONCERNED THAT THE DEGREE, QUALITY, AND ACCURACY OF INFORMATION AND GUIDANCE

EMANATING FROM THE REGIONAL OFFICES VARY IMMENSELY BETWEEN REGIONS AND DO NOT NECESSARILY REFLECT THE POLICY CONCERNS OF THE CENTRAL OFFICE.

34.3.1 **TARGET NEGOTIATIONS.** A MOST CRITICAL PROCEDURAL ELEMENT OF THE SYNAR STATUTE IS THE ESTABLISHMENT OF TARGET RATES FOR EACH STATE. DESPITE FEDERAL REGULATIONS THAT SPECIFY THAT STATES WILL HAVE THE OPPORTUNITY TO NEGOTIATE BOTH THE BASELINE AND ANNUAL TARGET RATES WITH FEDERAL OFFICIALS, THAT HAS NOT BEEN THE PRACTICE. RATHER THAN ENTER INTO A TRUE NEGOTIATION WITH STATES, THE FEDERAL GOVERNMENT HAS MERELY ESTABLISHED TARGET RATES FOR EACH STATE. AS WAS ESTABLISHED IN REGULATIONS PROMULGATED BY HHS, FAIR AND FORMAL TARGET NEGOTIATION AND RENEGOTIATION PROCESSES MUST BE ESTABLISHED BETWEEN THE FEDERAL GOVERNMENT AND THE STATES. TARGET RATES MUST BE BASED UPON HIGH-QUALITY, LONG-TERM, STATE-BASED STUDIES THAT DETERMINE THE PREVALENCE OF TOBACCO SALES TO MINORS AND VALIDATE THE LINK BETWEEN THE SALE OF TOBACCO TO MINORS AND YOUTH SMOKING RATES. SYNAR TARGET RATES SHOULD BE REVISED BASED UPON NEW AND MORE RELEVANT DATA, AS WELL AS STATISTICAL FLUCTUATIONS.

34.3.2 **BLOCK GRANT APPROVAL.** AS THE AWARD OF A STATE'S SUBSTANCE ABUSE TREATMENT AND PREVENTION BLOCK GRANT IS BASED UPON SYNAR COMPLIANCE, FAILURE ON THE PART OF HHS TO MAKE A DETERMINATION REGARDING PENALTIES CAN HOLD UP THE APPROVAL OF A STATE'S BLOCK GRANT APPLICATION. THIS RESULTS IN AN INTERRUPTION OF CRITICAL SERVICES TO INDIVIDUALS WITH SEVERE SUBSTANCE ABUSE PROBLEMS. SAMHSA MUST ESTABLISH A FAIR AND FORMAL PROCEDURE FOR CONSIDERING BLOCK GRANT APPLICATIONS IN A TIMELY FASHION, PROVIDING A DATE CERTAIN WHEN STATES WILL BEGIN TO RECEIVE FUNDING, IN ORDER TO ENSURE THAT SERVICES ARE NOT DISRUPTED.

34.3.3 **PENALTY DETERMINATIONS.** STATES THAT FIND THEMSELVES UNDER THREAT OF A 40 PERCENT PENALTY TO THEIR SUBSTANCE ABUSE TREATMENT AND PREVENTION BLOCK GRANT HAVE NO WAY TO PLAN FOR SUCH AN EVENT, BECAUSE SAMHSA DOES NOT HAVE ANY FORMAL PROCESS FOR DETERMINING IF, WHEN, OR HOW PENALTIES WILL BE INCURRED BY A STATE. SAMHSA MUST ESTABLISH A FAIR AND FORMAL PROCESS TO DETERMINE WHEN AND HOW PENALTIES SHALL BE LEVIED AND UNDER WHAT CIRCUMSTANCES PENALTIES WILL BE WAIVED. IN PARTICULAR, SAMHSA MUST DEVELOP A REASONABLE DEFINITION OF "EXTRAORDINARY CIRCUMSTANCES" UNDER WHICH PENALTIES SHALL BE WAIVED. CURRENT DEFINITIONS THAT DEFINE "EXTRAORDINARY" AS "OUT OF THE STATE'S CONTROL" HAVE BEEN INTERPRETED MUCH TOO NARROWLY AND DO NOT REFLECT OPERATIONAL REALITIES OF SYNAR ENFORCEMENT. PROCEDURES SHOULD ALSO BE SET IN PLACE THAT WOULD ALLOW STATES TO RECEIVE A PORTION OF THEIR BLOCK GRANT WHILE PENALTY DETERMINATIONS ARE UNDERWAY, IN ORDER TO MINIMIZE DISRUPTION OF VITAL SERVICES.

34.4 **RESEARCH, METHODOLOGY, AND IMPLEMENTATION**

WHEN THE SYNAR STATUTE WAS PASSED INTO LAW IN 1992, LITTLE STATE-BASED RESEARCH OR DATA WAS AVAILABLE REGARDING TOBACCO SALES TO MINORS. THE SYNAR TARGETS DEVELOPED BY HHS ARE BASED UPON SHORT-TERM, COMMUNITY-BASED RESEARCH PROJECTS CONDUCTED MORE THAN FIVE YEARS AGO.

BY SYSTEMATICALLY AND STRATEGICALLY SEEKING OUT VENDORS THAT SELL TOBACCO TO MINORS, STATES ARE CONDUCTING THE HIGH-QUALITY, LONG-TERM, STATE-BASED STUDIES THAT SHOULD HAVE BEEN CONDUCTED BEFORE THE IMPLEMENTATION OF THE SYNAR STATUTE. AS STATES MOVE FORWARD AND DEVELOP BETTER RESEARCH METHODS, THEY CONTINUE TO FIND GREATER INCIDENCE OF TOBACCO SALES TO MINORS THAN INITIALLY ANTICIPATED. THIS RESULTS IN AN ARTIFICIAL INCREASE IN RATES, OR "REBOUND," OF TOBACCO SALES TO MINORS.

REBOUND RATES DO NOT REPRESENT A FAILURE, BUT ARE A RESULT OF STATES' GOOD-FAITH EFFORTS TO LOCATE AND IDENTIFY CURRENT VIOLATIONS AND TO PROPERLY REPORT SUCH FINDINGS TO THE FEDERAL GOVERNMENT. ESSENTIALLY, THE BETTER THE STATE RESEARCH AND STATE ENFORCEMENT, THE GREATER THE CHANCE THAT STATES WILL FIND VENDORS SELLING TOBACCO TO MINORS, INDUCING THEIR RATES TO REBOUND. STATES SHOULD NOT BE PUNISHED FOR THEIR GOOD-FAITH EFFORTS.

THE INITIAL DATA USED BY HHS TO DETERMINE SYNAR TARGET RATES WAS INSUFFICIENT AND INCORRECT. IF SYNAR IS TO BE FULLY EFFECTIVE, THE PROVISION MUST BUILD UPON THE EXPERTISE ALREADY GAINED IN THE STATES AND CONDUCT NEW RESEARCH IN ORDER TO DETERMINE THE TRUE EXTENT OF TOBACCO SALES TO MINORS. TO CONTINUE TO HOLD STATES TO A FALSE STANDARD IS UNREASONABLE AND OFFERS A DISINCENTIVE TO STATES TO EMPLOY HIGH-QUALITY ENFORCEMENT STRATEGIES. RESEARCH SHOULD ALSO BE CONDUCTED TO DETERMINE THE RELATIONSHIP BETWEEN TOBACCO SALES TO MINORS AND YOUTH SMOKING RATES. IF THE SALES RATE DROPS BUT TEEN SMOKING DOES NOT, STATES SHOULD BE PERMITTED TO TAKE ANOTHER APPROACH TO REDUCING TEEN SMOKING.

34.5 COORDINATION BETWEEN FEDERAL AGENCIES

SAMHSA IS NOT THE ONLY FEDERAL HEALTH AGENCY CONCERNED WITH TOBACCO SALES TO MINORS. BOTH THE FOOD AND DRUG ADMINISTRATION (FDA) AND CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) OPERATE SUCCESSFUL COMPETITIVE GRANT PROGRAMS WITH THE SAME GOAL AS SYNAR. HOWEVER, SAMHSA, FDA, AND CDC HAVE ALL SET DIFFERENT CRITERIA AND TARGETED AGE RANGES FOR THEIR PROGRAMS. THIS MAKES IT DIFFICULT FOR STATES TO PARTICIPATE IN THE GRANT PROGRAMS OFFERED BY FDA OR CDC AND HAS RESULTED IN SOME STATES HAVING DIFFICULTY ACHIEVING AND MAINTAINING SYNAR COMPLIANCE. FEDERAL AGENCIES SHOULD ESTABLISH GREATER COORDINATION,

UNIFY STANDARDS, AND WORK COLLABORATIVELY WITH THE STATES TO PROVIDE TECHNICAL ASSISTANCE AND COMPETITIVE GRANTS TO EXPAND STATE EFFORTS TO REDUCE TOBACCO SALES TO MINORS.

34.6 TECHNICAL ASSISTANCE

ALTHOUGH SAMHSA HAS HELD SEVERAL LARGE CONFERENCES REGARDING SYNAR COMPLIANCE, IT WOULD BE EXTREMELY HELPFUL IF HHS COULD PROVIDE TARGETED TECHNICAL ASSISTANCE TO STATES BEFORE, DURING, AND AFTER THE CONCERN OF A PENALTY IS RAISED. RATHER THAN PENALIZE A STATE OUTRIGHT, SAMHSA SHOULD WORK WITH THE STATE TO RESOLVE THE PROBLEM AND ENSURE THAT TOBACCO SALES TO MINORS CONTINUE TO DECREASE.

STATES WOULD ALSO FIND IT USEFUL FOR HHS TO EXPLORE VARIOUS PROTOCOL MODELS TO SEEK OUT BEST PRACTICES AND TO DETERMINE TO WHAT DEGREE COMPLIANCE RATES ARE LINKED TO THE METHODOLOGY EMPLOYED BY THE STATE. HHS SHOULD THEN PROVIDE TECHNICAL ASSISTANCE TO STATES BASED UPON MODELS OF BEST PRACTICES.

Time limited (effective Winter Meeting 2000–Winter Meeting 2002).

HR-37. PRIVATE SECTOR HEALTH CARE REFORM

37.1 **Preamble**

The health of our nation depends on the health of our people. The United States has the most sophisticated and technologically advanced health care system in the world. However, the technological excellence of our system has come with a price. For several decades, growth in the American health care industry exceeded growth in the overall economy. In the mid 1990s, there was a moderation in medical inflation thanks in large part to the cost controls and management efficiencies implemented in Medicaid and other state health programs by Governors.

However, recent indications are that health care premiums are beginning to rise in response to increases in underlying health care costs as well as market pressures. States must have the flexibility to work with the private sector health care delivery system to explore strategies to help control costs and ensure quality of care.

A growing number of Americans, including children and adolescents, are without private sector health coverage, with even basic care beyond the reach of many. With health care costs having exceeded general economic growth for decades, coverage has declined, and costs have shifted to a smaller percentage of Americans who can afford to pay. Affordable quality care is becoming more elusive. The challenge that we face is to extend access to affordable quality care to all Americans, including those in underserved and rural areas, while containing costs.

The last several years have seen intense federal efforts to develop a consensus on national health care reform. Although efforts to enact fundamental national reform have been unsuccessful thus far, important progress has been made with the passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In addition, the reform efforts of Governors and state legislators have been much more successful than federal attempts at fundamental reform. The emphasis of Governors today is to develop state-based health care reform efforts.

In almost every state, strategies have been implemented to improve the quality and availability of health care. In most states, the reform efforts have been focused to address a specialized problem. States are testing strategies to restructure both the health care market and the public programs that support the most vulnerable citizens.

37.1.1 **Private Market.** Even before the enactment of HIPAA, states have acted to enhance access and improve equity for both employers and employees within the private insurance market. In some states, for example, limits have been placed on preexisting conditions exclusions for certain market segments. In both the individual and small group markets some states have implemented reforms setting forth guaranteed issue, which requires insurers in the small group market to accept every small employer who applies for coverage, and portability of coverage, through which individuals can be ensured access to coverage after changing jobs. And within the small group insurance market, a number of states are establishing modified community rating systems, while two states have moved to a pure community rating.

Many states are experimenting with tax incentives to increase coverage. Included among these strategies are transitional tax credits to small businesses and medical savings accounts. These state experiments are applicable only to state taxes and do not affect federal tax laws.

Some states are encouraging the establishment of purchasing alliances or group purchasing pools. By spreading risk and encouraging competition among health networks and insurers, alliances are able to offer affordable coverage to individuals, those who are self-employed, and people who work in small businesses—those who find it most difficult to purchase affordable coverage. Although these programs are still in their earliest stages, the results look promising. The Governors continue to be concerned about federal preemption of state law in the regulation of health care networks.

By experimenting with a number of innovations within the private insurance market, states have taken the lead in developing and implementing reforms designed to expand affordable access to insurance coverage while controlling costs. The experience gained through state reform efforts laid the groundwork for the passage of the federal Health Insurance Portability and Accountability Act of 1996.

37.2 Federal Support for State-Based Health Care Reform

States have made significant progress in reforming their health care systems; however, much more needs to be done. The nation's Governors call upon the President and Congress to work with states to facilitate and accelerate the development of state reform efforts.

37.2.1 **Employee Retirement Income Security Act.** Although the Governors are extremely sensitive to the concerns of large multistate employers, the fact remains that one of the greatest barriers to some state reform initiatives is the Employee Retirement Income Security Act (ERISA).

ERISA was enacted in 1974 and applies to employee benefits plans, including employee health plans. ERISA provides for a complete federal preemption of state laws that "relate to" employee health plans. Under the McCarran-Ferguson Act, states retain the ability to regulate insurance carriers, such as indemnity plans and health maintenance organizations. However, states are powerless to regulate or otherwise affect employee health plans that "self-insure" under ERISA rather than buy insurance.

Self-insurance was very rare when ERISA was enacted, but it now covers a majority of the employees in the United States who receive health benefits. This proliferation of self-insurance, coupled with the federal courts' broad interpretation of the reach of ERISA preemption, has made ERISA a formidable barrier to states wishing to implement certain health care reform.

ERISA preempts all self-insured health plans from state regulations and subjects those plans only to federal authority. As a result of judicial interpretations of ERISA, states are prohibited from:

- establishing minimum guaranteed benefits packages for all employers;
- requiring all health plans to provide states with information crucial to developing a comprehensive understanding of the status of the state's health care access and delivery systems;
- establishing a statewide employer mandate;
- imposing a level playing field through premium taxes on self-insured plans; and
- overseeing quality in self-funded health plans and establishing consumer protections.

The decision in New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company affirmed states' ability to establish all-payer rate-setting systems. The same case indicated that provider taxes would be permissible, but concerns remain that these taxes could be preempted by ERISA through evolving judicial interpretation.

37.2.1.1 **Strategy for Reform.** A multidimensional approach to reform could be taken that includes flexibility for states directly in the ERISA statute, and through new waiver authority.

- **Statutory Flexibility.** Congress may act quickly to help states by including flexibility directly in statute. This may be accomplished through statutory directives to the federal executive branch regarding national uniformity. Specifically, a state would be permitted to impose requirements on self-funded plans if the state was willing either to adopt and build upon minimum national standards or work within some type of federal framework. The federal executive branch must be instructed to work with states to identify and define those standards.

  This approach has the potential for broad applicability but is most relevant to quality and utilization review procedures.

  To facilitate the process, the legislation should be structured to rely on existing national standards. Where none exist, the legislation could direct the executive branch to develop them. However, if the executive branch finds it necessary to develop a national standard, states should be given limited flexibility during the development period so that they can move ahead with their innovations.

- **Waiver Authority.** In addition to direct statutory flexibility, Congress should establish direct waiver authority in ERISA. Waiver authority would be most applicable for states that wish to develop alternative financing and cost-control strategies that are now precluded by the statute. Waiver authority could have the following parameters.
  - The secretary of the U.S. Department of Labor would have the authority to review and grant ERISA waivers.
  - There would be no prohibition against replicating other state ERISA waivers. However, each state would have to submit a waiver application.

- Waivers would be approved for an initial five-year period with five-year renewals thereafter.
- Waiver applications would be submitted by the Governor.
- ~~As a condition for waiver approval, the state would have to demonstrate that the strategy has the support of the state's legislature.~~
- For states making requests for exemptions in the areas of financing or cost control, the state's waiver application would have to include a plan for expanding coverage and maintaining quality, and a strategy for documenting the state's progress toward achieving these goals.

37.2.2 **The Health Insurance Market.** With the enactment of the McCarran-Ferguson Act in the 1940s, a state's prerogative to regulate health insurers has been recognized by federal law. However, since ERISA's enactment in 1974, that delineation of state and federal responsibilities has been blurred. ERISA provides that self-funded single employer or Taft-Hartley jointly administered plans are exempt from state regulation. States cannot establish minimum solvency and capital requirements for these self-funded plans. They cannot ensure that employees and dependents in self-funded plans receive the basic consumer protections that are offered to those in commercial state-regulated plans; nor can they ensure that those in self-funded plans have remedies available when problems arise over coverage decisions and other matters. As such plans proliferate, they represent a growing share of the total health care market and greatly erode the ability of states to regulate the private health care market. The federal government must act to rectify the situation.

The nation's Governors call on the federal government to correct these inequities by adopting one or more of the following options.

- Congress should work with the states to establish national health care standards for self-funded plans that are similar to those imposed by states on commercial plans. If Congress is unwilling to define legislative standards in ERISA, the U.S. Department of Labor, in consultation with the states, should be given the authority to develop regulations that, at the very least, establish essential consumer protections and remedies standards for self-funded plans.
- Anecdotal evidence suggests that consumer protections problems are more likely to arise in small self-funded plans. Congress could limit self-funding authority to businesses above a certain size. Businesses below that limit would be required to follow state laws. The U.S. Department of Labor would need to enforce standards for those plans that remain under its jurisdiction.

If Congress chooses to set minimum national standards, they should be developed with state officials in consultation with representatives of affected small businesses, insurers, and consumers.

37.2.2.1 **Special Group Arrangements and Markets**

Healthmart Arrangements. Although Governors support many of the goals of healthmarts and recognize that they would preserve some important state prerogatives, states do have some serious concerns about the proposal. First, healthmarts would preempt state benefit requirements, which already provide some of the strongest consumer protections. These benefit requirements include automatic coverage of newborns without any preexisting condition exclusions. A healthmart could design its own benefit package without any requirements or oversight.

Second, a healthmart is allowed to determine what geographic area it will serve. This would leave people who are poorer risks in a smaller pool, raising their rates, and increasing the likelihood that their employer will drop coverage.

Finally, healthmarts would undermine state health reforms by fragmenting the health insurance marketplace. They would also undermine efforts undertaken by states to ensure that their small business communities have access to affordable health insurance.

37.2.2.2 **Multiple Employer Welfare Arrangements.** The Governors support efforts designed to enable small employers to join together to participate more effectively in the health insurance market. In fact, states have taken the lead in facilitating the development of such partnerships and alliances. However, these partnerships must be carefully structured and regulated by state agencies. Many states have experienced extensive and well-documented problems with fraudulent Multiple Employer Welfare Arrangements (MEWAs) in recent years. In many cases, state legislation has been adopted to protect against further abuse.

The Governors strongly oppose congressional reforms that would extend ERISA status to MEWAs or otherwise limit state oversight. State insurance regulation is crucial to ensuring that small business alliances receive reliable and secure coverage. Before any change is made in federal statute with regard to MEWAs, the impact of the small market reform changes set forth by the Health Insurance Portability and Accountability Act of 1996 should be carefully analyzed.

37.2.3 **The Health Insurance Portability and Accountability Act of 1996.** With the passage of this important new law, the federal government has made progress toward extending basic market reforms to ERISA plans. Although Governors recognize the importance of national protections and applaud the extension of those protections to ERISA plans, it is important to remember that states have primary responsibility for insurance regulation. That role must be preserved.

The U.S. Department of Health and Human Services (HHS) plans to evaluate HIPAA during the year. The Governors look forward to working closely with the federal government in the evaluation process. In particular, Governors will be following very carefully the process for determining whether state alternatives for the regulation of the individual insurance market are deemed acceptable by HHS. The statute provides examples of what constitutes an acceptable alternative, and Governors do not want state flexibility to be diminished through the regulatory process.

The Governors also believe states should be consulted extensively as HHS develops standards for the administrative simplification provisions in the new law, especially regarding privacy. National standards will be adopted and enacted within twenty-four months of promulgation regarding transactions, data elements for such transactions, and standards for the electronic transmission of certain health information. State participation is needed to ensure that state data needs are addressed and that patient privacy is protected.

37.2.4 **Privacy.** HIPAA sets a deadline for congressional action on privacy standards for medical records of August 1999, and requires the secretary of HHS to promulgate regulations by February 2000, should Congress fail to enact legislation. THE DEADLINE FOR CONGRESSIONAL ACTION HAS PASSED WITHOUT A MEDICAL RECORDS PRIVACY BILL. AS A RESULT, HHS HAS RELEASED A PROPOSED REGULATION. HOWEVER, CONGRESS RETAINS THE POWER TO EXTEND OR ELIMINATE THE HIPAA DEADLINE AND TO PASS LEGISLATION THAT WOULD SUPERSEDE DEPARTMENTAL REGULATIONS.

In considering legislation and/or regulations, Governors urge the administration and Congress to take into consideration the fact that many states have privacy laws governing medical records. WHILE IT IS CERTAINLY PREFERABLE THAT STATE LAWS ON MEDICAL RECORDS PRIVACY NOT BE PREEMPTED BY FEDERAL ACTION, ANY FEDERAL STATUTE, REGULATIONS, OR GUIDELINES SHOULD REPRESENT A MINIMUM STANDARD, OR "FLOOR," THAT STATES SHOULD BE PERMITTED TO MOVE BEYOND IN ORDER TO CREATE MORE STRINGENT PRIVACY STANDARDS AND BEST MEET THE NEEDS OF THEIR CITIZENS. A MAXIMUM FEDERAL STANDARD FOR MEDICAL RECORDS WILL REVOKE PRIVACY RIGHTS PREVIOUSLY BESTOWED UPON STATES' CITIZENS AND WILL PREVENT STATES FROM

RESPONDING TO FUTURE MEDICAL RECORDS PRIVACY NEEDS THAT CANNOT BE FORESEEN AT THIS TIME. ADDITIONALLY, THE GOVERNORS EXPECT THAT FEDERAL LEGISLATION OR REGULATION WILL NOT INHIBIT THE NECESSARY ACTIVITIES OF STATE INSURANCE COMMISSIONERS, PARTICULARLY IN REGARD TO THE INVESTIGATION OF FRAUD AND ABUSE, THAT ALLOW STATES TO PRESERVE THE FINANCIAL INTEGRITY OF PUBLIC PROGRAMS AND PROTECT CONSUMERS. GOVERNORS ARE CONCERNED THAT THE REGULATIONS COULD IMPOSE SIGNIFICANT AND COSTLY ADMINISTRATIVE BURDENS FOR THE STATES, SUCH AS REWRITING AND DISTRIBUTING MEMBER HANDBOOKS, PROVIDING ADDITIONAL TRAINING FOR STATE AGENCY PERSONNEL, AND ESTABLISHING PRIVACY OFFICERS. ~~These state laws should not be preempted in any way by federal action regarding HIPAA.~~

37.2.5 **Medical Tort Reform.** Reform of the medical tort system should be undertaken with a view toward achieving high-quality and appropriate care. Ideally, medical tort reform will reduce the cost of defensive medicine and provide appropriate levels of compensation for patients injured by medical negligence. Toward that end, the federal government should establish national minimum tort and liability standards. States could establish more restrictive standards if they so choose. The federal government, working with states, also must consider alternative dispute resolution strategies that could be used to reduce the costs of litigation.

37.2.6 **Antitrust.** More and more Americans are receiving their care through health delivery networks. Establishing these networks requires new approaches to cooperation among providers and businesses that heretofore have been competitors. Congress and the administration must work with the states to accommodate this new health care environment while ensuring that competition remains in the marketplace.

37.2.7 **Outcome and Quality Standards.** If meaningful choices are ever to be made in health care, research must be supported to develop outcomes and quality standards for use by providers, purchasers, and consumers alike. Also, information systems must be developed that include price and quality information for all providers and consumers of health care services in a given geographic area. The federal government, the states, and the private sector (both purchasers and providers) must cooperate in the development and implementation of such standards. Data measures must provide information relevant to state programmatic decisions and consumer choice. The collaborative processes of standard development and measurement must be designed in such a way that they do not create unreasonable administrative burdens without yielding useful results.

37.2.8 **Administrative Simplifications.** The administrative complexity of the current system must be reduced. The Governors support the reforms set forth in the Health Insurance Portability and Accountability Act to move the nation toward uniform claims forms and uniform standards for electronic data interchange. However, states must be closely involved in the development of the national standards to ensure that state data needs are met and individual privacy rights are protected.

37.2.9 **Public Sector Health Care Delivery.** Although the Governors support the delivery of care through the private health care system, a public system of services, funded by the state and federal governments, has arisen to address needs unmet by the private sector. (See the Governors' Public Health Services policy, HR-7.)

37.2.10 **Enhance Opportunities for Primary Care Practice.** Despite the recent increase in the percentage of medical students choosing to pursue careers in general medicine, the medical education system still is not preparing the providers that are needed for a health care system with a focus on preventive and primary care. States are currently experimenting with a wide variety of initiatives that address the critical issues of increasing primary care practice and improving the distribution of primary care providers, especially in rural and urban medically underserved areas. These initiatives include data collection to better understand the distribution of, and need for, providers in specific locations; loan repayment programs to practitioners who practice in underserved areas; and technical assistance programs to enhance primary care delivery systems in underserved locations.

Therefore, the Governors recommend that the federal government recognize, review, and support programs currently underway in states that are successfully addressing the issue of increasing and preserving access to primary care physicians in medically underserved and rural areas. Moreover, the Governors recommend that the federal government provide incentives for students, physicians, and mid-level health professionals to serve in primary care professions, particularly in rural and underserved areas.

37.2.11 **Managed Care and Quality.** See the Governors' Medicaid policy, HR-16.

37.3 **Conclusion**

In many states, Governors have begun to meet the challenge of reforming their health care systems and are beginning to learn about the successes and failures. The federal government should support states as they demonstrate different approaches to achieve universal access to affordable health care and should evaluate creative comprehensive approaches to health care reform.

Time limited (effective Winter Meeting 1999–Winter Meeting 2001).
Adopted Winter Meeting 1994; revised Winter Meeting 1995, Winter Meeting 1997, and Winter Meeting 1999.

HR–39. SENIOR PRESCRIPTION DRUGS

IF CONGRESS DECIDES TO EXPAND PRESCRIPTION DRUG COVERAGE TO SENIORS, IT SHOULD NOT SHIFT THAT RESPONSIBILITY OR ITS COSTS TO THE STATES. FURTHERMORE, IN THE PROCESS OF DEVELOPING A SENIOR PRESCRIPTION DRUG POLICY, THE FEDERAL GOVERNMENT SHOULD ACKNOWLEDGE AND ACCOMMODATE STATE PROGRAMS AND AVOID DISINCENTIVES TO STATE INNOVATION, SUCH AS UNREASONABLE MAINTENANCE-OF-EFFORT REQUIREMENTS, REDUCED FEDERAL MATCHING FUNDS, OR OTHER PENALTIES.

Time limited (effective Winter Meeting 2000–Winter Meeting 2002).

HR-40. BUILDING SUCCESSFUL LITERACY INITIATIVES

40.1 PREAMBLE

READING IS A FUNDAMENTAL TOOL FOR SUCCESS FOR ALL. IT OPENS THE DOORS TO ALL OTHER ACADEMIC SUBJECTS FOR STUDENTS. EARLY INTERVENTION IS ESSENTIAL TO ENSURE THAT EACH CHILD HAS THE READING SKILLS TO SUCCEED FIRST AS A STUDENT AND LATER AS AN ADULT. WHILE IN THE PAST ILLITERATE ADULTS HAVE FACED GREAT CHALLENGES IN FINDING WORK, THE NEAR FUTURE WILL HOLD EVEN FEWER JOB OPPORTUNITIES FOR THOSE WHO CANNOT READ. THE INFORMATION AGE AND THE ADVANCEMENT OF NEW TECHNOLOGIES WILL FUEL A NEW ECONOMY THAT HOLDS ALMOST NO JOB OPPORTUNITIES FOR THOSE WHO ARE NOT LITERATE.

HOWEVER, IN 1998 ONLY 60 PERCENT OF THE NATION'S FOURTH-GRADE STUDENTS WERE READING AT A LEVEL APPROPRIATE FOR THEIR AGE OR GRADE LEVEL. THIS IS IN PART BECAUSE MANY STUDENTS ARRIVE AT SCHOOL WITHOUT THE FUNDAMENTAL SKILLS AND EXPERIENCES TO LEARN TO READ. IMPORTANT EXPERIENCES THAT LEAD TO READING SUCCESS BEGIN VERY EARLY IN LIFE. CHILDREN WHO ARE LIKELY TO DEVELOP READING DIFFICULTIES INCLUDE THOSE WHO DO NOT HAVE GENERAL VERBAL ABILITIES, AWARENESS OF THE SOUNDS OF LANGUAGE, OR FAMILIARITY WITH THE BASIC PURPOSE AND MECHANICS OF READING. THESE CHILDREN RARELY EXPERIENCE THE JOY OF READING OR BEING READ TO.

THE GOVERNORS HAVE LONG RECOGNIZED THE CRITICAL ROLE THAT READING PLAYS IN THE LIFE OF A CHILD. ACROSS THE COUNTRY, STATES ARE ENGAGED IN EFFORTS TO ENRICH THE LIVES OF CHILDREN BY CULTIVATING COGNITIVE, LANGUAGE, PHYSICAL, SOCIAL, AND EMOTIONAL DEVELOPMENT DURING THE FIRST FIVE YEARS OF LIFE. MANY STATES HAVE INSTITUTED FAMILY LITERACY PROGRAMS THAT TEACH BOTH PARENTS AND THEIR CHILDREN TO READ. THESE INITIATIVES HAVE AND WILL CONTINUE TO HELP MORE CHILDREN ARRIVE AT SCHOOL READY TO LEARN

TO READ. GOVERNORS ACROSS THE NATION HAVE ALSO INSTITUTED READING INITIATIVES TO ENSURE THAT ONCE CHILDREN ARRIVE AT SCHOOL, THEY DEVELOP STRONG READING SKILLS. IT IS NOT UNUSUAL TO FIND IN MANY STATES A GOVERNOR AND HIS OR HER SPOUSE IN SCHOOLS READING TO STUDENTS ON A REGULAR BASIS. KEY TO THE SUCCESS OF ALL OF THESE READING PROGRAMS IS THE FACT THAT THEY DO NOT PLACE THE RESPONSIBILITY FOR TEACHING LEARNING SOLELY ON SCHOOLS. EVERY PARENT, TEACHER, AND CITIZEN HAS A ROLE TO PLAY IN HELPING ALL STUDENTS LEARN TO READ.

40.2 PRINCIPLES FOR DEVELOPING SUCCESSFUL LITERACY INITIATIVES

THE FOLLOWING PRINCIPLES CAN HELP STATES, DISTRICTS, AND SCHOOLS DEVELOP COMPREHENSIVE AND SUCCESSFUL LIFELONG LITERACY INITIATIVES.

40.2.1 **PLANNING FOR COHERENCE.** AN ONGOING COMPREHENSIVE PLANNING AND CONTINUOUS IMPROVEMENT PROCESS WILL ENGAGE STAKEHOLDERS—PARENTS, EDUCATORS, BUSINESS LEADERS, AND COMMUNITY LEADERS—IN DEVELOPING AND IMPLEMENTING THE INITIATIVE AND WILL ENSURE THAT THE KEY LITERACY GOALS FOR THE STATE AND/OR COMMUNITY ARE IDENTIFIED AND MET. SUCCESSFUL READING EXPERIENCES FOR ALL CHILDREN AND THEIR FAMILIES ARE THE RESPONSIBILITY OF THE WHOLE COMMUNITY, NOT JUST THE SCHOOL SYSTEM, SO IT IS IMPORTANT TO INVOLVE INDIVIDUALS FROM ACROSS THE COMMUNITY.

40.2.2 **EFFECTIVE CORE PROGRAM.** IT IS IMPORTANT FOR THE STAKEHOLDERS TO SELECT A CORE PROGRAM FOR LITERACY DEVELOPMENT THAT IS BASED ON A SHARED PHILOSOPHICAL FRAMEWORK AND CURRENT RESEARCH. SUCH A PROGRAM SHOULD HAVE A CORE CURRICULUM AND TEACHING STRATEGIES THAT ARE SEAMLESS THROUGHOUT THE EARLY GRADES AND PROVIDE INSTRUCTION THAT ENSURES CONTINUED PROGRESS FOR ALL STUDENTS. YEARS OF PRACTICE AND RESEARCH HAVE SHOWN THAT THE ELEMENTS OF SUCCESSFUL INSTRUCTION INCLUDE READING ALOUD; SHARED READING AND WRITING; INDEPENDENT READING AND WRITING;

GUIDED INSTRUCTION; ATTENTION TO ORAL LANGUAGE DEVELOPMENT; OBSERVATION OF STUDENTS' LITERACY BEHAVIORS; AND AUTHENTIC ASSESSMENT OF STUDENTS' LITERACY DEVELOPMENT.

40.2.3 **ASSESSMENTS.** ASSESSMENTS HELP PARENTS AND TEACHERS UNDERSTAND WHAT STUDENTS KNOW, WHAT STUDENTS NEED TO KNOW, AND WHAT CHANGES IN THE CURRICULUM OR INSTRUCTION NEED TO BE MADE TO HELP ALL STUDENTS REACH THEIR LITERACY GOALS. LITERACY INITIATIVES NEED A SYSTEMATIC APPROACH TO INFORMAL AND FORMAL ASSESSMENTS AND THE SHARING OF DATA IN WAYS THAT WILL SUPPORT AND CHALLENGE THE READER AND PROMOTE CONTINUITY OF READING SKILLS AND KNOWLEDGE. TEACHERS, IN COORDINATION WITH ASSESSMENT EXPERTS, NEED TO BE GIVEN THE TIME TO DEVELOP A WIDE RANGE OF AGE-APPROPRIATE ASSESSMENT TOOLS TO MEASURE STUDENT PERFORMANCE.

40.2.4 **EARLY INTERVENTION.** A WIDE VARIETY OF FACTORS AFFECT A STUDENT'S APTITUDE AND ABILITY TO READ. MANY OF THESE SKILLS ARE DEVELOPED LONG BEFORE A STUDENT ARRIVES AT SCHOOL. CREATING EARLY AND EFFECTIVE INTERVENTION STRATEGIES WILL HELP IDENTIFY STUDENTS WHO MAY NEED EXTRA HELP BEFORE THE PROBLEMS BECOME OVERWHELMING AND POTENTIALLY DISCOURAGING TO YOUNG READERS. ALL PROGRAMS SHOULD BEGIN WITH THE BELIEF THAT ALL STUDENTS CAN BE SUCCESSFUL READERS, BUT THEY SHOULD ALSO INCLUDE A CONTINUUM OF PREVENTION AND INTERVENTION STRATEGIES THAT SUPPORT CHILDREN WHO ARE AT RISK OR WHO ALREADY HAVE DEMONSTRATED DIFFICULTIES WITH READING.

40.2.5 **ONGOING PROFESSIONAL DEVELOPMENT.** ONGOING PROFESSIONAL DEVELOPMENT WILL ASSIST TEACHERS IN ALL DISCIPLINES AS THEY IMPROVE THEIR KNOWLEDGE OF LITERACY DEVELOPMENT AND LEARN NEW STRATEGIES FOR HELPING ALL STUDENTS MEET THEIR LITERACY GOALS. THIS IS AN ONGOING PROCESS THAT OCCURS EVERY DAY IN CLASSROOMS AND IS ESSENTIAL TO THE SUCCESS OF ANY PROGRAM.

EFFECTIVE PROFESSIONAL DEVELOPMENT ACTIVITIES WILL HELP EDUCATORS EXPAND THEIR KNOWLEDGE OF HOW LITERACY DEVELOPS, HOW TO ASSIST INDIVIDUALS AND GROUPS WITH READING PROBLEMS, AND HOW TO INTEGRATE SUBJECT MATTER FROM OTHER AREAS INTO THE LITERACY CURRICULUM.

40.2.6 **HOME-SCHOOL PARTNERSHIPS.** EVERY CHILD STARTS SCHOOL WITH KNOWLEDGE AND SKILLS GAINED FROM FAMILY MEMBERS. TOO OFTEN THERE IS A CYCLE OF ILLITERACY IN FAMILIES. IF PARENTS CANNOT READ, THEIR CHILDREN ARE ALSO LIKELY TO HAVE DIFFICULTIES LEARNING TO READ. FROM INFANCY, PARENTS CAN DEVELOP THEIR CHILDREN'S LITERACY SKILLS BY INTERACTING WITH THEIR CHILDREN, READING TO THEM, AND SHOWING THEM THAT READING IS VALUED IN THE HOME. SUCCESSFUL LITERACY INITIATIVES CREATE HOME-SCHOOL PARTNERSHIPS. SUCH PARTNERSHIPS WILL ENCOURAGE AND SUPPORT FAMILY MEMBERS' EFFORTS TO PARTICIPATE IN THEIR CHILDREN'S LEARNING AT HOME AND AT SCHOOL, AND WILL BUILD THE CAPACITY OF THE FAMILY TO HELP THEIR CHILDREN. FINALLY, SUCH PARTNERSHIPS WILL BROADEN THE SCHOOL'S CAPACITY TO HONOR THE CULTURAL TRADITIONS OF THEIR STUDENTS' FAMILIES AND TO INTEGRATE THOSE TRADITIONS INTO THE CURRICULUM AND CULTURE OF THE SCHOOL.

40.2.7 **COMMUNITY SUPPORT.** COMMUNITIES—LOCAL BUSINESSES, AGENCIES, AND ORGANIZATIONS OF LOCAL GOVERNMENT, COLLEGES AND UNIVERSITIES, LIBRARIES, MUSEUMS, AND CITIZENS—CAN SUPPORT LITERACY INITIATIVES IN A WIDE VARIETY OF WAYS. THESE PARTNERSHIPS MUST INCLUDE DEVELOPING DIRECT, ONGOING RELATIONSHIPS BETWEEN SCHOOLS AND COMMUNITIES THAT INCLUDE STRONG TWO-WAY COMMUNICATION ABOUT ACTIVITIES AND GOALS; SHARED LEADERSHIP AND SHARED GOALS; AND STRATEGIES TO ACHIEVE HIGH LEVELS OF LITERACY.

40.2.8 **RESOURCES.** RESOURCES NEED TO BE REALLOCATED AND LEVERAGED TO MAKE THE MOST OF LIMITED FUNDING, PERSONNEL, TIME, FACILITIES, AND TECHNOLOGY. A CRITICAL COMPONENT OF PLANNING A LITERACY INITIATIVE IS THE REALLOCATION

OF RESOURCES TO SUPPORT THE VARIOUS STRATEGIES THAT HAVE BEEN IDENTIFIED AS ESSENTIAL FOR ENSURING THAT ALL STUDENTS ARE SUCCESSFUL READERS. THIS INCLUDES RESOURCES NOT ONLY WITHIN SCHOOLS AND SCHOOL DISTRICTS, BUT ALSO WITHIN THE COMMUNITY PARTNERSHIPS.

40.3 FEDERAL PROGRAMS TO SUPPORT STATE AND LOCAL LITERACY EFFORTS

THE FEDERAL GOVERNMENT HAS HISTORICALLY PLAYED A ROLE IN SUPPORTING STATE AND LOCAL LITERACY EFFORTS. OVER THE PAST TEN YEARS, FEDERAL FUNDING FOR FAMILY LITERACY HAS GROWN FROM $14.5 MILLION TO $135 MILLION, AND ADDITIONAL FUNDING INCREASES ARE EXPECTED IN THE COMING YEAR. IN ADDITION, AS PART OF THE REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT, CONGRESS IS EXPECTED TO CONSIDER THE EVEN START FAMILY LITERACY PROGRAM. EVEN START PROVIDES FUNDING FOR STATEWIDE FAMILY. LITERACY INITIATIVES THAT COORDINATE LOCAL, STATE, AND FEDERAL EFFORTS TO IMPROVE LITERACY RATES. IN ADDITION, STATES CAN USE FUNDS PROVIDED UNDER OTHER FEDERAL PROGRAMS SUCH AS TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT, AND THE MIGRANT, BILINGUAL, AND INDIAN EDUCATION PROGRAMS TO SUPPORT FAMILY LITERACY INITIATIVES. GOVERNORS RECOGNIZE THE ROLE THAT THE FEDERAL GOVERNMENT HAS PLAYED IN BOLSTERING STATE AND LOCAL LITERACY IMPROVEMENT EFFORTS, ESPECIALLY IN THE AREA OF FAMILY LITERACY PROGRAMS, AND APPLAUD FEDERAL EFFORTS TO HELP STATES EXPAND AND/OR CREATE FAMILY LITERACY PROGRAMS THAT ARE OF THE HIGHEST QUALITY AND THAT ARE BASED ON RELIABLE AND REPLICABLE RESEARCH. THE GOVERNORS CALL FOR THE REAUTHORIZATION AND FUNDING OF THE EVEN START FAMILY LITERACY PROGRAM.

Time limited (effective Winter Meeting 2000–Winter Meeting 2002).

HR-46. ADMINISTRATIVE FUNDS FOR HEALTH AND HUMAN SERVICES PROGRAMS

46.1 PREAMBLE

RECENT CONGRESSIONAL PROPOSALS HAVE ATTEMPTED TO RESTRICT FEDERAL REIMBURSEMENTS TO STATES FOR ADMINISTRATIVE COSTS OF FEDERAL MEANS-TESTED BENEFITS, SUCH AS FOOD STAMPS, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND MEDICAID. GOVERNORS ARE CONCERNED THAT WITHOUT CERTAIN STATE FLEXIBILITY, SUCH PROPOSALS WILL RESULT IN A COST SHIFT TO STATES. FURTHER, GOVERNORS ARE CONCERNED THAT A REDUCTION IN THE FEDERAL COMMITMENT TO THE ADMINISTRATION OF THESE PROGRAMS WILL RESULT IN A LOSS OF VITAL HEALTH AND HUMAN SERVICE BENEFITS TO INDIVIDUALS AND FAMILIES IN NEED.

46.2 BACKGROUND

WITH THE ENACTMENT OF THE AGRICULTURAL RESEARCH, EXTENSION AND EDUCATION ACT IN THE 105TH CONGRESS, FEDERAL ADMINISTRATIVE FUNDS FOR THE FOOD STAMP PROGRAM WERE REDUCED BY AN ESTIMATED $1.8 BILLION OVER FIVE YEARS. WHILE SOME STATES ARE STILL IN THE PROCESS OF APPEALING THE AMOUNT BY WHICH THEIR ADMINISTRATIVE FUNDS ARE REDUCED, THE LOSS OF FEDERAL REIMBURSEMENTS, TOGETHER WITH RESTRICTIONS ON THE USE OF TANF FUNDS, IS CLEARLY A VIOLATION OF THE UNFUNDED MANDATES REFORM ACT OF 1995 AND HAS RESULTED IN A COST SHIFT TO STATES. THROUGHOUT THE DEBATE ON FOOD STAMP COST ALLOCATION, GOVERNORS ACKNOWLEDGED THE NEED TO ADDRESS LEGITIMATE CONCERNS THAT SOME STATES MAY HAVE HAD SHARED ADMINISTRATIVE COSTS FOR FOOD STAMPS AND MEDICAID BUILT INTO THEIR TANF BLOCK GRANT BASE. IN ADDITION, GOVERNORS HAVE CONSISTENTLY BEEN WILLING TO WORK WITH CONGRESS AND THE ADMINISTRATION TO DEVELOP A REASONABLE

SOLUTION THAT WILL NOT HAMSTRING STATE FLEXIBILITY IN PROVIDING VITAL HUMAN SERVICES.

IN THE END, HOWEVER, THE AGRICULTURAL RESEARCH, EXTENSION AND EDUCATION ACT WAS ENACTED WITH A FEW FATAL FLAWS. STATE RECOMMENDATIONS FOR A FAIR AND REASONABLE SOLUTION WERE NOT FULLY INCORPORATED BECAUSE OF ESTIMATES FROM THE CONGRESSIONAL BUDGET OFFICE THAT WOULD HAVE LESSENED THE AMOUNT OF SAVINGS ACHIEVED BY THE FEDERAL GOVERNMENT WITH PASSAGE OF THE LAW.

FOR EXAMPLE, GOVERNORS HAVE MAINTAINED THAT IF A STATE HAD CERTAIN SHARED ADMINISTRATIVE COSTS FOR FOOD STAMPS AND MEDICAID BUILT INTO ITS TANF BLOCK GRANT BASE, THEN THE STATE SHOULD HAVE THE ABILITY TO USE THESE TANF FUNDS TO REPLACE ANY LOSS IN FOOD STAMP REIMBURSEMENTS AS A RESULT OF THE ENACTMENT OF THE AGRICULTURAL RESEARCH, EXTENSION AND EDUCATION ACT. FURTHER, STATES SHOULD ALSO BE ALLOWED TO MAKE A SIMILAR ADJUSTMENT IN THEIR TANF MAINTENANCE-OF-EFFORT REQUIREMENT BASED ON THE AMOUNT OF FUNDS DETERMINED TO HAVE BEEN IN THEIR TANF BLOCK GRANT BASE.

46.3 IMPORTANCE OF ADMINISTRATIVE FUNDS

FOR ALL HEALTH AND HUMAN SERVICE PROGRAMS, ADMINISTRATIVE FUNDS PLAY A KEY ROLE IN THE DELIVERY OF SERVICES. AS STATE HUMAN SERVICE OFFICES SHIFT FROM ELIGIBILITY OFFICES TO INTENSIVE CASE MANAGEMENT OFFICES, A GREATER EMPHASIS IS PLACED ON THE IMPORTANCE OF ADMINISTRATIVE FUNCTIONS ACROSS ALL HEALTH AND HUMAN SERVICE PROGRAMS.

46.3.1 **MEDICAID.** MEDICAID ADMINISTRATIVE FUNDS ARE AN INTEGRAL COMPONENT OF SUCCESSFUL PROGRAM OPERATION. MEDICAID IS ONE OF THE LARGEST AND FASTEST-GROWING SEGMENTS OF STATE BUDGETS, AND GOVERNORS HAVE UNDERTAKEN EFFORTS TO STREAMLINE PROGRAM OPERATION AND ACHIEVE GREATER PROGRAM EFFICIENCIES. ADMINISTRATIVE EXPENDITURES CURRENTLY ACCOUNT FOR LESS

THAN 5 PERCENT OF TOTAL PROGRAM SPENDING, FAR LESS THAN IN PRIVATE INSURANCE PLANS.

CUTS IN MEDICAID ADMINISTRATIVE FUNDS WOULD HAVE A DEVASTATING IMPACT ON VITAL FUNCTIONS, SUCH AS CHILDREN'S HEALTH OUTREACH, FRAUD AND ABUSE PREVENTION, AND QUALITY MONITORING OF NURSING HOMES. STATES HAVE FOUND THAT MODEST INVESTMENTS IN ADMINISTRATIVE PROGRAMS SUCH AS PRIOR AUTHORIZATION CAN REAP SAVINGS TEN- OR TWENTY-FOLD. FRAUD AND ABUSE PREVENTION PROGRAMS, SUCH AS OPERATION RESTORE TRUST, ARE KEY TO THE EFFICIENT AND EFFECTIVE MANAGEMENT OF THE MEDICAID PROGRAM; ELIMINATING THEM WOULD ERODE CONSUMER CONFIDENCE AND THREATEN BENEFICIARY PROTECTIONS. AUTOMATED PRESCRIPTION DRUG UTILIZATION REVIEW SYSTEMS HAVE NOT ONLY SAVED DOLLARS, BUT ALSO PROTECTED MEDICAID BENEFICIARIES FROM HARMFUL DRUG INTERACTIONS.

46.3.2 **TANF.** ADMINISTRATIVE FUNCTIONS WITHIN TANF ARE NO LONGER SIMPLY DETERMINING ELIGIBILITY AS THEY ONCE WERE UNDER THE FORMER AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC). THROUGHOUT THE COUNTRY, FORMER WELFARE OFFICES ARE NOW BEING TRANSFORMED INTO JOB PLACEMENT CENTERS. RECIPIENTS RECEIVE INTENSE CASE MANAGEMENT AND ASSISTANCE IN ACCESSING BENEFITS THAT WILL HELP THEM ACHIEVE SELF-SUFFICIENCY—A SERVICE THAT TENDS TO BE MORE COSTLY THAN SIMPLY DETERMINING ELIGIBILITY. FURTHER, ADMINISTRATIVE FUNDS ARE ALREADY CAPPED WITHIN THE TANF BLOCK GRANT, AND ANY ATTEMPT TO DECREASE OR LIMIT GOVERNORS' FLEXIBILITY IN THE USE OF TANF FUNDS WOULD BE AN INFRINGEMENT ON THE CAREFULLY CRAFTED WELFARE REFORM AGREEMENT.

46.3.3 **FOOD STAMPS.** WITH THE ENACTMENT OF THE AGRICULTURAL RESEARCH, EXTENSION AND EDUCATION ACT, MANY STATES ARE ALREADY FACING A REDUCTION IN FEDERAL FUNDS FOR FOOD STAMP ADMINISTRATION. WITH THE ADVENT OF WELFARE REFORM, A GREATER NUMBER OF LOW-INCOME FAMILIES ARE WORKING AND MUST NOW RELY

ON FOOD STAMPS AS A KEY INCOME SUPPORT. A FURTHER LOSS IN FEDERAL FUNDS TO SUPPORT STATE ADMINISTRATION OF THE FOOD STAMP PROGRAM WOULD RESULT IN FEWER RESOURCES DEDICATED TO PROVIDING THIS CRUCIAL BENEFIT TO INDIVIDUALS AND FAMILIES IN NEED AND WOULD BE CONTRARY TO RECENT FEDERAL EFFORTS TO ENCOURAGE GREATER ACCESS TO FOOD STAMP BENEFITS. IT IS ALSO IMPORTANT TO CONSIDER THAT BECAUSE OF THE EXTENSIVE FEDERAL RULES GOVERNING THE ADMINISTRATION OF MEDICAID AND THE FOOD STAMP PROGRAM, STATES DO NOT HAVE THE FLEXIBILITY TO STREAMLINE AND MAKE OTHER EFFICIENCIES THAT COULD POTENTIALLY OFFSET THESE FUNDING REDUCTIONS.

46.4 RECOMMENDATIONS

WHILE IT IS WELL UNDERSTOOD THAT CUTS IN PROGRAMMATIC FUNDS CLEARLY JEOPARDIZE THE VITAL HEALTH AND HUMAN SERVICES FOR VULNERABLE CITIZENS, GOVERNORS ARE EQUALLY CONCERNED ABOUT THE IMPACT OF REDUCING THE FEDERAL COMMITMENT TO THE ADMINISTRATION OF THESE PROGRAMS. ADMINISTRATIVE FUNDS ARE THE BASIS OF RESPONSIBLE AND COST-EFFECTIVE SERVICE DELIVERY.

WHILE GOVERNORS HAVE CONSISTENTLY ACKNOWLEDGED THE NEED TO ADDRESS THE ISSUE OF SHARED ADMINISTRATIVE FUNDS BUILT INTO TANF, ANY LEGISLATIVE PROPOSAL TO ALTER STATE ADMINISTRATIVE FINANCING THROUGH A COST ALLOCATION PROPOSAL MUST BE DEVELOPED THROUGH CONSULTATION WITH THE STATES SO THAT STATES' ABILITY TO PROVIDE KEY HEALTH AND HUMAN SERVICES IS NOT NEGATIVELY AFFECTED. SPECIFICALLY, STATES SHOULD BE GIVEN MAXIMUM FLEXIBILITY TO USE TANF TO OFFSET ANY LOSS IN ADMINISTRATIVE FUNDS THROUGH FEDERAL LEGISLATION, AS WELL AS THE ABILITY TO ADJUST THEIR TANF MAINTENANCE-OF-EFFORT REQUIREMENT TO REFLECT SUCH A LOSS.

COST ALLOCATION

46.1 Preamble

The nation's Governors strongly believe in upholding the welfare reform agreement reached with congressional leadership and the administration with the passage of P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act. As part of the agreement, Governors were granted significant flexibility in administering the Temporary Assistance for Needy Families (TANF) block grant. Any attempt to decrease or limit Governors' flexibility in the use of TANF funds sets a dangerous precedent and would be an infringement on the carefully crafted welfare reform agreement.

Recent congressional proposals have attempted to restrict federal reimbursements to states for administrative costs of federal means-tested benefits, such as food stamps and Medicaid, and at the same time limit state flexibility in the use of the TANF grant. Governors oppose such proposals as they would result in a cost shift to states and would be a clear violation of the Unfunded Mandates Reform Act of 1995.

46.2 Background

Historically, state practice around the allocation of administrative costs among Aid to Families with Dependent Children (AFDC), food stamps, and Medicaid has varied greatly. In some states, shared state administrative costs were charged to AFDC, such as a single eligibility interview for welfare, food stamps, and Medicaid. Under this practice, AFDC was designated as the "primary" program for claiming shared administrative reimbursements. This practice was acceptable to, and encouraged by, the federal government, even though a more traditional approach, called "benefiting," was prescribed in Office of Management and Budget (OMB) Circular A-87. Some states pursued a benefiting approach, whereby shared administrative costs are distributed proportionally among the programs, while some used a combination of primary and benefiting cost allocation. In reviewing varying state practices, it has become apparent that guidance from the U.S. Department of Health and Human Services (HHS) with respect to these programs and compliance with OMB Circular A-87 has differed by, as well as within, geographic region.

To the extent states designated AFDC as primary programs, the states' TANF block grant bases included the reimbursement states received for shared administrative costs. Subsequently, when the Congressional Budget Office (CBO) revised its baseline in 1997, it anticipated that states would move to a benefiting approach by allocating some administrative costs to the food stamp and Medicaid programs that would otherwise be borne only by TANF. In its baseline, CBO estimated that combined administrative costs for food stamps and Medicaid would increase significantly because of this practice. Some in Congress have expressed concerns that if states now move to a benefiting approach they would effectively be receiving a double reimbursement for these shared administrative costs. However, CBO's estimate was based on the erroneous assumption that all states were uniformly designating AFDC as the primary program and that all states would move to benefiting.

46.3 Issues

Various proposals have been introduced in Congress in an attempt to restrict federal reimbursements to states for administrative costs of federal means-tested benefits, based on the assumption that states are now claiming shared administrative costs in their TANF block grants while also benefiting those costs out to the corresponding programs, such as food stamps or Medicaid.

One proposal would reduce a state's federal food stamp administrative reimbursement by the amount in the TANF grant representing common costs that under a primary allocation were charged to AFDC. In its current form, this proposal would be highly problematic for states. Once a state moves to a benefiting approach, it would not be able to utilize its TANF grant to cover the federal portion of shared food stamp administrative costs, even though federal funding was included in the block grant for that purpose. As a result, states would have to come up with their own funds to cover these costs. Although the proposal requires state-specific calculations for any food stamp reductions, state officials would not be given any meaningful process to challenge incorrect determinations. With these two fatal flaws, this approach clearly represents a cost shift to states and would constitute an unfunded mandate. Fixing the defects of this proposal could make it a more viable option for limiting state reimbursements, but it would not be likely to produce any short-term savings under CBO projections because states were never

~~assumed to be able to immediately expend the TANF funds freed up by administrative reimbursements from outside the block grant.~~

~~Another suggested approach is to require states to "freeze," or lock into, their current cost allocation plan, whether it be the primary or benefiting approach. The Governors are concerned that this would essentially restrict states that are currently using a primary approach from moving to benefiting in the future, despite the fact that benefiting may be the most cost effective means of claiming federal reimbursement for administrative expenditures. This proposal would be in direct contrast to OMB Circular A-87, which prescribes that states move to a benefiting approach for shared administrative costs. In addition, the proposed TANF regulations explicitly require states to move to benefiting, so a mandate to continue covering shared eligibility costs under the block grant would represent a change in current policy by Congress and the administration.~~

~~Governors are also strongly opposed to any cap placed on food stamp administrative costs. With the enactment of welfare reform, states are faced with many new federal mandates that will require greater investment in food stamp administrative expenditures. With limited administrative dollars under a food stamp cap, states would have to absorb new administrative costs associated with implementing the new work requirement for able bodied single adults, the new noncitizen eligibility prohibitions, and the fraud control requirements to disqualify those with drug offenses. In addition, as TANF caseloads are dropping across the country as a result of welfare reform, the number of food stamp only cases that require additional food stamp administrative funds is rising. As for Medicaid, P.L. 104-193 gave states the option to determine eligibility for Medicaid separately from the TANF program, which for some states could result in lower shared costs but higher Medicaid administrative program costs. Both the food stamp and Medicaid programs remain federal entitlements administered by states, with eligibility policy determined largely by Congress and the administration. Overall limitations on federal contributions to cover administrative costs would break the federal government's commitment to its current partnership with states.~~

~~46.4 Recommendations~~

~~The nation's Governors oppose attempts to restrict federal reimbursements to states for administrative costs of federal means tested benefits, as they would result in a cost shift to the states and would clearly be a violation of the Unfunded Mandates Act of 1995. Considering the varying state practices with regard to cost allocation, Governors are also opposed to applying such proposals retroactively.~~

~~However, the Governors recognize the need to address legitimate concerns about states receiving additional reimbursement for costs that are already built into the TANF block grant and are willing to work with Congress and the administration to develop a solution. However, several policy issues must first be discussed and a fair and reasonable solution to this problem may not yield the savings anticipated by Congress following CBO's original projections. In addition, the issue of administrative cost allocation is very complex and earlier assumptions regarding historical state practice and anticipated future behavior fail careful scrutiny.~~

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–~~

~~Winter Meeting 2000~~).

Adopted Winter Meeting 1998.

HR-5. FAIR LABOR STANDARDS ACT AS APPLIED TO PUBLIC EMPLOYEES AND INMATE LABOR

5.1 Application to Public Employees

Rather than protecting only the most vulnerable public employees, application of the Fair Labor Standards Act (FLSA) by the courts has provided a means for the most highly compensated public employees—those whom the law was not intended to protect—to seek and reap windfalls from already depleted government coffers.

Public employers have been exposed to unforeseen and unjustifiable liability owing to judicial interpretations that have found violations based on long-standing personnel and budgetary practices common throughout the public sector.

To date, congressional and U.S. Department of Labor (DOL) efforts to effect partial solutions have been unsuccessful. In 1986 Congress passed a number of amendments to FLSA to address the then-known problems that its application to state and local governments created. In 1991 and 1992, DOL issued regulations intended to resolve the salary basis issue for state and local governments. However, these regulations have been subject to continuing court challenge, and since their issuance, more recent court decisions have opened new areas of salary basis liability that are not adequately addressed in existing regulations.

Examples

- White-collar employees, many earning over $50,000 per year, have received millions of dollars in overtime and liquidated damages solely because they have been more strictly accountable for their working time than the private sector. This increased accountability has been held to violate the so-called "salary basis" test, rendering such highly paid employees covered by FLSA.
- White-collar administrative employees have received millions of dollars in overtime and liquidated damages because they work in "line" versus "staff" positions.
- State government employees have sought liquidated damages because they were paid during a budget impasse with registered warrants, even though almost all banks cashed the warrants as though they were regular paychecks.

5.2 Application to Inmate Labor

In recent years, federal courts have ruled that the protections provided to the American workforce under FLSA and its implementing regulations also apply to prison and jail inmates. These decisions are of great concern to the Governors.

The fiscal impact of applying FLSA for typical prison work, such as laundry, custodial chores, and food service, would be staggering. Inmates could seek back pay and other workplace guarantees governed by FLSA, including overtime pay. The result would be millions of dollars in additional liability for states and localities already struggling with limited fiscal resources.

At the very least, the threat of liability under FLSA could force many states and localities to dramatically cut or even eliminate job training and other innovative educational programs for inmates. Prisoners would lose the opportunity to learn job skills during their incarceration and, thus, the opportunity to return to society in a productive capacity.

The Governors believe that FLSA was never intended to cover prison inmates involved in typical prison duties. Historically, Congress has sought to regulate prison labor and prison work programs under the Ashurst-Sumners Act, which was enacted three years before FLSA. Yet, rather than follow the letter of the law, federal courts are willing to force states to provide the same degree of wage protections to prisoners that is provided to law-abiding citizens. To do so is antithetical to the need for states to be accountable to their taxpayers for the expenditure of public funds.

5.3 Recommendations

The nature and scope of FLSA issues confronting state and local governments are such that issue-specific solutions have proven unworkable and leave state and local governments vulnerable to persistent lawsuits and incalculable liability. The Governors believe the federal government should resolve this crisis by taking the following steps.

- The U.S. Department of Labor should, without delay, do everything within its regulatory power to resolve these issues.
- Should members of Congress consider legislation regarding FLSA, the Governors urge them to resolve the abuses listed above.
- Legislation should be passed immediately that would eliminate retroactively the liability that has thus far accrued to public employers as a result of the abuses listed above.
- Prison and jail inmates should be excluded from FLSA for typical prison work, and any liability that may have accrued to state and local governments as a result of the misapplication of FLSA to inmates should be eliminated.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–Winter Meeting 2000~~).

Adopted Annual Meeting 1993; revised Annual Meeting 1995, Winter Meeting 1996, and Winter Meeting 1998.

HR-7. PUBLIC HEALTH SERVICES

7.1 Preamble

Effective public health services ensure access to or education about community-based preventive and primary health care for all citizens, especially vulnerable and medically underserved populations. The Governors believe such services are a cost effective way to improve the health of our citizens and prevent illness.

7.2 Core Public Health Services

The Governors encourage support for the core public health functions that are routinely carried out by public health agencies and improve the health of our citizens and prevent illness, resulting in a higher quality of life and lower medical services expenses. Conversely, an inadequate public health infrastructure can result in increased health care costs, substantial economic loss, unnecessary suffering, and premature death.

7.3 Federal, State, and Local Responsibilities

The delivery of public health services is best carried out by states, which can allocate resources and develop policies that respond to their unique needs and health problems. The Governors believe that the federal government has a responsibility to work in partnership with the states and to provide financial and technical assistance to the states and, in turn, to local governments for the delivery of public health services. The federal government's role is financing public health delivery, collecting information on a national level, and taking the lead on certain public health functions that are national in scope.

Federal assistance to state and local governments should be based on the following principles.

- The responsibility for the delivery of public health services must remain with state and local governments.
- State government, through a state health plan, should be responsible for the design of public health programs.
- Federal financial assistance should be broad-based enough to permit states to target available resources on the highest priority health problems affecting the citizens of each state.
- All public health activities financially assisted by the federal government within a state should be under the sponsorship of agencies specified by the state.
- The federal government should establish policies for the surveillance of environmental threats to the public health and for monitoring health trends and identifying the long-term chronic health effects of exposure to toxic substances and other environmental contaminants. Information gained through this surveillance should be made available to the states in a timely manner.
- The federal government, in concert with state and local governments, should provide the leadership necessary to establish nationwide health promotion and disease prevention efforts such as those focused on childhood immunization, sexually transmitted disease and HIV/AIDS prevention, women's health, chronic diseases, and the hazards of youth smoking. Health education and promotion programs can play an important role in modifying unhealthy practices and can reduce the incidence of disease.
- In providing for the prevention and control of infectious AND CHRONIC diseases, current federal efforts to support and coordinate state programs for strong surveillance, investigation, reporting, and other disease prevention and control activities should be maintained AT A CONSISTENT LEVEL.

7.4 Coordination of Services

The Governors believe that cooperative federal, state, local, and private initiatives based on these principles will assist the development of a coordinated delivery system for public health services. This coordination can help ensure that our citizens lead healthy lives in an environment that minimizes exposure to hazardous practices, environments, and products.

Coordination will be a crucial component of public health and also of the continuing evaluation of methods to finance and deliver health care, such as managed care. Effective coordination among federal, ~~and~~ state, AND LOCAL governments and the private sector will help encourage and maintain high-quality services.

7.4.1 **Health Services Block Grants.** Block grants, such as the Maternal and Child Health Block Grant, the Preventive Health Block Grant, the Substance Abuse Prevention and Treatment Block Grant, and the Mental Health Block Grant, continue to be important sources of funding for many critical public health programs. The Governors believe that block grants must continue AT A MINIMUM AT CURRENT FUNDING LEVELS in order to meet public health needs. Within each block grant, states should be given the autonomy to set their own goals, to target resources, and to tailor programs based on their individual performance objectives. Providing for more state flexibility in existing health service block grants, specifically by removing complex allocation and set-aside requirements and by allowing for interblock transfer, is essential.

7.4.2 **Maternal and Child Health Services.** The Governors believe that improving the health status of America's children should be a top priority of all levels of government. To help meet this priority, federal support for maternal and child health services and nutrition programs such as the Special Supplemental Food Program for Women, Infants, and Children (WIC) should be maintained. Since its creation in 1972, WIC has provided supplemental food, nutrition education, and health care referral services to millions of low-income pregnant women, infants, and children. WIC is an effective entrepreneurial program with a proven track record. The program should be further improved by reducing prescriptive and burdensome regulations on state and local agencies and by giving states greater flexibility to administer the program in conjunction with other systems of support.

7.4.3 **Early Child Health Development.** For the past two years, a focus on the special needs of our youngest children has been an integral part of the chairman's initiative for the National Governors' Association. Additionally, individual Governors have been creating programs and prioritizing investments to ensure that children receive the services they need during the critical formative years. Clinical research has established that much of the potential for future learning is determined during the first three years of life as pathways in the brain are formed. This research should help inform public health policy decisionmaking at all levels.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–Winter Meeting 2000~~).

Adopted Annual Meeting 1980; revised Annual Meeting 1981, Winter Meeting 1982, Annual Meeting 1984, Winter Meeting 1986, Annual Meeting 1986, Winter Meeting 1988, Winter Meeting 1989, Annual Meeting 1989, Winter Meeting 1990, Winter Meeting 1994, Winter Meeting 1996, and Winter Meeting 1998 (formerly Policy C-5).

REAFFIRM

HR-21. ~~EC-11.~~ CHILD CARE AND EARLY EDUCATION

21.1 Preamble

The nation's Governors believe in working toward a goal of a seamless child care and early education system that provides a safe, nurturing, and developmentally sound environment for all children. This seamless system of care should be linked to health care and education systems and promote parental involvement in their children's out-of-home care setting.

Governors recognize that parents are children's first and primary nurturers. Parents have primary responsibility for the care of their children, including financial responsibility, and government and employer policies should support the family as the primary child care unit. Parents should make the choice about what child care, if any, is right for their child. For instance, child care may be offered by a stay-at-home parent, a relative, or a formal day care provider. Although parents remain the cornerstone of a child's upbringing, the increased number of parents in the workplace, especially single parents, enforces the need for ensuring appropriate child care and early education for children of all ages. Some states have adopted programs that permit parents to stay home, especially in the early years.

~~Recent~~ Research demonstrates that children need a stimulating and nurturing environment for healthy brain development. Cost-benefit research shows that early investment in child development can prevent larger expenses to remediate problems in the future. This early investment should be linked to other children's programs to help children make a smooth transition into the education system.

The need for ensuring a quality system of care extends to families of all income levels who require child care. A productive workforce depends on a reliable child care system to allow working parents to focus on their work. Parents who know their children are in a safe, nurturing, and developmentally sound child care setting can focus on their own job performance. ~~According to data from the 1990 National Child Care Survey, failures in child care arrangements caused nearly one of every six working mothers to lose time from work in the prior month.~~

In addition, with the enactment of P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), more children will need to be cared for by someone other than their parents. For many current and former welfare recipients, finding safe, nurturing, and developmentally sound child care may be the key to a successful transition from welfare to work. In some states, ~~new~~ rigorous work requirements and time limits ~~will~~ intensify the demand for child care. ~~as states face greater pressure to promote job retention in order to meet the required work rate.~~

The nation's Governors recognize that there are gaps in the current child care supply and that there is a need to focus resources in specific areas. For example, a need exists to focus resources on helping the low-income working poor; not only to assist families in their transition from welfare to work but to provide quality child care that will help low-income working families keep their jobs and prevent them from entering the welfare system.

In addition, there may be a need to provide child care during nontraditional hours. Many parents who find work in second- or third-shift jobs have difficulty finding child care during those hours. Many families also struggle to find interim care when schools or centers are closed for holidays or for staff professional development days. These gaps are apparent in rural, as well as urban, areas. There is also an unmet need for child care for infants and sick or disabled children.

School-age children are another population that states should be mindful of in developing a seamless system of care. Some experts argue that time after school could be spent providing students with the additional assistance they need to meet state academic standards. Others believe that after-school programs serve as a prevention mechanism for juvenile crime, teen and preteen pregnancy, and substance abuse.

Developing partnerships and increasing coordination of services among all levels of government, as well as with the private sector and employers, is essential to creating a seamless system of care and increasing parents' access to such a system. Any new funding for child care and early education should allow Governors to create or maintain an integrated system of programs serving children at the state level. In addition, if the federal government is willing to commit resources to improve the current child care and early education system, the program should require collaboration with state programs. It is

essential that funding for new programs does not come at the expense of other state or federal funding sources intended to serve the same population, and that it is not accompanied by additional federal mandates or intrusive federal child care standards.

21.2 **Roles and Responsibilities**

Developing a seamless child care and early education system by ensuring access for all families to a safe, nurturing, and developmentally sound child care environment is a shared responsibility. Parents have the primary responsibility for making sure that their children have the best care possible, with federal and state governments, as well as communities and employers, supporting their efforts. The Governors believe it is important for all involved parties to promote the coordination of programs serving children through links at all levels of the child care, health care, and education systems.

21.2.1 **Family Roles and Responsibilities.** First and foremost, parents and families are responsible for their children's well-being. It is essential that parents educate themselves to be good consumers of child care services so they are able to make the best choices for their children. Options for parents and families include:

- maintain a nurturing home environment where children are encouraged to learn;
- participate in state or local governance to voice specific concerns and recommendations for community child care programs;
- maintain a high level of participation in their children's child care and early education programs; and
- take financial responsibility for the care of their children.

21.2.2 **Local Roles and Responsibilities.** To promote continuity throughout a child's development and education, programs also need to be coordinated on the local level, specifically among local child care collaboratives, school districts, and Head Start programs. Governors recognize the importance of the role of local communities in assessing and meeting specific child care needs and realize that the state should play a role in encouraging local involvement and requiring local accountability. Only a community can truly articulate its individual child care needs. Options for local entities include:

- establish local coordination structures to assess community needs for a system of care and allocate funds to meet unmet needs;
- coordinate Head Start, pre-kindergarten, and other child care and early education programs in the community, including other programs serving children's needs;
- improve consumer education efforts and increase public awareness of quality child care programs;
- provide objective referral services for parents seeking child care;
- encourage private sector involvement;
- encourage parental involvement IN ~~on the~~ local COLLABORATIVE EFFORTS; ~~collaboratives;~~ and
- encourage local schools to collaborate with child care service providers.

21.2.3 **State Roles and Responsibilities.** Governors play a crucial role in developing and administering a child care and early education system at the state level. With greater use of block grants of federal funds for human service programs, such as Temporary Assistance for Needy Families (TANF), the Child Care and Development Fund (CCDF), the Social Services Block Grant (SSBG), and the STATE CHILDREN'S HEALTH INSURANCE PROGRAM (S-CHIP), ~~the new Title XXI children's health program,~~ Governors are now not only accountable for the delivery of services, but also have a greater

opportunity to promote state flexibility and to respond to the child care needs of their individual state. Key to states' efforts is the coordination of children's programs at the state level. To facilitate this coordination, any new federal funding for child care and early education should be allocated in a manner that requires collaboration with existing state programs that serve children. Options for states include:

- ensure that child care and early education programs are well coordinated and that state funds are allocated to reflect such coordination;
- encourage parental involvement in the state governance structure;
- provide incentives to improve quality through state standards, accreditation, credentialing, or training opportunities for all types of child care providers;
- explore possible incentives to permit one parent in a two-parent family to remain in the home to provide care, at least in the early years;
- encourage accreditation of child care centers through financial incentives;
- encourage professional development through scholarships and training programs for child care providers;
- improve consumer education efforts and increase public awareness of quality child care programs;
- develop tax incentives for providers to expand the availability of child care, such as financing facility development;
- establish measures of program success and hold providers accountable for meeting performance expectations;
- encourage private sector involvement;
- coordinate delivery of services with other programs serving children, such as children's health, transportation, and education;
- promote family-friendly workplace policies and practices in both the public and private sectors;
- encourage community efforts to assess and meet local child care needs; and
- encourage and provide incentives for public schools to arrange after-school care, child care for students who have their own children, and full-day kindergarten.

21.2.4 **Federal Roles and Responsibilities.** The Governors believe the federal government should support state activities in child care and early education, not control them. The federal government should support state efforts to build a quality system of care, provide funding and technical assistance, and provide information on models of best practices. The federal government can have a positive impact on children's development by encouraging greater coordination of federal programs that serve children and encouraging private sector involvement. Options for the federal government include:

- maintain maximum flexibility at the state level through CCDF and allow increased flexibility for any new child care and early education programs with respect to the delivery of services and the use of funds;
- explore possible incentives to permit one parent of a two-parent family to remain in the home to provide care, at least in the child's early years;
- provide adequate funding to states to meet the need for child care;
- provide incentives and rewards for improved coordination of child care and early education programs;

- promote AND DISSEMINATE research ~~and evaluation~~ of existing, HIGH-QUALITY child care and early education programs; ~~that are high quality and ensure school readiness and provide information to states about what works;~~
- encourage professional development through scholarships, training programs, salary subsidies, loan forgiveness, or programs to reduce turnover for child care providers;
- provide tax incentives for employers, individuals, and providers;
- encourage private sector involvement;
- increase funding for Head Start and Early Head Start programs that collaborate with other early care providers, including state child care programs;
- require federal programs serving children to collaborate with state and local programs that serve children; and
- support state efforts to enforce state licensing and accreditation.

21.2.5 **Private Sector Roles and Responsibilities.** With greater demands on public resources for child care, the need for private sector involvement has increased. The Governors believe that now, more than ever, it is crucial for government to form partnerships with the private sector. ~~Currently, the private sector provides less than 1 percent of child care funding, yet~~ Businesses benefit from a stable, productive workforce that a seamless system of care can help provide. Most child care expenses are paid by families as a cost of being employed. Individual businesses can contribute to creating a seamless child care and early education system by acknowledging and accommodating the child care needs of their employees. Options for the private sector include:

- participate in local collaborative boards to determine child care and early education needs of the community;
- encourage parental involvement with their children's care and education;
- provide a family-friendly workplace;
- provide on-site child care facilities for employees or resource and referral services for off-site care and purchase child care or sick care slots or provide financial assistance for child care;
- provide employees with flexible spending account benefits for child care expenses; and
- offer flexible schedules to help ~~harried~~ parents by increasing the quality and quantity of their child care options.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–Winter Meeting 2000~~).
Adopted Winter Meeting 1998.

REAFFIRM

HR-43. COMMUNITY SERVICES BLOCK GRANT PROGRAM

The Governors support CONTINUATION ~~reauthorization~~ of the Community Services Block Grant (CSBG) program as an effective and flexible program uniquely suited to reduce dependency and promote the self-sufficiency of millions of LOW-INCOME INDIVIDUALS. ~~poor Americans.~~ CSBG supports a broad range of federal, state, local, public, and private initiatives aimed at reducing the causes and effects of poverty. CSBG agencies have launched a series of self-sufficiency model programs that can be utilized for the implementation of welfare reform initiatives. GOVERNORS SUPPORT MAINTAINING the integrity of CSBG. ~~must be retained.~~

CSBG funds constitute a small but necessary percentage of the total funding available to local CSBG subgrantee agencies. Besides maintaining current services, these modest sums also create new initiatives, augment existing resources, and extend relatively scarce or restricted services available under other programs to poor people who otherwise would not be served. The CSBG funds are essential to support the local agencies often responsible for administering other federal programs such as the Low-Income Home Energy Assistance Program, Head Start, and emergency homeless assistance. The planning and INTEGRATION ~~integrating~~ of CSBG services with state Temporary Assistance for Needy Families (TANF) plans is therefore critical to efficient administration of this funding.

One of the most significant aspects of the CSBG program is the development of partnerships between the states and community action agencies. By working toward mutually defined goals, coordination is increased and private sector resources and volunteers are utilized to strengthen community efforts that address poverty.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2002 ~~Winter Meeting 1998–Winter Meeting 2000~~).
Adopted Winter Meeting 1998.

HR-44. POSTSECONDARY EDUCATION

44.1 Preamble

States and private institutions have created an infrastructure for the nation's postsecondary institutions that is subsidized by the federal government through student aid and some other federal programs. As Higher Education Act (HEA) programs are reauthorized, Congress needs to recognize the state and institutional context in which these programs operate and work closely with states and institutions in the reauthorization process.

Federal aid comprises more than 75 percent of all student financial assistance provided in the country. States also provide aid to students through traditional aid programs and by heavily investing in state colleges and universities to keep tuition levels well below the cost of actually attending college. Although major federal funding for overall postsecondary education, with regard to student assistance, is less than 12 percent, states, localities, and institutions provide the remaining funding for an extensive and widely diverse system of education opportunities for students after high school.

44.2 Recommended Federal Role

The Governors support the primary goal of the Higher Education Act, which is to expand access to postsecondary educational opportunities for low-income students and ensure the affordability of postsecondary education for moderate-income families. At present, the federal government is responsible for ensuring institutional compliance with federal aid regulations and student aid programs at institutions. States do not determine which institutions or students are eligible for federal aid, nor do they have any recourse over an institution that fails to follow federal regulations. The Governors believe that this is clearly the responsibility of the U.S. Department of Education and HEA should be modified to reflect this responsibility.

44.2.1 Promoting Quality in Postsecondary Education. The Governors recognize the need to promote and maintain quality education in all higher education institutions. Many states have undertaken efforts to achieve this goal. However, states will have an increasing need for reliable measures of effectiveness. This is clearly an issue for states and institutions to address. The federal government should learn from the lessons of the states and not attempt to establish a federal set of quality measures.

44.2.2 Coordinating the State-Federal-Institutional Partnership. The Governors recognize the long tradition of direct relationships among federal agencies and their staff, colleges and universities and their faculties, and students. However, it is important that different levels of government coordinate their efforts when addressing similar public policy concerns. Without such coordination, small federal programs may have little or no impact. In addition, a well-intentioned federal effort may have a negative or disruptive effect if it runs counter to delicately designed state strategies. Therefore, the Governors urge Congress to design federal programs so that they result in an effective state-federal-institutional partnership in both the funding and delivery of student and institutional assistance.

44.2.3 Preparing the Workforce for a Changing Economy. Our nation's economy is undergoing a major transformation from one based on heavy industry to one based on skilled services and technology. This decrease in jobs in heavy industry and increase in jobs in skilled services and technology require a more educated workforce. Postsecondary institutions contribute significantly in the training of the workforce for these new jobs and contribute to the economic development of states and the nation. In addition, institutions provide information services and research essential to an efficient and productive workforce. HEA should support these critical efforts.

44.2.4 Preparing Teachers and Supporting Professional Development. A substantial number of our nation's teachers are approaching retirement and are expected to leave the classroom. At the same time, the number of students enrolled in elementary and secondary programs is at an all-time high and is expected to increase. Many states are considering proposals to reduce the student-teacher ratio in classrooms, thus further increasing the demand for teachers. There is a growing need to train more new teachers and teacher aides and support professional development for current teachers who are being asked to teach more rigorous curriculums to help students achieve higher academic standards.

Title V of HEA contains a collection of unfocused and unfunded professional development programs. The Governors believe that this title of the bill should be restructured into a single state-based program that builds on current state efforts to meet the need of the elementary and secondary education system to have high-quality teachers that can help all students achieve the state's content standards. Congress should consider the recommendations of the gubernatorially chaired National Commission on Teaching and America's Future in restructuring this title of HEA. The program should be a state-based program that permits state-level coordination with other federal funds made available through the Improving America's Schools Act and the Goals 2000: Educate America Act. Governors, with the participation of their respective education agencies, should be given substantial flexibility to use these funds in a manner that meets the needs of the schools in their states.

44.2.5 **Simplifying Programs and Forms.** Student aid programs are complex and, many argue, duplicative. They include multiple grants, loans, and work-study programs that are confusing to parents and students, especially when layered on top of state and institutional grants, loans, and scholarship programs. Congress should give serious consideration to simplifying programs and forms into a more coherent system of state and federal aid. The federal government needs to take into consideration the role of state agencies, not only in the administration of federal programs, but also in the role that state guaranty agencies play in operating state and institutional aid programs, and should not take policy actions that lead to the demise of the agencies.

44.2.6 **Supporting Distance Learning.** Technology is having a significant impact on increasing educational opportunities for students of all ages. A growing number of students now use distance learning to earn a degree, for continuing education, and for workforce retraining. The Governors strongly support the use of technology to expand such options for students, either as a supplement to or as a substitute for attending classes on a traditional campus. The Governors urge Congress to study the issues surrounding distance learning, including student aid.

While recognizing the need to prevent fraud, waste, and abuse in the student aid programs, Governors believe that students who choose to participate in postsecondary education programs through distance learning offered by accredited institutions of higher education should be afforded full access to the distribution of federal student assistance. The federal government should join with states in encouraging creative approaches to the delivery of postsecondary education through the use of distance learning technologies and the Secretary of Education should be encouraged to exercise his authority to allow institutions to experiment with new ideas and approaches in meeting the financial aid needs of students enrolled in such programs.

44.2.7 **Encouraging Families to Save for Their Children's Higher Education.** The nation's Governors recognize the seriousness of increases in college costs that greatly exceed rises in the cost of living and its potential impact on access to education.

Many states have initiated savings plans and other actions to address this widespread public concern. Although the Governors applaud such federal efforts to assist families, they also ask that the following principles be reflected in policy established at the federal level.

- College savings incentives at the federal level should be designed to stimulate and complement, rather than preempt, similar policy initiatives by states and higher education institutions.
- Federal incentives should give equal standing to public and independent higher education institutions.
- Reduced revenue resulting from tax incentives for savings for higher education should not lead to reductions in other vital federal higher education programs.

Time limited (effective WINTER MEETING 2000–WINTER MEETING 2001 ~~Winter Meeting 1998–Winter Meeting 2000~~).

Adopted Winter Meeting 1998.

February 19, 1999

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Summary and Analysis of NGA Resolutions

HR-2: Immigration And Refugee Policy

Summary

The resolution calls for increased enforcement against illegal immigration, including efforts at the border, such as hiring more Border Patrol agents, and efforts in the interior, such as identifying and removing criminal aliens, combating alien smuggling and document fraud, and barring the employment of illegal aliens. The resolution calls on the Immigration and Naturalization Service to eliminate backlogs in naturalization and other immigration benefits. Further, on a variety of immigration related issues, the resolution requests increased federal consultation with states and increased federal funding commensurate with federal responsibility for immigration policy. NGA urges the federal government to continue to support refugees and not to shift these costs to state and local governments.

Analysis

The Administration's budget helps combat illegal immigration by:

- Funding nearly 9,000 Border patrol agents, a 122 percent increase since FY 1993, while also enhancing technology and facilitating legal border traffic; and

- Enhancing interior enforcement by providing $20 million and 185 new positions to identify and remove criminal aliens from the United States, deter and dismantle smuggling organizations, and block employer access to illegal workers.

The Administration is improving customer service and reducing the waiting time for naturalization through $124 million in new funding and a comprehensive set of administrative reforms. The Administration also has succeeded in restoring certain benefits to legal immigrants that were cut off by the welfare law. This year's budget builds on this progress by proposing to restore disability, health, and nutrition benefits to additional categories of legal immigrants, at cost of $1.3 billion over five years.

HR-14: Child Support Financing

Summary

The NGA resolution states that any reduction in the federal government's financial commitment to the child support system would be a breach of the 1996 welfare reform act and could negatively affect states' ability to serve families. The resolution expresses appreciation for efforts the Administration has made in the past year to consult with states on issues related to CSE financing, and argues that the financing system should not be restructured at this time. In addition, the governors call for a continuation of the "hold harmless" provision which guarantees states their 1995 share of child support collections despite falling welfare caseloads.

Analysis

During the last year, the Administration conducted an extensive consultation process regarding child support financing that included both the NGA and the states. Through this process, we are seeking to develop legislation that will: 1) maximize collections and support for all families in the program; 2) maximize paternity establishment; 3) give priority to increasing payments to families, while ensuring federal budget cost neutrality; 4) create incentives for state and local investment of staff and resources needed to improve performance; and 5) promote national standards and ease of interstate case processing, while maintaining state flexibility.

This year's budget, like last year's, proposes to eliminate the child support "hold harmless" provision which guarantees states their 1995 share of child support collections. Originally designed to protect states from the results of new rules determining what share of child support was retained by the family versus the state, the hold harmless provision has instead guaranteed states funds despite falling welfare caseloads. The budget also lowers the federal match for paternity establishment from the enhanced 90 percent level established to encourage states to adopt the practice to the normal 66 percent match level. The third change will require states to review and revise the amount of support orders for TANF families every three years, which will increase the amount of support collected for families. Together these changes are estimated to save less than $500 million over five years.

HR-16: MEDICAID

16.2.1: The Federal Commitment to the Medicaid Program

Summary

NGA is concerned about proposals to reduce the federal match for or cap the federal commitment to the Medicaid program, believing there is no way to reduce funds without jeopardizing patient protections and other critical program functions. In addition, NGA feels strongly that Medicaid expenditures should not be cut as part of efforts to balance the budget.

Analysis
The Administration does not support either a cap on federal Medicaid spending or any federal matching rate reductions. The President's FY 2000 budget proposal reduces Medicaid administrative payments to offset the overall rise in Medicaid administrative costs as states shift costs that were previously charged to AFDC to Medicaid.

16.2.2: Medicaid Mandates

Summary
NGA is calling on Congress to enact statutory language to clarify that a cut or a cap on the Medicaid program without new or expanded flexibility is an unfunded mandate.

Analysis
It is not clear that the Unfunded Mandate Act should cover changes in Medicaid policy. All Medicaid spending is matched at some rate by the Federal government. This Administration has both given states significant flexibility in Medicaid and made appropriate policy changes to ensure the fiscal integrity of this program. Thus, this extension does not appear to be needed.

16.2.3: Medicaid and Medicare

Summary
NGA would like additional flexibility to integrate Medicaid and Medicare funding streams, benefit packages, and delivery systems in order to improve on fragmented systems of care.

Analysis
This Administration has been a strong proponent of budget-neutral demonstrations to improve the effectiveness of Medicare service delivery. This Administration shares the states' commitment to integrating care for dual eligibles and we have demonstrated this commitment by working closely with states to develop creative ways to utilize both Medicaid and Medicare to serve vulnerable populations in a way that is consistent with the statute.

16.2.4: Disproportionate Share Hospital Program

Summary
NGA is opposed to any further cuts in DSH payments.

Analysis
There is no change in DSH payments in the President's FY 2000 budget.

16.2.5: Budget Neutrality

Summary
NGA notes that expenditures in one program often realize savings in others. NGA would like

states to have the flexibility to consider budget neutrality across federal programs, not just for individual programs.

Analysis
The current way that budget neutrality is determined for Medicaid waivers reflects an agreement made with the NGA in 1993. We have since heard states' concerns about the narrowness of the determination, but are concerned that broadening budget neutrality to include other programs would create additional federal liabilities. Although we are willing to hear how states propose that budget neutrality can be broadened, we have serious concerns about this resolution.

16.3.1: Allow States Greater Flexibility to Establish Managed Care Networks

Summary
Although NGA is appreciative of the added flexibility that the BBA provided in the design and development of Medicaid managed care networks, it believes HCFA regulations will create so many barriers to full implementation of these networks that the option is not really valid. NGA also wants Congress to clarify that, under federal law, if the state enters into a contract with a provider or HMO that covers the necessary benefits, the state's obligation to provide services is satisfied. Any dispute regarding covered services should be resolved as a contractual matter between the client and provider under state law.

Analysis
The Administration supports states in their efforts to expand mandatory managed care programs consistent with BBA. HHS is currently in the process of reviewing comments from Governors, Medicaid agencies, managed care organizations and other stakeholders on the proposed regulation, and will give them full consideration.

16.3.2: Managed Care Quality Standards

Summary
NGA believes that the HCFA regulations governing grievance procedures in Medicaid managed care are overly proscriptive, and that many states have specific grievance and appeal procedures in their plan contracts that are as effective as the federal approach.

Analysis
The Administration intends to work in partnership with the states to improve the quality of care for Medicaid beneficiaries. When developing the regulation, HCFA was guided by three principles: the preservation of state flexibility wherever possible and appropriate; consistency with the Medicare program; and incorporation of the recommendation of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

16.3.3: Waivers

Summary
NGA believes that states should not have to produce and defend waivers that are "similar to" previously approved ones in other states. NGA argues that developing and securing approval for similar waivers is a waste of both federal and state resources.

Analysis
Although states often implement similar programs through waivers, no two state waiver programs are the same. Each state's goals, desired changes, budget neutrality, etc. are unique and thus distinct waivers are required. Thus, we cannot support this resolution. However, this Administration has eliminated the need for managed care waivers, and through eligibility simplification, allowed states to cover new categories of people without waivers (e.g., two-parent families, working families, people with disabilities who return to work).

16.3.4: Boren-like Provisions

Summary
NGA believes that the same ambiguity that caused problems for states in the Boren amendment exists in other parts of the Medicaid statute governing reimbursement to providers and urges Congress to repeal them in order to preclude any litigation over provider or health plan payment rates.

Analysis
We are reviewing this issue and will consult with Governors and Medicaid agencies as we do so.

16.3.5: Managing Costs in EPSDT

Summary
NGA believes that current policy should be modified to allow states to limit the range and cost of services required under EPSDT.

Analysis
Recognizing states' concerns about costs, the BBA authorized a study to determine whether and how much EPSDT raises costs. We do not support this resolution while this study is ongoing.

16.3.6: Ensure that States will not be Required to Implement Medicaid Program Changes Until HCFA has Published Final Regulations to Guide Program Administration

Summary
NGA believes that states should not be held liable for operating under state law or state interpretation of federal statute until the federal regulations are adopted. In addition, NGA feels that states should not be bound by informal policy directives that are issued in violation of the

formal rulemaking process.

Analysis
The Administration is sensitive to the desire of states to be guided by final regulations that are complete, consistent, and reflect the input of governors and other stakeholders. HHS will give comments from governors full consideration as it drafts the Medicaid managed care final regulations.

16.3.7: Promote Cost Control and Efficiency

Summary
NGA believes that mandatory reasonable cost reimbursement strategies should be repealed.

Analysis
The Administration is committed to carrying out the intent of the Congress to phase out cost-based reimbursement for federally qualified health centers and rural health clinics through the gradual process outlined in the BBA. We will work with states and these community based providers throughout this process to ensure that the delivery of high quality care is not interrupted or impaired.

16.3.8: Assume Full Financial Responsibility for All Low Income Medicare Beneficiaries Who Are Not Otherwise Medicaid-Eligible

Summary
NGA believes that the federal government should assume full responsibility for meeting the Medicare cost sharing obligations for low income beneficiaries and for providing the full Medicaid benefit package to these beneficiaries when applicable.

Analysis
The Administration is committed to ensuring that low income beneficiaries receive the medical care they require. We are committed to maintaining at least the current level of assistance to low income Medicare beneficiaries. Any proposed increase in federal spending would need to be considered in the context of a balanced budget.

16.3.9: Make Audit and Disallowance Policies More Equitable

Summary
NGA believes that the Medicaid statute should be revised to prohibit heavy federal penalties when the state violation does not result in direct harm to beneficiaries. States should be held harmless against possible penalties or disallowances for reasonable interpretations of law prior to the issuance of Federal regulations.

Analysis
Part of the Federal government's fiduciary responsibility for overseeing the Medicaid program is to employ disallowances for violations such as unauthorized or inappropriate payments, and so we do not agree that penalties should be limited to those violations that directly harm patients. We share the states' concerns that the size of a disallowance be in proportion to the significance of the state violation, but believe this would require a statutory change.

16.3.10: Allowing Greater Flexibility in Medicaid Home and Community-based Programs

Summary
NGA requests the authority to administer home and community-based care programs through Medicaid State Plan Amendments rather than through waivers. However, the states would like to retain the ability to limit the number of beneficiaries served under this program. In addition, the states would like to eliminate the current incentives in the Medicaid program to place beneficiaries in institutional care.

Analysis
The Administration's FY 2000 budget proposes to eliminate the institutional bias in Medicaid by implementing an equal eligibility standard (300% of SSI) for all institutional home and community based services program, and we are extremely supportive of state efforts in this area. However, the Administration could not support allowing states to implement home and community based services programs that provided services to only a portion of those who would qualify under equal eligibility criteria, as this would fundamentally change the entitlement nature of Medicaid.

16.3.11: Children who are eligible for Medicaid

Summary
NGA is opposed to tying receipt of Medicaid funds to achieving increased program enrollment rates.

Analysis
The Administration has not proposed to link receipt of Medicaid funds to increased program enrollment rates.

16.3.12: Flexibility for Optional Eligibility Groups

Summary
NGA believes that states should have the flexibility to customize a package of optional benefits to meet the particular needs of optional eligibility groups, acknowledging that this would require waiving comparability and statewideness.

Analysis

The Administration could not support a program that would change the entitlement nature of Medicaid by providing services to only a portion of those who would qualify under equal eligibility criteria. We are committed to working with the states through the waiver programs to allow for additional program flexibility while demonstrating improvements in service delivery and cost-efficiency.

16.3.13: The Americans With Disabilities Act

Summary
NGA believes that recent court decisions have interpreted the ADA in such a way that home and community based services will become an open ended entitlement for people with disabilities. They would like constructive clarification of the parameters of state requirements under the ADA.

Analysis
The Administration supports state flexibility in designing a range of institutional and home and community based services to serve Medicaid beneficiaries with disabilities. We are committed to working closely with states to ensure the civil rights protections found in the ADA while affording states the flexibility to provide services to each beneficiary in the setting most appropriate to their needs.

HR 17: MEDICARE

17.1: Improving the Coordination of Acute, Primary, and Long Term Care

Summary
NGA believes that the lack of coordination between the Medicare and Medicaid programs causes fragmented service delivery and poor clinical outcomes. NGA suggests that the way to end this fragmentation is full integration of funding and care delivery.

Analysis
The Administration is extremely interested in working with states to develop programs for the integration of acute and long term care. However, the BBA outlined broad parameters for the expansion of Medicare managed care, and we believe that state integrated care demonstrations should stay within this framework. We are also committed to beneficiary choice within the Medicare program, and believe that Medicare beneficiaries should retain the choice as to whether or not to join a managed care program.

17.1 Eliminating Institutional Bias

Summary
NGA believes that current Federal policy related to long term care is very complicated and

results in care management based on reimbursement instead of need.

Analysis
The Administration shares NGA's commitment to developing community based care options for the disabled. We believe that there is significant flexibility within Medicaid's current structure through the personal care option and the home and community care waiver program to allow recipients access to a comprehensive range of home and community based services. The Administration's FY 2000 budget proposes to eliminate the institutional bias in Medicaid by implementing an equal eligibility standard (300% of SSI) for all institutional home and community based services program, and we are extremely supportive of state efforts in this area.

HR-24: National and Community Service

Summary
NGA revised this resolution on promoting a system of service and volunteer programs emphasizing that the federal government should provide for sustained federal funding to continue and strengthen local service programs. NGA also affirmed that federal, state and local government officials should be encouraged to serve as mentors and promote personnel policies that allow for flexible time for mentoring activities.

Analysis
The administration agrees with NGA on the importance of service and volunteer programs. The President's 2000 budget continues and expands the Administration's consistent and strong support for community service through AmeriCorps, the National Senior Service Corps, Service-Learning and other service programs. The FY 2000 budget request includes $585 million for AmeriCorps, an increase of $113 million over last year, to expand AmeriCorps to nearly 70,000 members by the year 2000, with the goal of reaching 100,000 members serving each year by 2002. To tap the skills and experience of America's growing senior population, the budget requests $201 million for the Senior Corps, a $13 million increase over last year. This level would support an estimated 464,000 retired and senior volunteer program volunteers, 28,200 foster grandparents serving 100,000 children and youth with special needs, and 14,800 senior companions providing support to almost 52,000 adults who have difficulty with daily living tasks.

The administration also supports the efforts of federal employees to contribute their time and resources to their communities, even as they fulfill official responsibilities. On April 22, 1998, the President directed all Federal departments and agencies to explore additional measures to expand service opportunities for Federal employees, including the use of flexible scheduling to allow employees to perform community service.

HR-36: Implementation of Welfare Reform

Summary

This resolution emphasizes the early success of welfare reform, as well as the remaining challenges to help those remaining on the rolls move into jobs and help those who go to work succeed in the workforce. The governors lay out principles and recommendations to ensure the continued successful implementation of welfare reform.

Analysis

Most of these points address the final TANF regulations which are close to being finalized, but several also relate to FY 2000 budget initiatives.

36.2.1: Block Grant Funding And Flexibility

Summary

The resolution calls on Congress and the Administration to uphold the financial commitment in the 1996 welfare reform law to provide five years of fixed block grant funding and to maintain the flexibility of the TANF block grant, including maximum flexibility to transfer funds between TANF and the social services and child care block grants.

Analysis

The Administration continues to support preservation of full funding for the TANF block grant over a five-year period. Some in Congress have indicated that the $3 billion in unobligated TANF funds may be a good way to pay for other priorities. We disagree. Since these funds are fixed based on historic spending levels, it is prudent for states to reserve some funds for a rainy day when economic conditions may change. In addition, states may need to invest more as they face increasing work requirements, approaching time limits, and at the same time, those remaining on the rolls are the 'hardest to employ.'

36.2.2 - 36.2.8: Issues Related to the TANF Rule

Summary

The resolution, and a recent NGA letter, raise several concerns related to the pending TANF regulations including: allowing greater flexibility for programs funded with State Maintenance of Effort funds; narrowing the definition of assistance under TANF so that supports for working families won't incur the federal time limit, work requirements, or reporting requirements; providing states maximum flexibility to continue their welfare reform waivers; allowing greater flexibility in what counts toward the work requirement; streamlining the data reporting burden; and allowing more flexibility in the definition of administrative costs.

Analysis

HHS' draft final regulations for TANF are currently under review at the Office of Management and Budget. Governors -- individually and through NGA -- submitted extensive

and constructive comments, as did many other interested parties. In addition, the Administration has consulted with state organizations consistent with the Administrative Procedures Act and Executive Order 12866 (which governs the Administration's regulatory review procedures). As critical pillars in the success of welfare reform, the Governors' comments have been given considerable weight in the rulemaking process, and the final rule is expected to address many of their priorities.

36.2.9: Contingency Fund

Summary
The Governors recommend modifying the TANF Contingency Fund.

Analysis
Your budget proposes uncapping the Contingency Fund (currently capped at $2 billion). In addition, the Administration is currently developing a revenue neutral proposal to submit to Congress to further improve the Contingency Fund, which should address some of the state concerns.

36.2.14: State Flexibility to Set Benefit Levels for Families from Other States

Summary
The resolution supports the continuation of state flexibility provided in the 1996 welfare reform law to set durational residency requirements on individuals moving from one state to another -- that is, to pay new residents at the benefit levels of their prior state. The Governors maintain such provisions are constitutional.

Analysis
The United States filed a friend of the court brief with the Supreme Court which essentially supports the states' position on this issue. The Administration's position is that the residency provision in the 1996 welfare reform law is constitutional, and that its residency provision, like other sections of the statute, simply gives states additional flexibility to establish welfare policies that best meet their needs. About one-quarter of the states provide differential benefits to new residents.

36.3.2: Job Development/Creation

Summary
The resolution emphasizes the importance of private sector involvement in hiring and also challenges the public sector to lead by example and hire welfare recipients.

Analysis
Your Administration shares a commitment to both these goals, as evidenced by your launching of the successful Welfare-to-Work Partnership which has now enlisted over 10,000 companies

(26 Governors serve on the Partnership's National Advisory Council, co-chaired by Governors Carper and Thompson). In addition, the federal government is doing its part -- you challenged federal agencies to hire 10,000 welfare recipients by 2000 and under the leadership of the Vice President, they will meet this goal ahead of schedule.

36.3.6: Social Services Block Grant

Summary

The Governors urge full funding and flexibility for the Social Services Block Grant.

Analysis

Your budget restores funding for SSBG to its fully authorized level of $2.38 billion -- the level the Governors agreed to as part of the welfare reform law in 1996. States use these funds to support a wide range of programs for children and adults including child protection and child welfare, child care, and services for the elderly and disabled. However, the budget also moves forward by one year the 4.25% cap on transfers from TANF to SSBG. While states will argue that this reduces their flexibility, the Administration believes that restoring full funding increases the funds available for SSBG purposes and therefore reduces the need for transfers from TANF to make up SSBG cuts.

EC-11: Child Care And Early Education

Summary

At last year's meeting, the Governors adopted a strong resolution urging greater investment in child care and early childhood education. The resolution, which remains active for this year, calls for the creation of a seamless child care and early education system that provides a safe, nurturing, and developmentally sound environment for children.

Analysis

The Governors' policy proposals dovetail well with the child care initiative that you put forth last year and that remains a central part of your budget. Your FY 1999 budget victories on child care -- including enhanced support for after-school care, Head Start, child care quality, and child care research -- address specific needs identified by the Governors. The Governors share your rationales for efforts to improve child care as well as many of our policy prescriptions. Their largest priority for federal action is to maintain state flexibility and provide adequate funding to meet demand, both of which our initiative does through your proposed dramatic expansion of the Child Care and Development Block Grant. Other areas of mutual agreement on the child care agenda include: providing tax incentives for the private sector like our Business Tax Credit; providing tax credits for individuals, like our proposed expansion of the Child and Dependent Care Tax Credit; increased funding for Head Start and Early Head Start, which is included in the FY 2000 budget; and supporting state and local efforts to improve child care quality, like our Early Learning Fund.

EDC-14: Affordable Housing

14.2: Percent Cap On Rental Payments

Summary
This resolution expresses the NGA's desire for greater flexibility in housing programs in order to assist tenants in public housing who are trying to move from welfare-to-work.

Analysis
Your administration is asking Congress, as part of our request for additional welfare-to-work housing vouchers, for greater waiver authority in the Section 8 statute subject to HUD approval for moving people off welfare into work.

14.3: Existing Programs

Summary
The NGA is requesting increases for a number of programs including the Low-Income Housing Tax Credit (LIHTC), the Community Development Block Grant (CDBG), the Housing Opportunities For People With AIDS (HOPWA) program, among others.

Analysis
We are asking for increases of 7% in HOPWA, a $1.6 billion increase in the LIHTC, and $25 million for CDBG. We are also proposing increases of $10 million for the Home Investment Partnerships (HOME) program. The NGA is also asking for increase in the volume cap for the Mortgage Revenue Bond (MRB) program. Last year you signed an increase in the overall private activity bond cap and this year we are proposing over $30 billion in bond authority for school construction and Better America Bonds (BABs). The NGA is also asking for quick implementation of HUD's new Mark-to-Market program. HUD is working in consultation with the states on implementation of this program and expects it to be up and running this year.

14.3.1: Data Tracking Systems.

Summary
This resolution expresses NGA's desire that HUD delay implementation of its Analysis Integrated Data Information System (IDIS) until it is ready and field-tested.

Analysis
HUD has had some difficulty in implementing IDIS. This system is designed to improve the efficiency of the agency's grant-making process. The implementation of this system has been a sore point with the Governors because it was not originally rolled out effectively and with adequate consultation. HUD is working with the states to improve the system to get all the problems with the system worked out. At this time 11 states have voluntarily adopted the system.

14.4: Programs Serving the Homeless

Summary
The NGA supports the combining of the seven programs authorized by the Stewart B. McKinney Homeless Assistance Act into a block grant to state and local governments.

Analysis
The Administration does not believe this proposal is necessary. While the Administration supported the notion of performance-based block grants six years ago, HUD has now administratively consolidated the various McKinney Act programs -- as has the Appropriations Committee. The Continuum of Care provides a coordinated community approach to homelessness in moving persons into jobs and permanent housing. Each community submits a single Continuum of Care plan to HUD that reflects efforts to address the complexities of homelessness through a range of housing and services. These plans are prepared by the private sector, non-profit groups, and local and state governments working together. HUD then determines which individual projects to fund from these plans. The Administration is committed to furthering the benefits of the Continuum of Care. The FY 2000 budget provides $1.125 billion in homeless assistance -- more than a 15 percent increase from the $975 million enacted last year.

EDC-6: The Role of States, The Federal Government, And Indian Tribal Governments With Respect to Indian Gaming And Other Economic Issues.

Overview
While recognizing the sovereignty of Tribal governments, the NGA proposes changes to the Indian Gaming Regulatory Act of 1988 (IGRA) which would clarify the role of states and tribal governments in negotiating gaming issues.

6.2.1: Clarification of the Scope of Gaming

Summary
The NGA seeks amendments to IGRA that make clear that tribes can negotiate to operate gambling of the same types and subject to the same restrictions that apply to all other gambling in the state. The NGA believes that governors should not be compelled by federal law to negotiate for gambling activities or devices that are not expressly authorized by state law.

Analysis
The Administration has taken the position in court filings that a state has no duty under IGRA to negotiate with a Tribe with respect to particular Class III (casino-type) gaming that state law completely and affirmatively prohibits. However, the Administration has never taken a position as to what the outcome should be if a type of gaming is neither expressly prohibited nor expressly authorized.

6.2.2: Application of the "Good Faith" Negotiation Standard

Summary
The NGA would like to amend IGRA to apply the "good faith" negotiation standard in tribal-state compacts to tribes as well as states.

Analysis
While the Administration has never articulated a position on whether the "good faith" negotiation standard should apply to tribes as it does for states, the legislative history indicates that the "good faith" standard was added to address the issue of unequal bargaining power between states and tribes.

6.2.3: Regulatory Oversight

Summary
The NGA believes that in many cases, federally imposed minimum regulatory standards for the operation of tribal gambling facilities may be appropriate.

Analysis
The Administration agrees that certain federal minimum standards are necessary.

6.3: The Effect of the Seminole Decision on the Authority of the Secretary of the U.S. Department of the Interior

Summary
The NGA opposes the Department of the Interior promulgating a rule permitting the Secretary to provide a remedy to a tribe to permit Class III gaming in the event that the state and the tribe are unable to reach agreement and the state then raises immunity as a bar to a suit by the tribe.

Analysis
The Administration disagrees that the Secretary of the Interior has no authority to create an administrative compact process. While there is a Congressional moratorium on Interior promulgating its rule before March 31, 1999, it is likely that the Interior rule finally issued after that time will authorize the Secretary to create an administrative compact process.

6.4: Federal Enforcement

Summary
The NGA wants the federal government to actively use existing IGRA enforcement authority to shut down Class III gaming conducted on Indian lands in violation of or in the absence of a tribal-state compact.

Analysis
The Administration agrees with federal enforcement of unlawful gaming consistent with the

Attorney General's tribal gaming enforcement policy.

6.5: The Governors' Role in Congressional and Other Federal Decisionmaking

Summary
The NGA believes that in cases where a new tribe becomes federally recognized, there should be the concurrence of the Governor of the state in which the tribe is located.

Analysis
The Administration opposes the concurrence of states in the process for providing federal recognition to tribes. This function has historically been the sole purview of the federal government. Furthermore, under current procedures, states are permitted to comment on whether a tribe should be federally recognized.

6.5.1: Trust Land Acquisition for Gambling Purposes and 6.5.2: Trust Land Acquisition in General

Summary
The NGA seeks the commitment to preserve the current required concurrence of a state to acquire land in trust for gambling purposes. In addition, the NGA seeks state concurrence when land is taken into trust for nongaming purposes.

Analysis
The Administration generally supports state concurrence in trust land acquisition for gambling purposes. However, the Administration opposes gubernatorial concurrence on nongaming trust acquisitions. This is the subject of a proposed rulemaking to be submitted to OMB in the Spring of 1999. The proposed rule will somewhat ease the burdens required to take land into trust for nongaming purposes, but will increase the requirements for consultation with third parties and will provide for a showing of demonstrated need for acquiring land into trust for gaming purposes.

6.5.2.1: State and Local Taxation Authority Over New Trust Lands

Summary
The NGA seeks a requirement that before new trust land is acquired, the federal government, the state, and the tribe should reach an agreement regarding the application of state and local taxes on the land.

Analysis
The Administration opposes state and local taxation of new trust land.

Addendum: Community Policing and Federal Support for Prisons Background

While there was no resolution on criminal justice, it is possible that the NGA could raise issues with respect to state and local funding in our FY 2000 budget for administration of justice programs. It is important to note that while overall crime funding is up slightly ($200 million) from last year, and our COPS proposal will help keep about $3.6 billion going to the state and local level, our decisions not to fund Republican-proposed block grants and to cut prison construction funds will mean that total state and local crime funding is about $1.2 billion lower than last year's high of $4.8 billion. Three programs may be of particular interest to NGA:

(1) Prisons: The Administration's budget does not provide funding for the Violent Incarceration/Truth-in-Sentencing State prison construction program authorized in the 1994 Crime Act. Instead, our budget provides $100 million in new funds to help states to comprehensively drug test, sanction, and treat inmates, parolees, and probationers, and continues to provide $500 million for the State Criminal Alien Assistance Program. Our budget also contains a significant increase in funding for federal prisons, but this is not likely to appease the Governors.

(2) Community Policing: As you know, the COPS Initiative was slated to phase out beginning in FY 2000. Our FY 2000 budget provides $1.3 billion to roughly maintain the current COPS funding level for a new 21st Century Policing Initiative. In addition to funding more officers, the Initiative will provide more support for statewide law enforcement priorities such as improved criminal history records, crime labs, and police communications. This proposal should be strongly supported by the NGA, as nearly every state police agency has received COPS funding for hiring, training, technology and other non-hiring purposes.

(3) Byrne: The NGA has historically supported full, unearmarked funding for the Byrne Law Enforcement Memorial block grant -- the primary source of state anti-crime funds. Amidst budget pressures and overall reduced funding for state and local crime funds, Byrne was reduced by $92 million in our budget (from $552 million in FY 99 to $460 million in FY 2000).