Tobacco—Synar Amendment

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TOBACCO -
SYNAR

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To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP

cc: Cathy R. Mays/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP, Andrea Kane/OPD/EOP@EOP
Subject: Synar Penalties

As you know, the current penalty structure in the Synar Amendment requires increasingly larger penalties for States not meeting their targets for non-compliance. The penalty for noncompliance in the first applicable year (1994 for most States) was a 10 percent reduction in the State's SAPT Block Grant (SABG); increasing 10 percent a year until reaching 40 percent in the fourth year. Because the law has been in place for more than four years, the current penalty is no longer graduated; rather it's a uniform reduction of 40 percent of the SABG funds for failure to comply. This penalty structure is disproportionate and should be graduated to reflect the relative seriousness of the deficiencies in a State's enforcement program.

In conjunction with OMB, IGA and HHS, we've put together a proposal we could support and plan to quietly share it with folks on the Hill who want to fix the program within the context of SAMSHA reauthorization or through the appropriations process.

Our suggestion is that the penalty structure should be revised to address the following concerns: 1) the potential loss of prevention and treatment funds to States, 2) the relative seriousness of the compliance deficiency, and 3) providing an incentive for States to target additional State resources toward preventing non-compliance in the future.

Under our proposal, a State that fails to meet its annual retailer sales target will be given a choice between two options: (1) SAMSHA withholds a penalty from the State's SABG award; or (2) the State obligates additional State funds to compliance-related activities in the FY following the year of noncompliance. Both options would create a graduated penalty that combines the amount by which a State exceeds its target retailer compliance rate and the number of consecutive years that a State has failed to meet its target.

As an incentive to choose the second option over the first in order to ensure that States opt to spend additional funds on tobacco enforcement rather than forgo the penalty amount, we would require that States that fail to meet their annual retailer sales targets only pay 85 percent of the actual penalty. It is our assumption that it is much more likely that one or more states would give up its SABG funds if there is no financial incentive provided to spend those funds on tobacco. Of course, we might be accused of creating the impression that we are giving noncompliant states a break or that we are valuing substance abuse funding over tobacco enforcement efforts.

Comparing the discounted penalty model to last years non-compliant states (7 states and DC), shows that even in a single state's decision to take the SABG penalty could dramatically affect the total amount spent by states on tobacco. Using FY 99 as an example, there are three states that by refusing the tobacco option would themselves constitute a greater loss to total state expenditures on tobacco than would the 15% discount applied to all states.

Some folks at HHS aren't yet sold on the 15 percent discount idea - although at this time they might not fully understand the above described model. Earlier this week Tarplin was concerned with the optics of the discounted penalty but I don't know if he's changed his mind in the last day. Are you comfortable with this plan and the 15 percent penalty discount? We would like to get this proposal up to the Hill ASAP.

Tobacco
Health -
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Synar Requirements of the SAMSHA Block Grant
9/10/99

Penalties for Failing the Synar Amendment

Secretary Shalala is prepared to send letters to seven states (DE, IA, MO, MN, OR, RI, WY) plus D.C. informing them of her initial finding that in 1998 they were out of compliance with the Synar Amendment, and stand to lose 40 percent of their FY 1999 Substance Abuse Block Grant. The penalty, which is assigned by statute, totals $37 million across the eight states and would be redistributed to other states for use for substance abuse treatment and prevention. States may appeal this initial finding, and after the appeal, the hearing official will make a recommendation to the Secretary, who will make a final decision based upon the full record. HHS expects this appeal process to take ninety days, which extends past the end of FY 1999. Therefore, HHS plans to give states which appeal the option of receiving their full FY 1999 block grant, which they will need to pay back if they lose their appeal. In order for states to obtain the FY 1999 funds by the end of the fiscal year, HHS needs to send the letters by Friday, September 17th.

What is the Synar Amendment?

The Synar amendment, enacted in 1992, is a key part of the nation's efforts to reduce youth smoking by making it more difficult for youth under age 18 to purchase tobacco products. States are required to:

1. Have in effect a law prohibiting any manufacturer, retailer or distributor of tobacco products from selling or distributing such products to any individual under the age of 18.
2. Enforce such laws in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.
3. Conduct annual random, unannounced inspections – sending youth in to retail outlets to attempt to purchase tobacco products – to ensure compliance with the law. These inspections are to be conducted in such a way as to provide a valid sample of outlets accessible to youth.
4. Adhere to year-by-year goals, negotiated individually with each state, that by 2003 require less than 20 percent of outlets to sell tobacco products to minors.

Signaling a Willingness to Change the Law

In the letter to states, Secretary Shalala would like to say she would "welcome the opportunity to work with Congress to craft a statutory change that maintains our commitment to reduce youth smoking, but permits the Department to adjust the penalty amount based on the relative seriousness of the deficiencies in the State's enforcement program." The Administration would not plan to submit its own plan to Congress, but would be willing to work with members who want to craft one. Already, conversations are apparently underway between Senator Durbin, who has ideas for changes (see below) and Senator Frist, who is the lead sponsor of the SAMSHA reauthorization bill.

DPC, OMB, HHS, and IGA met Thursday to discuss possible changes to the Synar amendment, and devised these options:

1. Lower the Penalty by Changing the Penalty Amounts:

Option 1A: Change the Effective Dates of the Current Penalty Scale (HHS prefered option)

The law, which went into effect in 1994, established a 10 percent cut in the SAMSHA block grant in the first applicable year of the law; 20 percent for the second applicable year; 30 percent for the third applicable year; and 40 percent in the fourth year and thereafter. The fourth year the law's been in effect, 1998, is actually the first year any states have failed the targets, making the first assessed penalties at the 40 percent level.

An alternative approach would be make the 10 percent penalty for the first year a state fails the targets; 20 percent for the second year; 30 percent for the third; and 40 percent for the fourth and later years.

Option 1B: Lower Penalty Based on Degree of Noncompliance

Another approach would base the amount of a state's penalty on the amount by which it missed its compliance target. This could be devised several ways – for example, a state would lose a certain percent of its SAMSHA block grant for every percent by which it missed its target. HHS is developing specific options, which will require taking into account the fact that, due to sample sizes, the inspection results have a +/- 3 percent error margin.

2. Combine a Lower Penalty with Tougher Targets (HHS second option)

Either of the above changes would probably be seen as weakening the law's anti-youth smoking provisions, unless coupled with provisions to strengthen the law. A way around this could be to make the target violation rates for States more stringent, perhaps changed to no more than 10 percent. Currently 19 States have achieved the 20 percent goal and 3 states are below 10 percent. We would probably want to make the tougher targets applicable after 2003, e.g. 2006.

3. The Durbin Proposal

The proposal Senator Durbin is developing combines option 1B with option 2, the a 10 percent target.

TOBACCO — Synar

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF NATIONAL DRUG CONTROL POLICY

Washington, D.C. 20503

FOR RELEASE: SEPT. 20, 1999 Contact: Bob Weiner (202) 395-6618

WHITE HOUSE DRUG CZAR McCAFFREY ASSERTS PENDING DRUG TREATMENT FUNDING PENALTIES ON STATES AS YOUTH-TOBACCO PUNISHMENT IS ILLOGICAL, COUNTERPRODUCTIVE;

COULD CLOSE DRUG TREATMENT CENTERS AND GENERATE MORE CRIME

(Washington, DC) -- White House Director of National Drug Control Policy Barry R. McCaffrey today criticized the mandatory penalties under current law required by the Synar Amendment, which cuts Federal drug treatment grants in states that fail to make sufficient progress in reducing the sale of tobacco products to minors. Seven states plus the District of Colombia have been notified by HHS that they are in non-compliance and could face cuts.

"*The National Drug Control Strategy* calls for increasing the availability of drug treatment services -- and reducing by half the "treatment gap" -- over the next decade. These mandatory penalties would require the Department of Health and Human Services to cut by 40 percent several states' federal funding for drug treatment and prevention programs for young people. This makes no sense, and will impair the ability of states to treat the nation's 4.1 million chronically addicted."

"This is an illogical action, mandated by current law. This law needs to be reviewed and changed. Some drug treatment centers may close. Some heroin addicts might be forced back on the streets to return to a criminal life. We agree that the carrot-and-stick approach of the law can serve a purpose of pushing compliance with youth tobacco reduction objectives, but we must not throw the baby out with the bath water by increasing drug addiction and crime."

"We join Secretary Shalala's support for the goals of the Synar Amendment, to encourage states to enact and enforce effective laws and programs that restrict the sale of tobacco products to young people. Goal One of the *Strategy* calls for educating and enabling America's youth to reject illegal drugs *as well as alcohol and tobacco*. Research shows clearly that the use of tobacco by youth is closely associated with, and often precedes, the use of other dangerous substances, including illegal drugs. However, penalties that reduce Federal support for drug treatment are counterproductive. We would welcome a discussion with the Congress about the appropriateness of these penalties, with a goal of reducing the impact of both adolescent smoking and substance abuse on all our citizens."

Jurisdictions who received the notice are Rhode Island, Delaware, Minnesota, Iowa, Missouri, Wyoming, Oregon, and the District of Columbia.

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