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Governors 81 Assoc

1999 Winter Meeting

COMMITTEE ON ECONOMIC DEVELOPMENT AND COMMERCE

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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 Economic Development and Commerce recommends the consideration of two new policy positions, one resolution, amendments to five existing policy positions (three in the form of substitutes), and the reaffirmation of one existing policy position. Policy proposals are time limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. <u>Air Transportation</u> (Amendments to EDC-9)

   These technical amendments clarify the Governors' policy that all existing and future funds dedicated to the federal Airport and Airway Trust Fund should promptly be invested for their intended purpose: airport construction and air traffic control modernization. Currently more than $9 billion in unspent balances exist in the Airport and Airway Trust Fund, and the unspent balance is projected to increase to $51 billion by 2008.

   These technical amendments have no significant federal fiscal impact.

2. <u>Federal Economic and Community Development Programs</u> (Amendments to EDC-10)

   The amendments update the policy and incorporate language from three other policies that are scheduled to sunset: EDC-3, Military Base Closure, Disposal, and Reuse; EDC-15, Uniform Product Liability Code; and EDC-20, Tax-Exempt Financing.

   The amendments add product liability concerns to the list of barriers to growth for the private sector; lengthen the section on modifying the tax code to include current tax-exempt bond policy calling for an increase in the volume cap for so-called "private activity" bonds; and create a new section on base closure and reuse, which is updated to begin with a call for a moratorium on new rounds of closures pending resolution of the issues arising from the last four rounds. The only substantive changes involve the tax-exempt financing policy, which is updated to call for an acceleration of the increase in the so-called "private-activity" bond cap that was enacted last year. In addition, the policy's sunset date is extended for two years.

   The amendments have no significant federal fiscal impact.

3. <u>Governors' Principles on International Trade</u> (Amendment in the form of a substitute to EDC-11)

   The amendment in the form of a substitute clarifies and updates the policy, adding provisions strengthening the state role in trade agreement negotiation and implementation, including workforce training to better equip Americans to compete in a changing global economy as part of the public education effort needed to promote trade; supporting expanding trade with Vietnam once full cooperation in accounting for POW/MIAs is ensured; and calling for a more effective state-federal partnership in export promotion. The amendment also incorporates language consistent with policy EDC-5, Tourism, on the federal management of border crossings, calling for greater consultation with states. The policy continues to call for support of an expansion of trade, re-enactment of fast track, adequate funding for the International Monetary Fund, continuation of normal trade relations with China, and driver's license reciprocity.

   The amendment has no significant federal fiscal impact.

4. <u>Implementation of the Transportation Equity Act for the 21st Century (TEA 21)</u> (Amendment in the form of a substitute to EDC-13)

   This amendment in the form of a substitute outlines the Governors' commitment for full and prompt implementation of the Transportation Equity Act for the 21st Century (TEA 21), which is the foundation for achieving the nation's high-priority surface transportation objectives.

The amendment asks the administration to implement the federal-state surface transportation partnership in accord with the provisions of TEA 21. The amendment asks Congress and the administration to keep the promise made to the nation to fund the federal highway and transit programs at no less than the guaranteed levels in TEA 21. The amendment specifically calls on Congress and the administration to ensure that all increases in revenue to the Highway Trust Fund are directed to their intended purposes as outlined in TEA 21. The amendment includes support for the streamlining and safety provisions of TEA 21.

The amendment has no significant federal fiscal impact.

5. <u>Affordable Housing</u> (Amendment in the form of a substitute to EDC-14)

This amendment in the form of a substitute updates the current policy to focus on housing programs of concern to Governors that are likely to face legislative action in the 106th Congress. The amendment includes support for housing programs that help people with AIDS and programs that address affordable housing and community development in rural America. The amendment asks the U.S. Department of Housing and Urban Development (HUD) to refrain from implementing data tracking systems that have not been adequately tested and that are incompatible with state systems. The amendment also calls for a continuing state role in manufactured housing regulation as well as calling on HUD to update federal standards and regulations. Throughout the policy, amendments are made to ask the federal government to give states maximum flexibility in implementing programs and to make use of block grants where appropriate.

There is no significant federal fiscal impact to these amendments.

6. <u>Rail Transportation</u> (New Policy Position, EDC-16)

This new policy position outlines the Governors' support for a strong and efficient passenger and freight rail transportation network that provides efficient delivery of goods, greater mobility for our citizens, access to local shippers, and encourages economic growth. The policy supports existing federal programs to develop and improve high-speed rail corridors and improve safety of rail grade crossings. The policy also supports the Local Rail Freight Assistance Program and the Rail Rehabilitation and Improvement Financing program.

This policy has no significant federal fiscal impact.

7. <u>Bankruptcy Reform</u> (New Policy Position, EDC-21)

This is a new policy to address the growing problem of bankruptcy. The policy supports federal efforts to prevent debtors with the ability to pay part or all of their debts from using Chapter 7 filings to escape their responsibilities. The policy also calls for state claims to be given parity with federal claims, encourages payment of domestic support obligations, and protects the state role in bankruptcy proceedings.

This policy should have a positive federal fiscal impact.

8. The Year of the Small Manufacturer (Resolution)

   This resolution supports naming 1999 as the Year of the Small Manufacturer in recognition of small manufacturers' contributions and importance to the strength and well-being of the nation.

   There is no federal fiscal impact to this policy.

9. Reaffirmation of Existing Policy

   The committee proposes the reaffirmation for six months of existing policy EDC-6, The Role of States, the Federal Government, and Indian Tribal Governments with Respect to Indian Gaming and Other Economic Issues. This will allow the committee to review the policy for necessary changes to be considered at the 1999 NGA Annual Meeting.

EDC-9. AIR TRANSPORTATION

9.1 Preamble

Aviation is a key factor in economic development efforts and a vital component of a balanced transportation system. The major challenge facing aviation today and in the future is to deal with problems of congestion and the resulting concerns with safety. This requires a comprehensive strategy, which includes improving airport facilities as well as the national airspace system. The importance of aviation to a state's economy, tourism, and community development, and the proven capacity of the states, working in conjunction with the affected regions, to implement airport programs in a cost-effective manner are convincing reasons for a strong state role.

9.2 Recommendations

9.2.1 **Planning.** The Governors support a multiyear authorization for aviation programs to provide the necessary predictability for multiyear, statewide, intermodal planning and programming.

9.2.2 **Finance.** The Governors urge the continuation and full use of the Airport and Airway Trust Fund for airport and airway development needs. The Governors endorse the principle of financing these aviation projects from existing dedicated user taxes and charges and oppose any attempt to divert trust fund revenues to other purposes. The unspent balance in the Airport and Airway Trust Fund has grown and is expected to continue to grow rapidly. ALL DEDICATED FUNDS IN THE AIRPORT AND AIRWAY TRUST FUND MUST BE PROMPTLY INVESTED FOR THEIR INTENDED PURPOSE: AIRPORT CONSTRUCTION AND AIR TRAFFIC CONTROL MODERNIZATION. The Governors support a mechanism to guarantee that all EXISTING AND FUTURE revenue dedicated to the Airport and Airway Trust Fund BE ~~is~~ spent each year for its intended purpose.

The Governors recognize the safety, security, and other broad public benefits of the services provided by the Federal Aviation Administration (FAA) and support a guarantee of continued general funding for FAA operations.

The Governors urge Congress to set Airport Improvement Program (AIP) obligation ceilings at levels sufficient to spend all authorized airport development funds. Both the National Association of State Aviation Officials and the National Civil Aviation Review Commission have called for an annual funding level of at least $2 billion for AIP. Priority should be given to increasing capacity that benefits the national aviation system at the most congested metropolitan airport systems through projects at existing airports in these regions and/or their relievers, or by constructing new airports, whichever is more cost-effective and environmentally practical in the long term. The AIP distribution for the state apportionment category should be increased to include necessary funding for system planning. In addition to fully funding AIP, the Governors encourage the owner-operators of the nation's airports to engage in a dialogue with air carriers and other interested parties to develop and support financing alternatives that will ensure adequate airport capacity now and for the foreseeable future.

The states, in keeping with the Governors' theme to provide more control and administrative responsibility over federal programs, should be allowed the discretion to determine how to prioritize the state-apportioned funds with general guidelines from the Federal Aviation Administration. The states are closer to the airports in these categories and can best determine needs and priorities for funding.

The Governors also support efforts designed to further reduce aircraft noise, and support a continued set-aside of AIP funds for noise abatement, as well as flexibility in the use of these funds.

The Governors also support more flexible applicability of AIP funds for projects such as airport pavement maintenance, efficient ground access to airports, and the maintenance of facilities and equipment installed with AIP funding. The Governors support the use of innovative financing methods, such as state infrastructure banks and state revolving loan funds utilizing AIP funds. Finally, Governors encourage FAA to allow the use of state highway specifications for construction of runways at airports serving smaller aircraft where appropriate.

9.2.3 **State Block Grant Programs.** The state block grant program should be continued and structured to allow states maximum flexibility to administer grants for general aviation, reliever, and nonprimary commercial service airports. Action should be taken to ensure that the key objectives of the program—predictable funding and state programming authority—are achieved. The Governors support the expansion of a voluntary state block grant program to all qualified states as a means of implementing a "partnering" approach, where the state and federal governments have complementary roles for the entire national airport system. States should be given the authority to use their own priority systems to select projects to be funded with block grant funds or with state apportionments in nonblock grant states.

9.2.4 **Military Facilities.** The Governors support the increased use of former and current military airports to provide immediate capacity relief for the aviation system.

9.2.5 **Essential Air Service.** Regional air service is a vital part of the national network of air service and is particularly important to small communities. The Essential Air Service (EAS) program has played a critical role in response to deregulation of the airline industry by ensuring minimum air service to smaller communities. The need for a federal role in this area continues, and the Governors strongly support extension of an EAS program. Although the Governors believe that the goal of the EAS program should be to encourage the evolution of subsidized routes toward self-sufficiency, there must be recognition that for those communities without reasonable alternatives to EAS, continuation of special support is needed.

9.2.6 **Small Community Air Service.** The Governors support efforts to improve commercial air service to small communities and territories that have not benefited from airline deregulation. In addition to continuing the Essential Air Service program, Governors support efforts to improve air service in underserved communities that do not participate in the EAS program.

9.2.7 **Privatization.** The Governors believe that privatization can sometimes enhance national air transportation goals and therefore barriers to privatization should be examined. In addition, the Governors urge federal agencies to cooperate with states involved in airport privatization initiatives.

9.2.8 **Airport Capacity and Competition in the Airline Industry.** The Governors support efforts to increase airport capacity and competition in the airline industry. Declining service to small and medium-size communities, congestion at hub airports, and rapidly increasing airfares are all significant and growing problems. The Governors believe that the U.S. Department of Transportation and FAA should take appropriate action to ensure that there is adequate airport capacity now and for the foreseeable future and to continue to promote competition in the airline industry.

Time limited (effective Annual Meeting 1998–Annual Meeting 2000).
Adopted Annual Meeting 1994; revised Winter Meeting 1996, Annual Meeting 1996, and Annual Meeting 1998 (based on former Policy F-3).

EDC-10. FEDERAL ECONOMIC AND COMMUNITY DEVELOPMENT PROGRAMS

10.1 Preamble

Governors are working to improve the business climate; provide access to capital; finance infrastructure investment; develop public-private partnerships; promote effective education and job training programs; support business assistance, including export promotion; and balance the needs of business and job creation with those of the environment and consumer protection. The federal government has a wide range of programs with these same goals.

10.2 Recommendations

The Governors call for the following federal actions to support state efforts in economic and community development.

10.2.1 **Remove Barriers to Growth for the Private Sector.** Community and economic growth and development are largely determined and influenced by actions taken by individual citizens, entrepreneurs, businesses, and industries. For these groups, multiple layers of regulatory review, permitting, and uncoordinated government requirements are a barrier to investment in communities. The federal government should do the following.

- ADOPT A FEDERAL UNIFORM PRODUCT LIABILITY CODE TO ENHANCE THE EFFECTIVENESS OF INTERSTATE COMMERCE. AMERICAN CONSUMERS AND BUSINESSES ARE ADVERSELY AFFECTED BY THE LACK OF UNIFORMITY AND PREDICTABILITY IN THE CURRENT PATCHWORK OF U.S. PRODUCT LIABILITY LAWS. IN ESTABLISHING A UNIFORM PRODUCT LIABILITY CODE, CONGRESS SHOULD ASSESS THE IMPACT OF A UNIFORM CODE ON PUBLIC SAFETY AND CONSUMER PROTECTION AND, IF DEEMED APPROPRIATE, ENHANCE FEDERAL SAFETY AND CONSUMER PROTECTION STANDARDS.
- Streamline federal regulatory review so as not to delay economic development in the states. Regulations should be final for an established time before compliance is required. Federal reviews should be done on real-time schedules.
- Delegate program authority, wherever possible, to the states, including regulations within federal programs to enable businesses to submit to one layer of review. The federal government should focus on setting goals, allowing states to define how they are best achieved in each situation.
- Require assessment of the impact on jobs, investment, and income of decisions that increase or decrease the burden of government on businesses.

10.2.2 **Modify the Federal Tax Code.** Federal tax law influences business and individual investment decisions. The federal government should modify the federal tax code to ensure a climate conducive to long-term growth and investment in communities BY TAKING THE FOLLOWING ACTIONS. ~~, including permanent extension of~~

- PERMANENTLY EXTEND the research and development tax credit.
- IMMEDIATELY RAISE THE STATE-BY-STATE VOLUME CAP ON "PRIVATE-ACTIVITY" BONDS TO COMPENSATE FOR THE PURCHASING POWER THE CAP HAS LOST DURING THE PAST DECADE BECAUSE OF INFLATION, AND INDEX THE CAP TO INFLATION TO PREVENT FUTURE EROSION OF ITS VALUE. RAISE THE MAXIMUM TAX-EXEMPT

BORROWING LIMIT FOR SMALL ISSUE BONDS AND INDEX THIS AMOUNT TO INFLATION. "PRIVATE-ACTIVITY" BONDS PLAY AN IMPORTANT ROLE IN PROMOTING THE USE OF PUBLIC-PRIVATE PARTNERSHIPS TO FULFILL CRITICAL POLICY NEEDS SUCH AS AFFORDABLE HOUSING, ECONOMIC DEVELOPMENT, AND STUDENT LOANS.

10.2.3 **Provide Community Development Assistance.** States focus resources on community development to foster economic growth by leveraging public and private investments. The Governors recognize the Community Development Block Grant as the best current example of an effective federal/state/local economic development partnership. The Governors also recognize the importance of the programs administered by the Economic Development Administration (EDA) and EDA's effort to work with states and localities to provide the timely and essential support needed for long-term economic development and to address problems such as natural disasters, military base closures, or major economic dislocations. To make federal assistance programs more effective in promoting economic and community development, the federal government should do the following.

- Provide adequate appropriations for rural development programs under the 1996 farm bill and remove restrictions on flexible funds contained in fiscal 1997 appropriations.
- Consolidate, ~~and~~ coordinate, AND STREAMLINE federal grant and loan programs currently located in a number of different federal agencies. Federal programs should promote an effective intergovernmental partnership and include incentives for integrating human services and human capital resources with community and economic development programs to promote greater self-sufficiency, independence, and empowerment.
- Support continued investment in the federal empowerment zone program in coordination with state strategic plans and economic development efforts.

10.2.4 **Support Technology Development.** The federal government should ~~build on the work of the United States Innovation Partnership, including continuing to~~ work with states to support TECHNOLOGICAL programs THAT ~~to~~ improve the competitiveness of the nation's manufacturers, INCLUDING ~~through~~ the Manufacturing Extension Partnership AND OTHER APPROPRIATE PROGRAMS.

10.2.5 **MILITARY BASE CLOSURE, DISPOSAL, AND REUSE.** THE GOVERNORS BELIEVE THERE SHOULD BE A MORATORIUM ON FURTHER ROUNDS OF BASE CLOSURES PENDING FINAL RESOLUTION OF THE ISSUES ARISING FROM THE LAST FOUR ROUNDS. DURING THIS MORATORIUM, THE GOVERNORS ENCOURAGE THE U.S. DEPARTMENT OF DEFENSE (DOD) TO IDENTIFY AND IMPLEMENT WAYS TO REDUCE MILITARY OPERATING COSTS AND IMPROVE EFFICIENCY, SUCH AS SHARING THE USE OF EXISTING FACILITIES AND CAPABILITIES.

THE GOVERNORS ALSO CALL ON THE FEDERAL GOVERNMENT TO CONTINUE TO IMPROVE EXISTING MILITARY PROPERTY DISPOSAL PROCEDURES BY REMOVING BARRIERS IN EXISTING LAWS AND DOD PRACTICES; ESTABLISHING EFFECTIVE INDEMNIFICATION PROCEDURES TO PROTECT STATES AGAINST UNWARRANTED LIABILITIES AND EXPENSES STEMMING FROM PREVIOUS AND ONGOING DEFENSE ACTIVITIES AT CLOSED, CLOSING, OR REALIGNED FACILITIES; ENSURING COMPLETE

AND TIMELY ENVIRONMENTAL CLEANUP OF CLOSED BASES; ENSURING THAT STATE, TERRITORIAL, AND LOCAL GOVERNMENTS ARE PROVIDED MEANINGFUL ROLES IN THE BASE CLOSURE PROCESS; ALLOWING DOD TO PROVIDE MAXIMUM FLEXIBILITY IN THE TIMING OF BASE CLOSURES TO ASSIST STATE, TERRITORIAL, AND LOCAL GOVERNMENTS IN ACHIEVING SMOOTH TRANSITIONS TO PRIVATE AND PUBLIC USES; AND PROVIDING INCENTIVES FOR TIMELY COMMERCIAL REUSE OF SURPLUS MILITARY PROPERTY.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Annual Meeting 1990; reaffirmed Annual Meeting 1994; revised Winter Meeting 1995, Winter Meeting 1997, Annual Meeting 1997, and Winter Meeting 1998 (formerly Policy E-1).

EDC-11. GOVERNORS' PRINCIPLES ON INTERNATIONAL TRADE

11.1 PREAMBLE

INTERNATIONAL TRADE INCREASINGLY HAS BECOME IMPORTANT TO STIMULATE U.S. ECONOMIC GROWTH AND JOB CREATION. MOST GOVERNORS SUPPORT EXISTING TRADE AGREEMENTS, SUCH AS THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) AND STRUCTURES SUCH AS THE WORLD TRADE ORGANIZATION (WTO) AND THE ASIAN PACIFIC ECONOMIC COOPERATION FORUM (APEC). GOVERNORS ALSO SUPPORT THE CREATION OF THE FREE TRADE AREA OF THE AMERICAS (FTAA) TO ACHIEVE FREE TRADE IN THE WESTERN HEMISPHERE BY 2005. THE GOVERNORS BELIEVE FUTURE TRADE AND INVESTMENT AGREEMENTS WILL CONTINUE TO CREATE JOBS BY OPENING A WIDE RANGE OF OPPORTUNITIES FOR BUSINESSES AND AGRICULTURAL PRODUCERS TO EXPAND INTO FOREIGN MARKETS. AS THE PRINCIPAL JOB CREATORS AND EXPORT PROMOTERS IN THE UNITED STATES, THE GOVERNORS WILL CONTINUE TO BE ACTIVE PARTICIPANTS IN THE FORMULATION OF TRADE POLICY.

THE GOVERNORS OF THE FIFTY STATES; THE TERRITORIES OF AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS; AND THE COMMONWEALTHS OF THE NORTHERN MARIANA ISLANDS AND PUERTO RICO SUPPORT THE FOLLOWING TRADE POLICY OBJECTIVES.

11.2 EXPAND INTERNATIONAL TRADE

THE UNITED STATES TRADE REPRESENTATIVE (USTR) SHOULD NEGOTIATE NEW AND EXPAND EXISTING TRADE AGREEMENTS IN AN EFFORT TO ACHIEVE GREATER ECONOMIC PROSPERITY THROUGH GLOBAL FREE TRADE. MOST GOVERNORS SUPPORT EXPANDING FREE TRADE BETWEEN THE UNITED STATES AND CHILE AND BETWEEN THE UNITED STATES AND OTHER LATIN AMERICAN AND CARIBBEAN NATIONS. CONCURRENT WITH ITS EFFORTS TO EXPAND TRADE, THE FEDERAL GOVERNMENT SHOULD STRENGTHEN ITS COMMITMENT TO WORKFORCE DEVELOPMENT PROGRAMS AS OUTLINED IN POLICY HR-1, GOVERNORS' PRINCIPLES TO ENSURE WORKFORCE EXCELLENCE.

11.3 ENSURE A STATE AND TERRITORIAL ROLE IN TRADE AGREEMENT NEGOTIATION AND IMPLEMENTATION

THE FEDERAL GOVERNMENT SHOULD ENSURE AN EFFECTIVE STATE AND TERRITORIAL ROLE IN THE IMPLEMENTATION OF TRADE AGREEMENTS AND

PARTICIPATION IN RELEVANT WTO ACTIVITIES. FEDERAL AGENCIES MUST WORK WITH STATES PRIOR TO AGREEMENT FINALIZATION TO ADDRESS CONFLICTS BETWEEN STATE LAWS AND PROVISIONS OF TRADE TREATIES. THE FEDERAL GOVERNMENT ALSO SHOULD ENSURE AN EFFECTIVE STATE AND TERRITORIAL ROLE IN THE IMPLEMENTATION OF NAFTA AND SUBSEQUENT TRADE AGREEMENTS AND PARTICIPATION IN RELEVANT WTO ACTIVITIES. FEDERAL AGENCIES MUST WORK WITH STATES TO ADDRESS CONFLICTS BETWEEN STATE LAWS AND PROVISIONS OF TRADE TREATIES. EFFECTIVE STATE AND TERRITORIAL PARTICIPATION REQUIRES ADEQUATE TECHNICAL SUPPORT FROM FEDERAL AGENCIES.

THE GOVERNORS COMMEND THE FEDERAL GOVERNMENT AND THE CANADIAN AND MEXICAN GOVERNMENTS FOR TAKING STEPS TOWARD RESOLVING CONTENTIOUS TRADE ISSUES AMONG THE UNITED STATES, CANADA, AND MEXICO. THE GOVERNORS CALL ON ALL THREE GOVERNMENTS TO CONTINUE THE GOOD-FAITH DIALOGUE TO IMPLEMENT AGREEMENTS REACHED AND TO CONTINUE MEETING ON UNRESOLVED TRADE ISSUES. GOVERNORS HAVE AN INTEGRAL ROLE TO PLAY IN THE PROCESS, AS DEMONSTRATED BY THE DECEMBER 4, 1998, AGREEMENT OUTLINED BY THE U.S. TRADE REPRESENTATIVE, THE U.S. DEPARTMENT OF AGRICULTURE, AND THE CANADIAN GOVERNMENT. GOVERNORS SHOULD NOT ONLY BE CONSULTED WITH, BUT ALSO INCLUDED IN, ONGOING NEGOTIATIONS WITH BORDER COUNTRIES.

11.4 PROMOTE EXPORTS

STATES, TERRITORIES, AND THE FEDERAL GOVERNMENT PLAY SIGNIFICANT ROLES IN PROMOTING THE EXPORT OF U.S. GOODS AND SERVICES INTO FOREIGN MARKETS. THE FEDERAL GOVERNMENT SHOULD COORDINATE WITH STATES AND TERRITORIES TO MAXIMIZE THE EFFECTIVENESS OF FEDERAL EXPORT PROMOTION PROGRAMS. THE GOVERNORS SHOULD BE PROVIDED WITH THE FLEXIBILITY AND DISCRETION TO TARGET FEDERAL EXPORT ASSISTANCE IN A WAY THAT WOULD BEST SERVE THE NEEDS OF THEIR INDIVIDUAL STATES AND TERRITORIES. GOVERNORS SUPPORT THE ADMINISTRATION'S EFFORTS TO OPEN NEW AND MAINTAIN EXISTING MARKETS FOR U.S. AGRICULTURAL PRODUCTS. GOVERNORS ALSO SUPPORT JOINT EFFORTS CURRENTLY UNDERWAY BETWEEN THE U.S. DEPARTMENT OF COMMERCE AND THE NATIONAL GOVERNORS' ASSOCIATION TO IDENTIFY WAYS IN WHICH STATES AND THE FEDERAL GOVERNMENT CAN BETTER COORDINATE EXPORT ASSISTANCE ACTIVITIES THROUGH THE TRADE PROMOTION COORDINATING COMMITTEE.

11.5 IMPROVE PUBLIC EDUCATION AND WORKFORCE TRAINING

THE FEDERAL GOVERNMENT SHOULD WORK WITH STATES AND TERRITORIES TO EXPAND CITIZEN UNDERSTANDING OF THE IMPORTANCE OF INTERNATIONAL TRADE AND WORK WITH THE PRIVATE SECTOR TO DEVELOP LIFETIME EDUCATIONAL AND WORKFORCE TRAINING OPPORTUNITIES THAT PREPARE AMERICANS TO COMPETE SUCCESSFULLY IN A CHANGING GLOBAL ECONOMY. GOVERNORS SUPPORT FEDERAL EFFORTS TO FUND PROGRAMS BY U.S. HIGHER EDUCATION INSTITUTIONS THAT HELP OTHER NATIONS BUILD OPEN MARKET ECONOMIES.

11.6 RENEW "FAST-TRACK" TRADE NEGOTIATION AUTHORITY FOR THE PRESIDENT

THE GOVERNORS CALL ON CONGRESS TO IMMEDIATELY RENEW FAST-TRACK TRADE NEGOTIATION AUTHORITY FOR THE PRESIDENT, WHICH EXPIRED IN LATE 1994. IT IS IMPORTANT TO NOTE THAT EVERY U.S. PRESIDENT SINCE 1974 HAS RECEIVED FAST-TRACK TRADE NEGOTIATION AUTHORITY FROM CONGRESS. FAST-TRACK AUTHORITY GIVES THE PRESIDENT THE NEGOTIATING AUTHORITY NECESSARY TO CONCLUDE INCREASINGLY COMPLEX TRADE AGREEMENTS. WITHOUT FAST-TRACK AUTHORITY, U.S. ABILITY TO EXPAND AND OPEN MARKETS AROUND THE WORLD WILL BE CONSTRAINED SIGNIFICANTLY, AND U.S. BUSINESSES WILL LIKELY LOSE MARKET OPPORTUNITIES AND JOBS TO OTHER COUNTRIES.

11.7 ADEQUATELY FUND THE INTERNATIONAL MONETARY FUND

GOVERNORS CALL ON THE FEDERAL GOVERNMENT TO ADEQUATELY FUND THE EFFORTS OF THE INTERNATIONAL MONETARY FUND (IMF) TO STABILIZE TROUBLED ECONOMIES IN ASIA, LATIN AMERICA, RUSSIA, AND OTHER REGIONS. MANY OF THESE NATIONS SERVE AS IMPORTANT TRADING PARTNERS BY IMPORTING AMERICAN AGRICULTURAL COMMODITIES, MANUFACTURED GOODS, AND INFORMATION TECHNOLOGIES. IF THE IMF DOES NOT HAVE ADEQUATE RESOURCES TO PROMOTE STABILITY NOW AND IN THE FUTURE, AMERICAN COMPANIES AND WORKERS INVOLVED IN TRADE WITH OTHER NATIONS COULD SUFFER SIGNIFICANT NEGATIVE CONSEQUENCES. HOWEVER, GOVERNORS STRONGLY BELIEVE THAT IMF FUNDS SHOULD NOT BE USED TO UNFAIRLY SUBSIDIZE INDUSTRIES IN RECEIVING NATIONS. THEREFORE, THE GOVERNORS SUPPORT RECENTLY ENACTED MONITORING PROVISIONS IN U.S. LAW DESIGNED TO ENSURE THAT IMF LOANS ARE USED PROPERLY BY RECIPIENT COUNTRIES AND EXPECT THIS LAW TO BE VIGOROUSLY ENFORCED.

11.8 CONTINUE NORMAL TRADE RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA

THE NATION'S GOVERNORS CALL ON THE PRESIDENT AND CONGRESS TO MAINTAIN NORMAL TARIFF TREATMENT FOR THE PEOPLE'S REPUBLIC OF CHINA (CHINA). THE GOVERNORS BASE THIS RECOMMENDATION ON IMPORTANT U.S. ECONOMIC AND SECURITY INTERESTS.

MAINTAINING NORMAL TARIFF TREATMENT MEANS THAT CHINA WILL CONTINUE TO HAVE NORMAL TRADE RELATIONS WITH THE UNITED STATES. FREE AND FAIR TRADE BETWEEN THE TWO NATIONS HAS SERVED BOTH NATIONS WELL AND WILL HELP TO BETTER THE QUALITY OF LIFE FOR THE CHINESE PEOPLE.

THE GOVERNORS BELIEVE THAT CHINA MUST MAKE SIGNIFICANT PROGRESS IN IMPROVING HUMAN RIGHTS. THE GOVERNORS ALSO BELIEVE THAT CONTINUED TRADE AND COMMUNICATION WITH CHINA WILL HELP PROMOTE OPENNESS AND ADHERENCE TO INTERNATIONAL NORMS AND ALLOW FOR THE DISSEMINATION OF DEMOCRATIC IDEALS THROUGHOUT CHINA.

THEREFORE, THE GOVERNORS URGE CONGRESS AND THE PRESIDENT TO MAINTAIN NORMAL TRADING RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA.

11.9 MANAGE OUR BORDERS

THE FEDERAL GOVERNMENT SHOULD WORK TO ENSURE THE EFFICIENT FLOW OF TRADE AND GOODS AT BORDER CROSSINGS, WHICH FALLS UNDER ITS JURISDICTION. GOVERNORS URGE COORDINATION AMONG FEDERAL AGENCIES AT BORDER CROSSINGS TO EXPEDITE TRADE FLOW. WITH THE ENACTMENT OF THE NORTH AMERICAN FREE TRADE AGREEMENT, IT IS EQUALLY IMPORTANT FOR FEDERAL, STATE, AND LOCAL GOVERNMENTS TO COLLABORATE WHEN PROVIDING ADEQUATE INFRASTRUCTURE TO FACILITATE THE FLOW OF TRADE INTO THE UNITED STATES.

THE FEDERAL GOVERNMENT SHOULD CONSULT WITH STATES WHENEVER FEDERAL LEGISLATION OR AGENCY ACTIONS IMPACT THE FLOW OF COMMERCE AND TRAFFIC ALONG U.S. LAND BORDERS. FOR EXAMPLE, SECTION 110 OF THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 REQUIRED THE U.S. IMMIGRATION AND NATURALIZATION SERVICE (INS) TO DEVELOP AND IMPLEMENT AN AUTOMATED SYSTEM OF ENTRY AND EXIT CONTROLS FOR EVERY ALIEN COMING INTO AND LEAVING THE UNITED STATES. THE APPLICATION OF THIS PROVISION TO U.S. LAND BORDERS WILL CREATE SERIOUS DELAYS AND SIGNIFICANT PROBLEMS FOR STATES AND THEIR ECONOMIES. THOUGH CONGRESS SUSPENDED IMPLEMENTATION OF

THE ENTRY-EXIT CONTROL SYSTEM UNTIL MARCH 30, 2001, GOVERNORS BELIEVE THAT THE SYSTEM SHOULD NOT BE IMPLEMENTED UNTIL CONGRESS AND THE PRESIDENT CAN ENSURE THAT IT WILL NOT DISRUPT TRADE, TOURISM, OR OTHER LEGITIMATE CROSS-BORDER TRAFFIC AT LAND BORDER POINTS OF ENTRY.

11.10 REASSESS TRADE STATUS WITH VIETNAM WHEN CONDITIONS ARE MET

THE GOVERNORS BELIEVE IT IS VITALLY IMPORTANT THAT VIETNAM FULLY COOPERATE WITH THE UNITED STATES IN MAKING THE FULLEST POSSIBLE ACCOUNTING FOR AMERICANS MISSING IN ACTION FROM THE WAR IN SOUTHEAST ASIA. ONCE FULL COOPERATION IS ACHIEVED IN ACCOUNTING FOR PRISONERS OF WAR AND AMERICANS MISSING IN ACTION, AND UPON CONCLUSION OF A BILATERAL TRADE AGREEMENT, THE FEDERAL GOVERNMENT SHOULD GIVE VIETNAM NORMAL TRADE RELATIONS STATUS. RECOGNIZING THAT INTERNATIONAL TRADE IS AN INTEGRAL PART OF EVERY NATION'S ECONOMY, THE UNITED STATES SHOULD EXPAND TRADE RELATIONS WITH NATIONS THAT HAVE MADE PROGRESS TOWARD MARKET ECONOMY SYSTEMS. VIETNAM HAS TAKEN STEPS TO PRIVATIZE ENTERPRISES AND OPEN MARKETS TO FOREIGN COMPANIES AND IS CONTINUING TO DEVELOP AN OPEN MARKET ECONOMY.

11.11 ASSIST IN DRIVER'S LICENSE RECIPROCITY

AS A SERVICE TO U.S. CITIZENS LIVING ABROAD AND AS A WAY TO STRENGTHEN TIES BETWEEN FOREIGN COUNTRIES AND INDIVIDUAL STATES, MANY STATES HAVE ENTERED INTO DRIVER'S LICENSE RECIPROCITY AGREEMENTS WITH FOREIGN COUNTRIES. RECIPROCITY AGREEMENTS GENERALLY ALLOW FOREIGN DRIVERS IN THE UNITED STATES OR AMERICAN DRIVERS ABROAD TO BE EXEMPTED FROM LOCAL DRIVER'S LICENSE TEST REQUIREMENTS. TYPICALLY, THESE AGREEMENTS ARE SIGNED ONLY AFTER THE STATE AND FOREIGN NATIONS HAVE DETERMINED THAT THE STANDARDS AND CRITERIA FOR KNOWLEDGE, ROAD TEST, AND SKILLS TRAINING ARE MUTUALLY ACCEPTABLE. THE GOVERNORS SUPPORT VOLUNTARILY NEGOTIATED DRIVER'S LICENSE RECIPROCITY AGREEMENTS AND URGE THE U.S. DEPARTMENT OF STATE TO CONTINUE ITS EFFORTS TO ASSIST THE STATES IN REACHING SUCH AGREEMENTS.

~~11.1 Preamble~~

~~International trade increasingly has become important to stimulate U.S. economic growth and job creation. Most Governors support existing trade agreements, such as the North American Free Trade Agreement (NAFTA) and the Uruguay Round negotiations on the General Agreement on Tariffs and Trade (GATT), which resulted in the World Trade Organization (WTO). The Governors believe such agreements will continue to create jobs by opening a wide range of opportunities for businesses to expand into foreign markets. As job creators and export promoters, the Governors will continue to be active participants in the formulation of trade policy.~~

~~The United States participates in two summits of critical importance to future trade initiatives. The Asia-Pacific Economic Cooperation (APEC) summit held its second meeting in November 1996 in the Philippines. The eighteen member nations of APEC are committed to achieving free trade among APEC's members by 2020. Southeast Asian nations have the fastest-growing economies in the world.~~

~~The Summit of the Americas, last held in Miami in December 1994, also concluded with a declaration stressing the need to create a free trade area of the Americas in order to achieve free trade in the western hemisphere by 2005. Latin American nations and the Pacific Rim will be the United States' largest trading partners in the future.~~

~~The Governors of the fifty states and the territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands support the following trade policy objectives.~~

~~11.2 Expand International Trade~~

~~The United States Trade Representative (USTR) should expand existing trade agreements in an effort to achieve greater economic prosperity through global free trade. This includes implementation of regional free trade agreements, as expressed in the goals of the APEC summit and the Summit of the Americas, as well as multilateral and sectoral agreements such as the Multilateral Agreement on Investment and the Information Technology Agreement. Concurrent with its efforts to expand trade, the federal government should strengthen its commitment to workforce development programs as outlined in policy HR-1, Governors' Principles to Ensure Workforce Excellence.~~

~~11.2.1 **NAFTA Expansion.** Most Governors support Chilean accession to NAFTA and believe the federal government should encourage other Latin American and Caribbean nations to become parties to the agreement.~~

~~11.3 Renew "Fast-Track" Trade Negotiation Authority for the President~~

~~The Governors call on Congress to immediately renew fast-track trade negotiation authority for the President, which expired in late 1994. It is important to note that every U.S. President since 1974 has received fast-track trade negotiation authority from Congress. Fast-track authority gives the President the negotiating authority necessary to conclude increasingly complex trade agreements. Without fast-track authority, U.S. ability to expand and open markets around the world will be constrained significantly, and U.S. businesses will likely lose market opportunities and jobs to other countries.~~

~~11.4 International Monetary Fund~~

~~Governors call on the federal government to adequately fund the efforts of the International Monetary Fund (IMF) to stabilize troubled Asian economies. Many of these Asian nations serve as important trading partners by importing American agricultural commodities, manufactured goods, and information technologies. As promoters of economic development and job creation activities, Governors understand the importance of international efforts to stabilize distressed markets. If the IMF does not have adequate resources to promote stability now and in the future, American companies and workers involved in trade with Asian nations could suffer significant negative consequences.~~

~~11.5 Continuation of Normal Trade Relations with the People's Republic of China~~

~~The nation's Governors call on the President and Congress to maintain normal tariff treatment for the People's Republic of China (China). The Governors base their recommendation on important U.S. economic and security interests.~~

~~Maintaining normal tariff treatment means that China will continue to have normal trade relations with the United States. Free and fair trade between the two nations has served both nations well and will help to better the quality of life for the Chinese people. However, the Governors believe that China must make significant progress in improving human rights. The Governors also believe that continued trade~~

~~and communication with China will help promote openness and adherence to international norms and allow for the dissemination of democratic ideals throughout China.~~

~~Therefore, the Governors urge Congress and the President to maintain normal trading relations with the People's Republic of China.~~

~~**11.6 Ensure a State and Territorial Role in Trade Agreement Negotiation**~~

~~Federal trade negotiators must be aware of the potential impacts a trade agreement may have on new or existing state or territorial laws. The federal government should consult regularly with states and territories on the development of specific provisions within an agreement that may have an impact on state or territorial law.~~

~~**11.7 Ensure a State and Territorial Role in Trade Agreement Implementation**~~

~~The federal government should ensure an effective state and territorial role in the implementation of NAFTA and subsequent trade agreements and participation in relevant WTO activities. Federal agencies must work with states to address conflicts between state laws and provisions of trade treaties. Effective state and territorial participation requires adequate technical support from federal agencies.~~

~~**11.8 Promote Effective Coordination Between States and Territories and the Federal Government**~~

~~11.8.1 **Export Promotion.** States, territories, and the federal government play significant roles in promoting the export of U.S. goods and services into foreign markets. The federal government should coordinate with states and territories to maximize the effectiveness of federal export promotion programs.~~

~~11.8.1.1. **Agriculture.** States and territories should work with the federal government to ensure support for state and territorial agricultural market development programs, including regional marketing associations, to the extent allowed under international treaties.~~

~~If nonagricultural federal export promotion programs are consolidated, the Governors should have input on how those resources will be redirected to state and territorial export promotion programs. The Governors should be provided with the flexibility and discretion to target federal export promotion assistance in a way that will best serve the needs of their individual states and territories, such as the promotion of small and medium-sized businesses or agricultural concerns.~~

~~The Governors support the administration's efforts to open new and maintain existing markets for U.S. agricultural products.~~

~~11.8.2 **Public Education.** States and territories should work with the federal government to expand citizen understanding of the importance of international trade and work with the private sector to develop lifetime educational opportunities that prepare Americans to compete successfully in a changing global economy.~~

~~11.8.3 **Driver's License Reciprocity.** U.S. citizens living and working abroad often face significant obstacles and expenses when attempting to qualify for a foreign driver's license. As a service to U.S. citizens living abroad and as a way to strengthen ties between foreign countries and individual states, many states have entered into driver's license reciprocity agreements with foreign countries. For example, as of September 1997, Alabama, Arizona, Colorado, Connecticut, Delaware, Illinois, Kansas, Missouri, North Carolina, Oregon, South Dakota, and Utah had entered into reciprocity agreements with Germany. Reciprocity agreements generally allow foreign drivers in the United States or American drivers abroad to be exempted from driver's license test requirements. Typically, these agreements are signed only after the state and foreign nation have determined that the standards and criteria for knowledge, road test, and skills training are mutually acceptable. The U.S. Department of State has played a crucial role in facilitating contacts between states and other nations. The Governors support voluntarily negotiated reciprocity agreements and urge the State Department to continue its efforts to assist the states in reaching such agreements.~~

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).

Adopted Winter Meeting 1997; revised Winter Meeting 1998 and Annual Meeting 1998.

EDC-13. IMPLEMENTATION OF THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA 21)

13.1 PREAMBLE

THE GOVERNORS ARE COMMITTED TO MAINTAINING A HIGHLY EFFECTIVE SURFACE TRANSPORTATION SYSTEM. EFFICIENT, SAFE, AND PRODUCTIVE ROAD AND TRANSIT INFRASTRUCTURE AND OPERATIONS PROVIDE THE FOUNDATION FOR OUR NATION'S ECONOMIC STRENGTH. THEY ARE ESSENTIAL FOR THE PERSONAL MOBILITY THAT IS CENTRAL TO THE AMERICAN QUALITY OF LIFE. STATE AND LOCAL GOVERNMENTS FINANCE MORE THAN HALF OF ALL PUBLIC INVESTMENT IN SURFACE TRANSPORTATION. IN ADDITION TO THEIR FINANCING RESPONSIBILITIES, STATE AND LOCAL GOVERNMENTS OWN AND OPERATE MOST OF THE NATION'S SURFACE TRANSPORTATION SYSTEMS.

TRANSPORTATION INFRASTRUCTURE IS THE ENGINE THAT POWERS OUR ECONOMY. PUBLIC TRANSPORTATION INVESTMENTS PROVIDE GREATER RETURNS THAN DO OTHER AREAS OF GOVERNMENT SPENDING AND MANY PRIVATE SECTOR INVESTMENTS. THE TRANSPORTATION INDUSTRY EMPLOYS MORE THAN 12 MILLION PEOPLE. ONE OF EVERY FIVE DOLLARS OF TOTAL HOUSEHOLD SPENDING IS INVESTED IN TRANSPORTATION, AND THE TRANSPORTATION INDUSTRY ACCOUNTS FOR 11 PERCENT OF THE NATION'S ECONOMIC ACTIVITY.

CONTINUED ECONOMIC GROWTH AND THE COMPETITIVENESS OF AMERICAN BUSINESSES AND WORKERS DEPEND ON A STRONG MULTIMODAL SURFACE TRANSPORTATION NETWORK. TODAY, BUSINESSES EMPLOY JUST-IN-TIME MANUFACTURING AND STREAMLINED DISTRIBUTION SYSTEMS TO REDUCE THE COST AND TIME NECESSARY TO PRODUCE AND DISTRIBUTE GOODS. THESE EFFICIENCY GAINS DEPEND HEAVILY ON LOW-COST, SAFE AND RELIABLE SURFACE TRANSPORTATION. INCREASED FEDERAL, STATE, AND LOCAL HIGHWAY INVESTMENTS IN THE PAST DECADE HAVE PRODUCED SAFER, FASTER, MORE EFFICIENT AND MORE COMFORTABLE COMMERCIAL AND PERSONAL TRAVEL. PRIVATE AND PUBLIC INVESTMENTS BY RAIL, TRUCKING, AND LOGISTICS FIRMS HAVE REDUCED FREIGHT TRANSPORT COSTS IN A GROWING INTERMODAL NETWORK.

FULL AND PROMPT IMPLEMENTATION OF THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA 21) IS THE FOUNDATION FOR ACHIEVING THE NATION'S HIGH-PRIORITY SURFACE TRANSPORTATION OBJECTIVES. THE SURFACE TRANSPORTATION PARTNERSHIP, EMBODIED IN TEA 21, MUST BE FULLY AND EFFECTIVELY IMPLEMENTED

IN ACCORD WITH ITS PROVISIONS, TAKING INTO ACCOUNT NATIONAL, STATE, AND LOCAL NEEDS, RESOURCES, AND RESPONSIBILITIES.

13.2 FINANCING

THE FINANCING SYSTEM FOR SURFACE TRANSPORTATION IS WELL ESTABLISHED BY LAW. IT IS BASED ON THE STATE-FEDERAL PARTNERSHIP TO UTILIZE THE USER TAXES AND FEES DEDICATED TO THE FEDERAL HIGHWAY TRUST FUND TO MAINTAIN AND IMPROVE OUR NATION'S HIGHWAYS, BRIDGES, AND TRANSIT SYSTEMS. THE FEDERAL HIGHWAY TRUST FUND WAS ESTABLISHED IN 1956 TO HELP FINANCE HIGHWAY INVESTMENT ACTIVITIES ACROSS THE NATION AND HAS BEEN INSTRUMENTAL IN ESTABLISHING A WORLD-CLASS TRANSPORTATION SYSTEM.

THE NATION'S GOVERNORS COMMEND CONGRESS FOR RESTORING THE INTEGRITY AND RELIABILITY OF THE DEDICATED HIGHWAY TRUST FUND BY GUARANTEEING THAT ALL FEDERAL HIGHWAY TRUST FUND REVENUES WILL BE DISTRIBUTED EACH YEAR FOR THEIR INTENDED PURPOSE. THIS GUARANTEE OF FUNDING IN TEA 21 WILL PROVIDE STATES WITH THE STABILITY THEY NEED TO BETTER PLAN AND MANAGE LONG-TERM CAPITAL INVESTMENTS.

ALTHOUGH TEA 21 INCREASES FEDERAL INVESTMENT IN SURFACE TRANSPORTATION PROGRAMS TO RECORD LEVELS, IT IS PREDOMINANTLY FUNDED FROM USER REVENUES DEDICATED TO THE HIGHWAY TRUST FUND. THIS APPROACH IS FULLY CONSISTENT WITH THE NATIONAL GOAL OF A BALANCED FEDERAL BUDGET. THIS INCREASED INVESTMENT WILL CREATE JOBS, IMPROVE PRODUCTIVITY, AND ENHANCE OUR NATION'S COMPETITIVENESS IN THE GLOBAL ECONOMY. AT A MINIMUM, CONGRESS AND THE ADMINISTRATION MUST KEEP THE PROMISE MADE TO THE NATION IN TEA 21 TO FUND THE FEDERAL HIGHWAY AND TRANSIT PROGRAMS AT THE GUARANTEED LEVELS IN TEA 21. CONGRESS AND THE ADMINISTRATION MUST ENSURE THAT ALL INCREASES IN REVENUE TO THE HIGHWAY TRUST FUND ARE DIRECTED TO THEIR INTENDED PURPOSES AS OUTLINED IN TEA 21. MOREOVER, WHILE MEETING THESE LEVELS, CONGRESS AND THE ADMINISTRATION MUST NOT SACRIFICE INVESTMENTS IN OTHER MODES OF TRANSPORTATION OR OTHER NONTRANSPORTATION PROGRAMS.

13.3 MAINTAINING STATE AUTHORITY AND FLEXIBILITY

STATE GOVERNMENTS ARE CENTRAL TO THE ORGANIZATION AND MANAGEMENT OF TRANSPORTATION SYSTEMS THAT BOTH SERVE LOCAL COMMUNITIES AND THEIR RESIDENTS AND INTERCONNECT TO CREATE AN EFFICIENT NATIONAL SYSTEM. TO SUPPORT AND ENHANCE THE CONTINUED EFFECTIVENESS OF STATE TRANSPORTATION

PROGRAMS, THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO DO THE FOLLOWING.

13.3.1 **MAINTAIN STATE GOVERNMENT AUTHORITY TO ENSURE SOUND STATE TRANSPORTATION SYSTEMS.** CONGRESS AND THE ADMINISTRATION SHOULD NOT ACT TO WEAKEN THE PRIMACY OF STATEWIDE PLANNING AND PROJECT SELECTION AND THEREBY WEAKEN THE ABILITY OF STATES TO MEET THE DIVERSE NEEDS OF URBAN, SUBURBAN, AND RURAL COMMUNITIES. STATES HAVE A LONG HISTORY OF DRAWING ON THE EXPERTISE OF THE FEDERAL AND LOCAL GOVERNMENTS, METROPOLITAN PLANNING ORGANIZATIONS (MPOS), AND PRIVATE ENTERPRISE, AND WILL CONTINUE TO WORK WITH THESE ENTITIES IN DELIVERING TEA 21 PROGRAMS TO THE PUBLIC. CONGRESS AND THE ADMINISTRATION SHOULD NOT ENACT MEASURES OR IMPLEMENT REGULATIONS OR GUIDANCE THAT DISTORT STATEWIDE PRIORITIES OR PREEMPT STATE AUTHORITY.

13.3.2 **PROVIDE FLEXIBILITY TO RESPOND TO PARTICULAR CIRCUMSTANCES AND NEEDS.** TEA 21 PROVIDES EACH STATE WITH GENUINE FLEXIBILITY TO MEET THE PRIORITY TRANSPORTATION NEEDS OF THAT STATE AND ITS UNITS OF LOCAL GOVERNMENT. STATES WELCOME THIS FLEXIBILITY. INDIVIDUAL STATE PLANNING PROCESSES MUST DETERMINE THE RIGHT MIX OF INVESTMENTS. THE GOVERNORS COMMEND CONGRESS FOR STREAMLINING AND SIMPLIFYING THE PROCESS THROUGH WHICH FEDERAL FUNDS FLOW TO STATES AND URGE THE ADMINISTRATION TO IMPLEMENT TEA 21 IN A MANNER CONSISTENT WITH STATE FLEXIBILITY, WITHOUT CREATING NEW SUBALLOCATIONS OR REGULATORY REQUIREMENTS.

13.3.3 **REFRAIN FROM IMPOSING UNFUNDED MANDATES.** THE GOVERNORS OPPOSE UNFUNDED FEDERAL MANDATES AND SUPPORT EFFORTS TO ELIMINATE THEM. ANY EXPANSION OF REQUIREMENTS ON STATES MUST BE ACCOMPANIED BY AN INCREASE IN THE FEDERAL FINANCIAL COMMITMENT TO STATES.

13.3.4 **USE INCENTIVES, NOT SANCTIONS, TO ACHIEVE SPECIFIC SURFACE TRANSPORTATION OBJECTIVES.** THE GOVERNORS STRONGLY BELIEVE THAT POSITIVE INCENTIVES TO ENCOURAGE THE ACHIEVEMENT OF NATIONAL GOALS ARE MORE EFFECTIVE AND PRODUCTIVE THAN SANCTIONS. THEY APPLAUD CONGRESS FOR PROVIDING POSITIVE INCENTIVES IN TEA 21 TO ENCOURAGE STATES TO INCREASE SAFETY BELT USE AND REDUCE THE INCIDENCE OF IMPAIRED DRIVING. THE GOVERNORS OPPOSE THE USE OF SANCTIONS AND URGE INSTEAD THE USE OF FEDERAL INCENTIVES IN LIMITED INSTANCES TO STIMULATE STATES TO ADOPT NATIONAL STANDARDS.

13.3.5 **ACHIEVING TRANSPORTATION OBJECTIVES WHILE PROTECTING THE ENVIRONMENT.** THE GOVERNORS STRONGLY SUPPORT ENVIRONMENTAL PROTECTION EFFORTS. STATES MUST HAVE THE NECESSARY FLEXIBILITY TO ASSIST AND ADVANCE FEDERAL ENVIRONMENTAL EFFORTS WHILE PRESERVING THE INTEGRITY OF A COMPREHENSIVE, INTEGRATED, SURFACE TRANSPORTATION PROGRAM. THE GOALS OF SENSIBLE ENVIRONMENTAL REGULATION, TRANSPORTATION IMPROVEMENT, AND ECONOMIC DEVELOPMENT ARE COMPATIBLE. THE GOVERNORS STRONGLY SUPPORT THE INTENT OF TEA 21 TO STREAMLINE THE ENVIRONMENTAL REVIEW PROCESS REQUISITE FOR TRANSPORTATION PROJECTS. THE ADMINISTRATION SHOULD ACT PROMPTLY TO IMPLEMENT THAT INTENT.

13.3.6 **MAINTAIN A STRONG EMPHASIS ON SAFETY.** GOVERNORS WANT TRAVEL TO BE AS SAFE AS POSSIBLE. IN 1997 MORE THAN 40,000 AMERICANS LOST THEIR LIVES AND MORE THAN 3 MILLION AMERICANS WERE INJURED IN MOTOR VEHICLE COLLISIONS. THE FATALITY AND INJURY RATE HAS DECLINED OVER THE PAST TWO DECADES, BUT THE NUMBER OF DEATHS AND INJURIES IS STILL FAR TOO HIGH. TO REDUCE THE NUMBER OF DEATHS AND INJURIES ON THE ROADS, THE GOVERNORS SUPPORT STRENGTHENED SAFETY PROGRAMS. FEDERAL AID REQUIREMENTS SHOULD BE SIMPLIFIED, AND EACH STATE SHOULD BE PERMITTED TO FOCUS FEDERAL HIGHWAY SAFETY RESOURCES ON ITS MOST PRESSING PROBLEMS. CONGRESS AND THE ADMINISTRATION SHOULD NOT MANDATE ADDITIONAL NATIONAL SAFETY STANDARDS WITHOUT STATE INVOLVEMENT AND CONCURRENCE.

13.3.7 **IMPROVE PROJECT DELIVERY TIMELINESS.** THE GOVERNORS SUPPORT THE TEA 21 PROVISIONS THAT STREAMLINE AND ELIMINATE DUPLICATIVE ADMINISTRATIVE PROCESSES IN ORDER TO IMPROVE THE TIMELINESS AND ADVANCEMENT OF CRITICAL TRANSPORTATION IMPROVEMENTS. THE GOVERNORS STAND READY TO WORK WITH FEDERAL AGENCIES TO FURTHER IMPROVE AND ENHANCE THE PROJECT DEVELOPMENT PROCESS.

THE GOVERNORS PLEDGE THEIR COMMITMENT TO WORK WITH CONGRESS AND THE PRESIDENT ON THESE AND OTHER ISSUES IMPORTANT TO THE NATION'S SURFACE TRANSPORTATION SYSTEM.

~~EDC-13. SURFACE TRANSPORTATION FINANCING~~

~~This year, our nation will make critical decisions affecting the future of our surface transportation system, both highways and public transit. These decisions will determine both the funding levels and the structure for a federal program aimed at providing our country with a first-rate transportation system.~~

~~By any measure, current investment in surface transportation is simply insufficient to meet the needs of our country. Most significant, the federal portion of the investment in surface transportation has fallen over the past ten years, and state and local governments have assumed the lion's share of the transportation financing burden. This trend must be reversed.~~

~~Growing Highway Trust Fund revenues will permit significantly higher federal spending for transportation programs over the next six years. A much greater share of Highway Trust Fund revenues can and should be spent for transportation investments than is implied in recent congressional and administration budget proposals. Governors support the movement in Congress for increased transportation spending and believe it should be one of the highest priorities in budget discussions. Additional resources resulting from an improved budget outlook should first be used to restore dedicated trust fund revenues funded by user fees.~~

~~The Governors are aware that federal fiscal circumstances require prudence in setting spending priorities and continue to support efforts to balance the budget. However, reducing federal transportation investment and allowing our nation's transportation infrastructure to fall further into disrepair will result in lost profits, jobs, and productivity, and ultimately lower tax revenues to the federal government.~~

~~The financing system for surface transportation is well established. It is based on the state-federal partnership to use the gas tax for transportation investment. The nation's Governors applaud Congress' decision to transfer the 4.3 cents per gallon fuel tax from the general fund to the Highway Trust Fund. The Governors urge the federal government to take the following steps.~~

- ~~Restore the integrity and reliability of the dedicated trust fund. All dedicated user fees and the interest accrued on existing and future trust fund balances should be promptly distributed for their intended purposes. Congress should enact legislation that permanently provides that these distributions take place automatically and annually without restriction.~~
- ~~Make transportation spending one of the highest priorities in budget discussions. Spending all dedicated Highway Trust Fund revenues is fully consistent with the national goal of a balanced budget and should be a priority of Congress.~~

~~The Governors pledge their commitment to working with Congress and the President on these and other issues important to the future of the nation's surface transportation system.~~

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Annual Meeting 1996; revised Winter Meeting 1997, Annual Meeting 1997, and Winter Meeting 1998.

EDC-14. AFFORDABLE HOUSING

14.1 PREAMBLE

THE GOVERNORS SUPPORT THE INTEGRATION AND COORDINATION OF PUBLIC AND PRIVATE RESOURCES TO MAKE AVAILABLE EFFECTIVE, AFFORDABLE HOUSING SERVICES WITH GOALS THAT RANGE FROM PREVENTING HOMELESSNESS TO PROMOTING HOMEOWNERSHIP AND THAT ENCOURAGE SELF-SUFFICIENCY AND PROMOTE ECONOMIC OPPORTUNITY. THE GOVERNORS ENCOURAGE THE FEDERAL GOVERNMENT TO SUPPORT FLEXIBILITY AND STATE DISCRETION IN HOUSING PROGRAMS THAT INVOLVE A PARTNERSHIP BETWEEN STATES AND THE FEDERAL GOVERNMENT. LEGISLATIVELY MANDATED SET-ASIDES IN PROGRAMS SUCH AS THE HOME INVESTMENT PARTNERSHIPS PROGRAM AND THE LOW-INCOME HOUSING TAX CREDIT SHOULD BE AVOIDED BECAUSE THEY LIMIT FINANCIAL RESOURCES FOR STATE-DETERMINED PRIORITIES.

14.2 PERCENT CAP ON RENTAL PAYMENTS

THE PUBLIC HOUSING REFORMS THAT BECAME LAW IN 1998 PROVIDE NEW FLEXIBILITY FOR TENANTS TRANSITIONING INTO WORK. THE NEW PROVISIONS WILL HELP GOVERNORS SUCCEED IN IMPLEMENTING WELFARE REFORM. EVEN GREATER FLEXIBILITY IS NECESSARY, AND HOUSING AGENCIES SHOULD HAVE THE FLEXIBILITY TO TAILOR PROGRAMS THAT SUPPORT WORK BASED ON LOCAL NEEDS.

14.3 EXISTING PROGRAMS

GOVERNORS STRONGLY SUPPORT THE HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM AND THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG). THE HOME PROGRAM IS A SUCCESSFUL AND PROVEN MODEL OF A STATE-FEDERAL PARTNERSHIP THAT SHOULD BE USED IN OTHER HOUSING AND DEVELOPMENT AREAS. HOME WAS DESIGNED AS A FEDERAL/STATE/LOCAL PROGRAM, WITH STATES RECEIVING A SUBSTANTIAL SHARE OF THE FUNDING, HAVING THE FLEXIBILITY TO FIT HOME FUNDS INTO THE FULL RANGE OF HOUSING SERVICES, AND HAVING THE AUTHORITY TO SPEND FUNDS ANYWHERE WITHIN A STATE RATHER THAN ONLY IN RURAL AREAS.

THE GOVERNORS SUPPORT THE HOUSING OPPORTUNITIES FOR PEOPLE WITH AIDS (HOPWA) PROGRAM ADMINISTERED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. THIS PROGRAM HELPS SAVE LIVES BY HELPING PEOPLE WITH HIV AND AIDS GET ADEQUATE HOUSING.

THE GOVERNORS ALSO SUPPORT EFFECTIVE FEDERAL PROGRAMS TO ADDRESS THE AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT NEEDS OF RURAL AMERICA.

THE LOW-INCOME HOUSING TAX CREDIT IS A VITAL TOOL IN PRODUCING NEW, AFFORDABLE HOUSING. GOVERNORS STRONGLY SUPPORT THE PERMANENCY OF THE LOW-INCOME HOUSING TAX CREDIT AND BELIEVE THAT STATE ALLOCATIONS SHOULD BE INCREASED TO COMPENSATE FOR THE IMPACT OF INFLATION SINCE THE TAX CREDIT WAS CREATED. THE TAX CREDIT SHOULD ALSO BE INDEXED FOR INFLATION.

THE GOVERNORS ALSO RECOGNIZE THE IMPORTANCE OF MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES, WHICH ARE CRITICAL TO THE CONTINUED AVAILABILITY OF AFFORDABLE HOUSING. THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO IMMEDIATELY INCREASE AND INDEX THE STATE PRIVATE ACTIVITY VOLUME CAP TO COMPENSATE FOR THE IMPACT OF INFLATION. THE GOVERNORS ASK THAT INCREASED FLEXIBILITY BE PROVIDED IN THE TAX CREDIT PROGRAM, TO PERMIT MORE OF THE FUNDS TO BE USED TO PROMOTE HOMEOWNERSHIP, AS WELL AS IN THE USE OF PROCEEDS OF TAX-EXEMPT HOUSING BONDS. THESE CHANGES WOULD GIVE STATES MORE PROGRAMMATIC FLEXIBILITY TO ADDRESS FUTURE DEMANDS FOR HOUSING ASSISTANCE AS FEDERAL PROGRAMS ARE RESTRUCTURED.

GOVERNORS SUPPORT FEDERAL LEGISLATION ENACTED IN 1997 THAT ALLOWS CERTAIN SECTION 8 PROJECT-BASED CONTRACTS TO BE RESTRUCTURED AND BELIEVE THAT THE LAW SHOULD BE IMPLEMENTED QUICKLY AND EFFECTIVELY WITH STRICT ATTENTION PAID TO CONGRESSIONAL INTENT. WILLING STATES SHOULD CONTINUE TO BE GIVEN A PRIORITY ROLE IN WORKING WITH THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) TO PERFORM CONTRACT RESTRUCTURINGS, AND STATES SHOULD BE GIVEN AS MUCH FLEXIBILITY AS POSSIBLE IN RENEGOTIATING CONTRACTS. THE GOVERNORS ASK THAT EXISTING OBLIGATIONS OF THE FEDERAL GOVERNMENT TO STATE-FINANCED PROJECTS (CONTINUING CONTRACTS) BE HONORED, BECAUSE CHANGES WOULD JEOPARDIZE STATES' ABILITY TO MEET FINANCING OBLIGATIONS UNDER OUTSTANDING BONDS.

14.3.1 **DATA TRACKING SYSTEMS.** THE GOVERNORS SUPPORT FEDERAL EFFORTS TO COMPILE ACCURATE AND TIMELY INFORMATION ABOUT THE IMPACT OF FEDERALLY FUNDED HOUSING PROGRAMS. HOWEVER, WE BELIEVE THAT THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SHOULD NOT REQUIRE STATES TO IMPLEMENT TRACKING SYSTEMS SUCH AS THE INTEGRATED DISBURSEMENT AND INFORMATION

SYSTEM AND THE DEPARTMENTAL GRANTS MANAGEMENT SYSTEM UNLESS THEY ARE APPROPRIATELY FIELD-TESTED, FULLY FUNCTIONING, COMPATIBLE WITH EXISTING STATE SYSTEMS, AND FUNDED FOR THE COST OF CONVERSION AND ONGOING OPERATIONS.

14.4 PROGRAMS SERVING THE HOMELESS

THE GOVERNORS STRONGLY SUPPORT COMBINING THE SEVEN PROGRAMS AUTHORIZED BY THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT INTO A BLOCK GRANT TO STATE AND LOCAL GOVERNMENTS (SEE EC-1, BLOCK GRANT POLICY). STATES SHOULD BE GIVEN MAXIMUM FLEXIBILITY IN A HOMELESS BLOCK GRANT, INCLUDING THE ABILITY TO EXPEND FUNDS IN RURAL AND URBAN AREAS AND LOW MATCH REQUIREMENTS THAT CAN BE MADE UP OF VOLUNTEER OR SUBGRANTEE RESOURCES. A BLOCK GRANT SHOULD NOT INCLUDE SET-ASIDES FOR OR CAPS ON SPECIFIC ACTIVITIES. STATES UNDERSTAND THE UNIQUE CHARACTERISTICS OF THEIR HOMELESS POPULATIONS, AND GOVERNORS ASK THAT THE FEDERAL GOVERNMENT RECOGNIZE THE ABILITY OF THE STATES TO MAKE GOOD DECISIONS ABOUT FUNDING PRIORITIES.

14.5 MANUFACTURED HOUSING REGULATIONS

THE GOVERNORS URGE THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO UPDATE FEDERAL MANUFACTURED HOUSING STANDARDS AND REGULATIONS. THE PROCESS FOR UPDATING THE STANDARDS MUST BE FAIR AND EFFECTIVE FOR STATES, INDUSTRY, AND CONSUMERS. ANY BODY CHARGED WITH UPDATING STANDARDS SHOULD HAVE BALANCED REPRESENTATION FROM ALL AFFECTED PARTIES. STATE AUTHORITY TO REGULATE MANUFACTURED HOUSING SHOULD NOT BE REDUCED AND THE STATES' PARTNERSHIP ROLE WITH HUD IN THE ADMINISTRATION AND ENFORCEMENT OF THE FEDERAL MANUFACTURED HOUSING PROGRAM MUST BE PRESERVED.

~~**14.1 Preamble**~~

~~The Governors support the integration and coordination of public and private resources to make available effective, affordable housing services that range from preventing homelessness to promoting homeownership and that encourage self-sufficiency and promote economic opportunity. States and local governments should be able to use affordable housing resources to help end welfare dependency. As major partners in the affordable housing arena and as managers of a significant proportion of human services program dollars, states are in a unique leadership position to coordinate these resources in an effective way to end welfare dependency and promote economic self-sufficiency.~~

~~14.2~~ **~~Percent Cap on Rental Payments~~**

~~If Governors are to succeed in implementing welfare reform, programs and practices in other federal programs must support this effort, and disincentives for moving from welfare to work must be minimized. The inflexible requirement that 30 percent of income be paid as rent is a disincentive, and raising the cap higher would be particularly harmful to the success of welfare reform, as well as potentially shifting costs to the states.~~

~~14.3~~ **~~Existing Programs~~**

~~The HOME Investment Partnerships Program (HOME) and the Community Development Block Grant (CDBG) provide successful and proven models of a state-federal partnership that can be used in other housing and development areas. HOME was designed as a federal/state/local program, with states receiving a substantial share of the funding, having the flexibility to fit HOME funds into the full range of housing services, and having the authority to spend funds anywhere within a state rather than only in rural areas. As efforts to streamline and consolidate programs continue, Congress and the administration should use these partnership aspects of the HOME program as a model.~~

~~The Governors also recognize the importance of mortgage revenue bonds, mortgage credit certificates, and the low-income housing tax credit, which are critical to the continued availability of affordable housing, and oppose efforts to remove the permanency of these programs. These are models of effective federal housing programs administered by the states. Therefore, the Governors support increases both in the state private activity volume caps and in state allocations for the tax credit because inflation has seriously eroded their capacity. The Governors ask that increased flexibility be provided in the tax credit program, to permit more of the funds to be used to promote homeownership, as well as in the use of proceeds of tax-exempt housing bonds. These changes would give states more programmatic flexibility to address future demands for housing assistance as federal programs are restructured.~~

~~14.4~~ **~~Federal Housing Efforts~~**

~~The Governors urge Congress and the administration to work more closely with states to address the following priority issues.~~

- ~~Consolidate programs and streamline program administration to better effect local control, ensuring that existing contracts are adequately resolved, and to increase flexibility for states in administering federal programs, including authority for states to use existing legislative or regulatory procedures wherever possible to achieve federal program goals.~~
- ~~Promote programs that are leveraged with private sector funds, that preserve the affordable housing stock, that increase the use of new technologies to lower housing costs, and that remove unnecessary regulatory impediments to the construction of affordable housing.~~
- ~~Develop consistent definitions and eligibility criteria, remove set-asides and rigid planning requirements, and focus on output measures rather than detailed planning documents.~~

~~Beyond these recommendations, the Governors urge the federal government to strengthen efforts to increase homeownership. One approach is to strengthen the public/private partnership. For example, the federal government should study effective incentives to increase the construction of affordable "starter" homes, work with states and localities to identify unnecessary barriers to the construction of affordable housing, and consider other steps that might unleash the resources of the private sector in the pursuit of homeownership.~~

~~14.5~~ **~~Section 8 Project-Based Assistance~~**

~~The Section 8 program involves a federal commitment of rental assistance to owners of federally assisted properties that house low- and moderate-income families. Some of these properties have long-term federally insured mortgages. Others have uninsured, state-financed mortgages backed by state-issued bonds. The Governors ask that existing obligations of the federal government to state-financed projects (continuing contracts) be honored, because changes would jeopardize states' ability to meet financing obligations under outstanding bonds. Federal changes could have serious consequences for all future state financing capacity.~~

~~Regarding expiring contracts, the U.S. Department of Housing and Urban Development is currently testing a method of restructuring contracts to reduce continuing federal subsidy costs. States could be willing to play a major role in developing restructured contracts with project owners in order to save the federal government from the cost of defaults on federally insured properties, protect the limited stock of~~

~~affordable housing, and avoid displacement of low-income residents. State involvement will increase as states are permitted to share in the resources saved in the restructurings. However, to be successful, states need flexibility and authority in many areas, including directing federal resources such as continuing Federal Housing Administration insurance. This authority and flexibility also is needed to ensure that restructuring does not result in added state financial responsibilities. Flexibility also should ensure adequate time to conduct restructuring, especially in states with large numbers of units under expiring contracts.~~

~~14.6 **Programs Serving the Homeless**~~

~~In the past, Congress has considered legislation to block grant federal programs for the homeless. The Governors support consolidation, ask that these programs be adequately funded, and ask that efforts to streamline and consolidate federal programs to serve the homeless and to prevent homelessness include an effective state role.~~

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

EDC-16. RAIL TRANSPORTATION

16.1 PREAMBLE

ACROSS THE NATION, RAIL IS INCREASINGLY BEING USED TO MOVE BOTH PEOPLE AND FREIGHT. INVESTMENTS IN RAIL MEAN GREATER ACCESS, EXPANDED MOBILITY, EFFICIENT MOVEMENT OF GOODS, AND JOB CREATION. A VIBRANT RAIL NETWORK IS ESSENTIAL TO THE MAINTENANCE OF A STRONG ECONOMY. WITHOUT IT, THE UNITED STATES WILL LACK A BALANCED INTERMODAL TRANSPORTATION SYSTEM.

IN SOME AREAS OF THE NATION, RAIL LINE CAPACITY IS AT OR NEAR FULL CAPACITY, WHILE IN OTHER AREAS, USAGE IS STILL WELL BELOW CAPACITY AND COULD BE EXPANDED. UNDER THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA 21), STATES WILL PLAY AN INCREASINGLY LARGER ROLE IN THE DEVELOPMENT AND IMPLEMENTATION OF BOTH PASSENGER AND FREIGHT RAIL, INCLUDING HIGH SPEED RAIL CORRIDORS, COMMUTER RAIL, INTERCITY PASSENGER RAIL, INTERMODAL LINKAGES, AND SHORTLINE AND REGIONAL FREIGHT RAIL DEVELOPMENT. GOVERNORS STRONGLY SUPPORT BOTH NEW AND REVIVED EFFORTS THAT ARE TAKING PLACE NATIONWIDE IN THE DEVELOPMENT OF PASSENGER AND FREIGHT RAIL.

16.2 RECOMMENDATIONS FOR DEVELOPING A STRONG REGIONAL FREIGHT SYSTEM

SINCE THE PASSAGE OF THE STAGGERS RAIL ACT IN 1980, RAILROADS AGAIN HAVE BECOME PROFITABLE AND MORE EFFICIENT. SINCE 1980, RAIL FREIGHT TON MILES HAVE INCREASED BY 49 PERCENT, AVERAGE RAIL RATES ADJUSTED FOR INFLATION ARE DOWN 50 PERCENT, AND TRAIN ACCIDENTS AND DERAILMENTS HAVE DECLINED BY ALMOST 70 PERCENT. THE SHEDDING OF LIGHTLY USED RAIL LINES BY THE LARGER CLASS I RAILROADS HAS PROVIDED LOCAL ECONOMIC OPPORTUNITY THROUGH THE CREATION OF SMALLER SHORTLINES AND REGIONAL RAILROADS. THE SMALLER SHORTLINE OR REGIONAL RAIL COMPANIES HAVE PROVIDED ACCESS TO SHIPPERS WHO OTHERWISE WOULD BE CUT OFF FROM ACCESS TO THE LARGER FREIGHT RAILROADS. SEVERAL STATES HAVE PURCHASED RAIL LINES, CAST OFF BY THE LARGER RAILROADS DURING MERGERS, AND HAVE WORKED TO ESTABLISH SHORTLINE OPERATIONS. THE GOVERNORS BELIEVE THESE EFFORTS ARE ESSENTIAL TO A STRONG REGIONAL FREIGHT SYSTEM THAT WILL BRING MORE JOBS AND GREATER ACCESS TO SHIPPERS, AS WELL AS A STRONG NATIONAL TRANSPORTATION NETWORK.

16.3 FULLY FUND HIGH SPEED RAIL PROGRAMS AUTHORIZED IN TEA 21

GOVERNORS WILL PLAY A CRUCIAL ROLE IN DEVELOPING A SAFE AND EFFICIENT RAIL SYSTEM. THE GOVERNORS URGE CONGRESS TO FULLY FUND SECTION 7201 OF TEA 21, WHICH AUTHORIZES $35 MILLION IN PLANNING AND TECHNOLOGY FUNDING TO DEVELOP AND IMPROVE THE LIFE OF HIGH-SPEED RAIL CORRIDORS. THE HIGH-SPEED RAIL PROVISIONS OF TEA 21 EXTENDED THE ABILITY OF CONGRESS TO PROVIDE FUNDING FOR THE EXISTING HIGH-SPEED RAIL ASSISTANCE PROGRAM CREATED IN THE SWIFT RAIL DEVELOPMENT ACT OF 1994. THESE FUNDS PROVIDE FINANCIAL ASSISTANCE TO PUBLIC AGENCIES FOR HIGH-SPEED CORRIDOR PLANNING ACTIVITIES AND CERTAIN PRECONSTRUCTION ACTIVITIES, INCLUDING RIGHT-OF-WAY ACQUISITION. FURTHER, AS STATES CONTINUE TO ASSUME A GREATER ROLE IN DEVELOPING AND MAINTAINING PASSENGER AND COMMUTER RAIL CORRIDORS, THEY SHOULD BE AFFORDED THE MAXIMUM AMOUNT OF FLEXIBILITY TO INVEST FEDERAL FUNDS IN RAIL CORRIDORS THAT RELIEVE CONGESTION IN HEAVILY TRAVELED CORRIDORS OR THAT CONTRIBUTE TO AIR QUALITY IMPROVEMENTS IN NONATTAINMENT AREAS.

16.4 INVEST IN RAIL SAFETY

THE GOVERNORS SUPPORT FULL FUNDING FOR THE MITIGATION OF GRADE-CROSSING HAZARDS UNDER TEA 21. TECHNOLOGY HAS GREATLY REDUCED THE POTENTIAL OF COLLISIONS BETWEEN TRAINS, BUT MORE PROGRESS CAN BE MADE BY ADDRESSING THE ISSUE OF RAIL GRADE-CROSSINGS. PROVEN EDUCATIONAL EFFORTS, SUCH AS OPERATION LIFESAVER, ALONG WITH TECHNOLOGICAL ADVANCES AND BETTER PLANNING, WILL PLAY A KEY ROLE IN ADDRESSING THIS THREAT.

THE GOVERNORS STRONGLY BELIEVE THAT THE AUTHORITY FOR GRADE-CROSSING IMPROVEMENTS, CLOSURES, GRADE SEPARATIONS, AND RAIL LINE RELOCATION LIES UNDER THE JURISDICTION OF THE STATE. ADEQUATE FUNDING FOR APPLICABLE FEDERAL PROGRAMS WILL ASSIST STATES IN ADDRESSING RAIL GRADE-CROSSING SAFETY IMPROVEMENT.

16.5 FULLY FUND THE NEXT GENERATION HIGH SPEED RAIL PROGRAM

THE NEXT GENERATION HIGH SPEED RAIL PROGRAM HAS BEEN AN EFFECTIVE MEANS OF PROVIDING FEDERAL SEED MONEY TO PROMISING HIGH-SPEED, RAIL-RELATED TECHNOLOGY DEVELOPMENTS. THIS PROGRAM HAS HELPED ENCOURAGE TECHNOLOGY ADVANCES IN COMMUNICATION AND SIGNALING FOR RAIL OPERATIONS, EQUIPMENT DEVELOPMENT, AND ASSISTANCE TO STATE AND LOCAL PLANNERS FOR

CORRIDOR DEVELOPMENT. THE GOVERNORS SUPPORT FULLY FUNDING THIS PROGRAM AT THE AUTHORIZED LEVEL.

16.6 PRESERVE AND ENHANCE THE RAIL FREIGHT NETWORK

THE GOVERNORS STRONGLY SUPPORT THE CONTINUATION AND IMPROVEMENT OF A SOUND, COMPETITIVE RAIL SYSTEM ACROSS THE NATION. THE NATION'S DIVERSIFIED AND GLOBAL ECONOMY DEMANDS COMPETITION IN ALL MODES OF TRANSPORTATION, INCLUDING RAIL, TO PROMOTE ECONOMIC GROWTH, IMPROVE MOBILITY, AND ENSURE SAFETY IN PARTNERSHIP WITH OTHER MODES. AS THE 106^{TH} CONGRESS REAUTHORIZES THE SURFACE TRANSPORTATION BOARD (STB), STB'S ROLE TO PRESERVE RAIL COMPETITION WHEN REVIEWING PROPOSED RAIL MERGERS AND ACQUISITIONS SHOULD BE EXTENDED. FURTHER, CONGRESS SHOULD EMPOWER THE BOARD TO BALANCE THE INTERESTS OF SHIPPERS, CARRIERS, STATES, AND LOCAL COMMUNITIES TO ENSURE A HEALTHY, COMPETITIVE NATIONAL RAIL SYSTEM.

16.7 SUPPORTING A VIBRANT SYSTEM OF SHORTLINE AND REGIONAL RAILROADS

IN ADDITION TO SUPPORTING FUNDING THE LOCAL RAIL FREIGHT ASSISTANCE PROGRAM, THE GOVERNORS SUPPORT FULL IMPLEMENTATION OF SECTION 7203 OF TEA 21, THE RAIL REHABILITATION AND IMPROVEMENT FINANCING (RRIF) PROGRAM. THIS PROGRAM PROVIDES DIRECT LOAN AND LOAN GUARANTEE AUTHORITY TO STATE AND LOCAL GOVERNMENTS, GOVERNMENT-SPONSORED AUTHORITIES AND CORPORATIONS, RAILROADS, AND JOINT VENTURES THAT INCLUDE AT LEAST ONE RAILROAD. RRIF IS AN IMPORTANT ATTRIBUTE OF TEA 21 AND RECOGNIZES THIS NEED. THE FUND IS DESIGNED TO BE SELF-SUFFICIENT AND REQUIRES NO START UP FUNDS. PREVIOUS LOAN PROGRAMS SIMILAR TO RRIF, SUCH AS THE SECTION 511 LOAN PROGRAM, HAVE PROVEN SUCCESSFUL AT SMALL COST TO THE TAXPAYER.

16.8 RAILROADS: PART OF OUR HERITAGE AND AN INVESTMENT IN OUR FUTURE

THE GOVERNORS SUPPORT A STRONG AND EFFICIENT PASSENGER AND FREIGHT RAIL TRANSPORTATION NETWORK THAT ENCOURAGES ECONOMIC GROWTH AND PROVIDES GREATER MOBILITY FOR OUR CITIZENS, MORE EFFICIENT DELIVERY OF GOODS, AND GREATER ACCESS TO LOCAL SHIPPERS. AS THE NATION MOVES INTO THE NEXT CENTURY AND A NEW MILLENNIUM, THIS IS A HISTORIC OPPORTUNITY TO BALANCE OUR NATION'S TRANSPORTATION SYSTEM THROUGH MEANINGFUL INVESTMENTS IN RAIL. THE GOVERNORS PLEDGE TO WORK WITH CONGRESS AND THE PRESIDENT ON THESE ISSUES TO MAKE CERTAIN THAT GOVERNMENT WORKS WITH THE PRIVATE SECTOR IN MAKING OUR RAIL SYSTEM WORLD CLASS.

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

EDC-21. BANKRUPTCY REFORM

21.1 PREAMBLE

THE GOVERNORS SUPPORT REVISING FEDERAL BANKRUPTCY LAWS TO CURB THE RAPIDLY INCREASING NUMBER OF BANKRUPTCY FILINGS AND TO BETTER REGULATE HOW BANKRUPTCIES ARE CONDUCTED. DESPITE LOW UNEMPLOYMENT AND LOW INFLATION OVER THE PAST DECADE, TOTAL BANKRUPTCY FILINGS, INCLUDING BUSINESS AND NONBUSINESS FILINGS, HAVE GROWN FROM LESS THAN 300,000 IN 1978, WHEN THE LAST MAJOR REFORM OF BANKRUPTCY OCCURRED, TO MORE THAN 1.4 MILLION IN 1997. ACCORDING TO THE U.S. CENSUS BUREAU, CONSUMER OR NONBUSINESS FILINGS ALONE ACCOUNT FOR MORE THAN 95 PERCENT OF THESE FILINGS, AND INCREASED FROM ABOUT 287,000 IN 1980 TO MORE THAN 1.3 MILLION IN 1998. THE NUMBER OF BUSINESS FILINGS REMAINED STEADY OVER THIS SAME TIME PERIOD.

AS BANKRUPTCY BECOMES AN EVER-LARGER FACTOR IN OUR DAILY LIVES, THE GOVERNORS ARE INCREASINGLY CONCERNED ABOUT ITS EFFECTS. RAPID INCREASES IN BANKRUPTCY FILINGS INDICATE A REDUCED SENSE OF PERSONAL RESPONSIBILITY, WHICH IS THE BASIS FOR OUR CREDIT ECONOMY AND OUR PROSPERITY. OF EQUAL CONCERN, BANKRUPTCY HAS A VERY SIGNIFICANT IMPACT ON STATE BUDGETS AND ON ALL SECTORS OF STATE ECONOMIES. THE U.S. CENSUS BUREAU ESTIMATES THAT AMOUNTS INVOLVED IN THE BANKRUPTCY PROCEEDINGS OF SOME OF THE LARGEST U.S. CORPORATIONS ARE MORE THAN $8 BILLION. OTHER ESTIMATES SHOW THAT MORE THAN $44 BILLION IN TOTAL DEBT IS DISCHARGED EACH YEAR IN BANKRUPTCY PROCEEDINGS, OR MORE THAN $400 FOR EACH U.S. HOUSEHOLD.

THE RESULTS ARE FELT IN STATE BUDGETS AND IN GOVERNORS' ABILITY TO DO WHAT THEY WERE ELECTED TO DO. STATES FIND IT HARDER TO COLLECT FROM THOSE WHO FILE FOR BANKRUPTCY AND ARE EITHER DELAYED OR SOMETIMES PREVENTED FROM ENFORCING STATE LAWS. OUR CITIZENS ALSO FEEL THE RESULTS.

TAXPAYING CREDITORS ARE HURT BY NOT BEING ABLE TO COLLECT ON LOANS OR CREDIT GIVEN IN GOOD FAITH, REDUCING TAX REVENUES. CONSUMERS FACE HIGHER INTEREST RATES AND CREDIT COSTS, HIGHER RETAIL PRICES, STRICTER LENDING STANDARDS, AND DECREASED RATES ON SAVINGS. SMALL BUSINESSES ARE LIKEWISE ADVERSELY AFFECTED. FOR EXAMPLE, MANY SMALL BUSINESSES RELY UPON CREDIT CARDS AND HOME EQUITY LINES FOR CREDIT. IF THOSE TYPES OF CREDIT BECOME LESS AVAILABLE, MANY SMALL BUSINESSES COULD BE FORCED TO BORROW AT HIGHER RATES OR BE FORCED TO CLOSE BECAUSE THEY HAVE NO FINANCING.

THE GOVERNORS ARE PARTICULARLY CONCERNED THAT BANKRUPTCY REFORM LEGISLATION ADDRESS THE FOLLOWING ISSUES.

21.2 PREVENT CHAPTER 7 USE BY THOSE WITH THE ABILITY TO PAY

CHAPTER 7 WAS ORIGINALLY INTENDED TO BE A WAY FOR HONEST, HOPELESSLY DEBT-BURDENED INDIVIDUALS TO GAIN A FRESH START. HOWEVER, CHAPTER 7 OFTEN HAS BEEN ABUSED OVER THE LAST TWO DECADES AS A WAY FOR CONSUMERS TO IRRESPONSIBLY AVOID PAYING THEIR CREDITORS. PRESENT BANKRUPTCY LAW DOES NOT PREVENT USE OF CHAPTER 7 BY THOSE WITH ABILITY TO REPAY, NOR DOES IT REQUIRE THAT DEBTORS USE CHAPTER 13, WHICH WOULD REQUIRE THEM TO REPAY CREDITORS WHAT THE DEBTOR CAN AFFORD. INCREASINGLY, PEOPLE WHO SHOULD BE ABLE TO PAY SOME OR ALL OF THEIR DEBTS UNDER CHAPTER 13 ARE FILING CHAPTER 7 BANKRUPTCY TO AVOID THEIR RESPONSIBILITIES AND IMPOSE ON OTHERS THE COSTS OF THEIR DOING SO.

THIS PRACTICE HURTS THE STATES AS MUCH AS IT HURTS THOSE WHO PAY THEIR DEBTS AND THEIR CREDITORS. WHEN DEBTORS DO NOT PAY WHAT THEY OWE, STATES SIMPLY FOREGO REVENUE FROM THE DISCHARGED DEBTS.

THE GOVERNORS STRONGLY SUPPORT FEDERAL EFFORTS TO PREVENT DEBTORS FROM USING CHAPTER 7 WHEN THEY ARE FINANCIALLY ABLE TO PAY SOME OR ALL OF THEIR UNSECURED DEBTS. VARIOUS ABILITY-TO-PAY TESTS COULD BE USED TO DETERMINE WHICH DEBTORS SHOULD BE COMPELLED TO FILE UNDER CHAPTER 13 AS OPPOSED TO CHAPTER 7. PREVIOUS ATTEMPTS TO CONTROL THIS ABUSE HAVE BEEN THWARTED BY UNCLEAR LEGISLATIVE LANGUAGE AND AN UNWILLINGNESS BY THOSE WHO ADMINISTER THE BANKRUPTCY SYSTEM TO ENFORCE EXISTING LAWS. FEDERAL EFFORTS TO PREVENT ABUSE SHOULD BE CAREFULLY DESIGNED TO ENSURE EFFECTIVENESS.

21.3 ENCOURAGE PAYMENT OF DOMESTIC SUPPORT OBLIGATIONS

CONGRESS HAS IMPOSED UPON THE STATES THE PRIMARY RESPONSIBILITY FOR ENSURING THAT NONCUSTODIAL PARENTS PAY CHILD SUPPORT AND CERTAIN OTHER DOMESTIC SUPPORT OBLIGATIONS, AND GREAT STRIDES HAVE BEEN TAKEN OVER THE LAST SEVERAL YEARS TO CREATE AN EFFECTIVE CHILD SUPPORT COLLECTION SYSTEM, ADMINISTERED BY THE STATES. AT THE SAME TIME, THE STATES HAVE INCREASINGLY BECOME RESPONSIBLE FOR THE WELFARE COSTS THAT ARISE WHEN CHILD SUPPORT AND SIMILAR OBLIGATIONS ARE NOT COLLECTED.

TODAY, BANKRUPTCY INTERFERES SIGNIFICANTLY WITH STATES' ABILITY TO ASSIST CITIZENS OWED DOMESTIC SUPPORT AND TO COLLECT UNPAID DOMESTIC SUPPORT OWED THEM WHEN THEY HAVE PAID A CUSTODIAL PARENT PUBLIC ASSISTANCE TO REPLACE UNPAID SUPPORT. WHEN STATES CANNOT COLLECT CHILD SUPPORT, SOME OF THEIR MOST VULNERABLE CITIZENS MAY SUFFER THE CONSEQUENCES AT THE SAME TIME THAT THE COSTS OF STATE-OPERATED WELFARE PROGRAMS INCREASE.

THE GOVERNORS STRONGLY ENCOURAGE CONGRESS TO ENSURE THAT ANY FEDERAL BANKRUPTCY REFORM REQUIRES THAT DOMESTIC SUPPORT OBLIGATIONS HAVE THE HIGHEST POSSIBLE REPAYMENT PRIORITY, THAT ALL DOMESTIC SUPPORT OBLIGATIONS BE NONDISCHARGEABLE, AND THAT COMMENCEMENT OF BANKRUPTCY NOT PREVENT THE CONTINUED COLLECTION OF CHILD AND OTHER SUPPORT OBLIGATIONS. IN ADDITION, ANY REFORM SHOULD REQUIRE THAT THE AVAILABILITY OF ANY DISCHARGE OR THE CONFIRMATION OF ANY PLAN BE CONDITIONED UPON THE DEBTOR HAVING MADE ALL POST-PETITION PAYMENTS TOWARD DOMESTIC SUPPORT OBLIGATIONS, THAT A DEBTOR NOT BE ABLE TO HIDE BEHIND EXEMPTIONS TO AVOID PAYMENT OF DOMESTIC SUPPORT OBLIGATIONS, AND THAT PAYMENT OF DOMESTIC SUPPORT BE FREE FROM ATTACK BY THE BANKRUPTCY TRUSTEE AS A PREFERENCE.

21.4 GIVE STATE CLAIMS PARITY WITH FEDERAL CLAIMS IN BANKRUPTCY

TODAY, BANKRUPTCY RIGHTLY GIVES CERTAIN PREFERENCES IN PAYMENT TO FEDERAL CLAIMS AGAINST THE BANKRUPTCY ESTATE, BUT SIMILAR TREATMENT IS NOT ALWAYS ACCORDED STATE CLAIMS. THESE CLAIMS CAN INVOLVE UNPAID TAXES AND OTHER CLAIMS.

AT THE SAME TIME, BANKRUPTCY MAKES STATE ASSERTION OF VALID CLAIMS UNNECESSARILY PROBLEMATIC. STATES HAVE DIFFICULTY OBTAINING NOTICES OF BANKRUPTCY PROCEEDINGS, ADVERSELY AFFECTING THEIR ABILITY TO PARTICIPATE IN PROCEEDINGS, PARTICULARLY WITH RESPECT TO COLLECTION OF UNPAID TAXES.

THE GOVERNORS STRONGLY SUPPORT CONGRESSIONAL EFFORTS TO REFORM THE TREATMENT OF STATE CLAIMS IN BANKRUPTCY TO PROVIDE PARITY OF TREATMENT WITH FEDERAL CLAIMS, REDUCE NONDISCHARGEABILITY OF TAX OBLIGATIONS, PROVIDE BETTER NOTICE, AND IMPROVE PROCEDURAL TREATMENT OF STATE CLAIMS.

21.5 PROTECT THE STATE ROLE

THE ISSUE OF BANKRUPTCY REFORM NEEDS TO BE ADDRESSED BY STATES, NOT ONLY TO PROTECT THE RIGHTS OF CITIZENS AND STATE BUDGETS, BUT ALSO TO

DEFEND STATES' RIGHTS TO DETERMINE THEIR OWN STANDARDS. THE GOVERNORS OPPOSE EFFORTS TO PREEMPT STATE AUTHORITY TO DETERMINE EXEMPTIONS UNDER STATE BANKRUPTCY LAW. CURRENTLY, DEBTORS HAVE A RIGHT TO CHOOSE BETWEEN FEDERAL AND STATE EXEMPTIONS. MOST CHOOSE STATE EXEMPTIONS WHEN THEY ARE MORE LENIENT TOWARDS THE DEBTOR. STATES CAN ALSO PREVENT DEBTORS FROM USING FEDERAL EXEMPTIONS. MORE THAN 50 PERCENT OF THE STATES HAVE ELECTED TO BAR THEIR RESIDENTS FROM USING FEDERAL EXEMPTIONS. THE GOVERNORS SUPPORT EFFORTS TO SHAPE BANKRUPTCY REFORM POLICY THAT PROTECTS THE RIGHTS OF STATES TO DETERMINE THEIR OWN STANDARDS INSTEAD OF HAVING UNIFORM FEDERAL REGULATIONS IMPOSED WITHOUT REGARD FOR INDIVIDUAL STATE NEEDS.

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

RESOLUTION

THE YEAR OF THE SMALL MANUFACTURER

SMALL MANUFACTURERS MAKE UP THE LIFEBLOOD OF THE U.S. ECONOMY. THEY INCLUDE NEARLY 98 PERCENT OF ALL U.S. MANUFACTURERS AND EMPLOY ABOUT 12 MILLION AMERICANS AT HIGH-WAGE JOBS. YET, AS IMPORTANT TO THE ECONOMY AS SMALLER MANUFACTURERS ARE, THEIR ROLE IS STILL LARGELY UNKNOWN TO MOST OF THE GENERAL PUBLIC. DURING 1999, THE NATION'S GOVERNORS WANT TO RECOGNIZE THE HUNDREDS OF THOUSANDS OF OUR NATION'S SMALL MANUFACTURERS WHOSE VITALITY AND DEDICATION TO THE AMERICAN SPIRIT OF FREE ENTERPRISE HAVE DONE SO MUCH FOR THE PROSPERITY OF THIS COUNTRY'S ECONOMY.

NO SECTOR OF THE AMERICAN ECONOMY REPRESENTS THIS COUNTRY'S SPIRIT OF FREE ENTERPRISE MORE THAN ITS 380,000 SMALL MANUFACTURERS. IN FACT, MANUFACTURERS WITH LESS THAN 500 EMPLOYEES MAKE UP 98 PERCENT OF ALL U.S. MANUFACTURERS AND EMPLOY ABOUT 12 MILLION PEOPLE, OR TWO THIRDS OF ALL U.S. MANUFACTURING WORKERS. ON AVERAGE, EACH $1 MILLION IN FINAL SALES IN MANUFACTURING IS ASSOCIATED WITH 13.6 JOBS IN MANUFACTURING AND 8.4 JOBS IN OTHER SECTORS, SUCH AS RAW MATERIALS AND SERVICES. THESE JOBS PRODUCE BOTH THE FINAL PRODUCT AND THE INTERMEDIATE PRODUCT AS SUPPLIERS TO LARGER MANUFACTURERS.

AS LARGE MANUFACTURERS INCREASE THEIR DEPENDENCE ON SUPPLIERS FOR PARTS AND SERVICES, THE PERFORMANCE AND CAPABILITIES OF SMALL MANUFACTURERS BECOME EVEN MORE CRITICAL TO THE COMPETITIVENESS OF THE ENTIRE MANUFACTURING SECTOR AND TO THE HEALTH OF THE U.S. ECONOMY.

RECOGNIZING THE EXTRAORDINARY CONTRIBUTIONS OF THE NATION'S SMALL MANUFACTURERS TO THE STRENGTH AND WELL BEING OF THIS GREAT COUNTRY, THE STATES CONTINUE TO WORK TOWARD IMPLEMENTING POLICIES AND PROGRAMS DESIGNED TO HELP THESE COMPANIES OVERCOME BARRIERS TO THEIR PRODUCTIVITY AND COMPETITIVENESS.

THE GOVERNORS DO HEREBY PROCLAIM SUPPORT FOR 1999 BEING THE YEAR OF THE SMALL MANUFACTURER.

Time limited (effective Winter Meeting 1999–Winter Meeting 2000).

REAFFIRM

EDC-6. THE ROLE OF STATES, THE FEDERAL GOVERNMENT, AND INDIAN TRIBAL GOVERNMENTS WITH RESPECT TO INDIAN GAMING AND OTHER ECONOMIC ISSUES

6.1 Preamble

The Governors recognize and respect the sovereignty of Indian tribal governments and support economic advancement and independence for tribes. State and tribal governments must continue to work together on many significant issues. Governors value their important relationships with tribal governments.

There is no question that by enacting the Indian Gaming Regulatory Act of 1988 (IGRA), Congress intended to provide states with a meaningful role in determining which gambling activities and devices would be conducted under a tribal-state compact. Therefore, implementation of IGRA requires a fair balance between state and tribal sovereignty.

As a state's chief executive officer and the primary defender of state sovereignty, a Governor has the ultimate responsibility to act in the best interests of all state citizens. Although the gambling activities conducted under IGRA occur within the boundaries of tribal lands, they are designed to attract nontribal patrons, and the effects of these activities are felt far beyond the geographic boundaries of the reservations.

The Governors have long decried the lack of uniformity with respect to the implementation and court interpretation of IGRA and have consistently called for congressional clarification of this statute. Although several problems exist, the states' primary concern continues to be clarifying the scope of the gambling activities permitted to tribes under the act. The Governors firmly believe that it is an inappropriate breach of state sovereignty for the federal government to compel states to negotiate tribal operation of gambling activities that are prohibited by state law.

The Governors remain committed to resolving the conflicts arising out of IGRA implementation. Any amendments to the act must address the Governors' principal concerns and ultimately must be designed to keep states and tribes in negotiations and out of court. In addition, the Governors urge Congress and other federal entities to include them in decisions that will have an impact on states.

6.2 IGRA Reform

Ambiguities in the current law have led to inconsistent court interpretations of the act. Amendments to IGRA should be designed to encourage state and tribal governments to work together to resolve conflicts that may arise during the compact negotiation process. IGRA should be amended to resolve the following issues.

6.2.1 **Clarification of the Scope of Gaming.** Much of the confusion and conflict that has arisen out of IGRA implementation centers around determining which gambling activities and devices are permitted by a state's public policy. The Governors assert that gambling public policy must be determined by reading a state's laws and regulations.

Amendments to IGRA must define the scope of the gambling activities and devices subject to negotiation under the law. It must be made 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. Ultimately, a Governor must not be compelled by federal law to negotiate for gambling activities or devices that are not expressly authorized by state law, although the Governor may have the discretion to negotiate across a broad range of options.

6.2.2 **Application of the "Good Faith" Negotiation Standard.** The "good faith" negotiation standard set forth by IGRA must be clarified and applied to both states and tribes. Further, the burden of proving an allegation should rest with the party making the allegation. Inability to agree on a compact should not be treated as an indication of bad faith by either party. In particular, a state's adherence to its own laws and constitution should not be regarded as bad faith.

6.2.3 **Regulatory Oversight.** The Governors recognize that in many cases, federally imposed minimum regulatory standards for the operation of tribal gambling facilities may be appropriate. In general, careful regulatory oversight is necessary to protect the integrity of the gambling activities and the interests of patrons, the states, members of tribes, and Indian tribal governments.

Congressional establishment of minimum regulatory standards should not preempt stricter state laws, nor should it prevent states from negotiating with tribal governments for more stringent regulatory standards as part of a tribal-state compact.

State and tribal governments should determine their respective regulatory oversight roles through the tribal-state compact negotiation process. If such standards are established, the federal government's oversight role should be limited to cases in which the state and tribe fail to meet established minimum regulatory standards.

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

The U.S. Supreme Court fortified state sovereignty in its March 1996 decision in Seminole Tribe of Florida v. Florida. Clearly, the Seminole decision rendered the judicial remedy contained in IGRA unenforceable against a state unwilling to consent to federal jurisdiction. In the wake of the decision, however, questions have been raised about whether the secretary of the U.S. Department of the Interior can unilaterally create a process through which tribal operation of Class III gaming can be authorized in the event a state invokes the Eleventh Amendment defense.

As the Governors interpret the effects of Seminole, nothing remains in IGRA or any other law that endows the secretary with the authority to independently create such a process. IGRA continues to be the sole mechanism through which tribal governments can operate Class III gaming. It is unthinkable that a Supreme Court decision endorsing state sovereignty could become the vehicle for an inappropriate expansion of the secretary's authority.

The Governors will actively oppose any independent assertion by the secretary of the power to authorize tribal governments to operate Class III gaming. State and tribal governments are best qualified to craft agreements on the scope and conduct of Class III gaming under IGRA.

6.3.1 **Congressional Delegation of Authority to the Secretary.** If Congress delegates to the secretary of the U.S. Department of the Interior the authority to provide a remedy to a tribe in the event a state raises the Eleventh Amendment defense to suit, the secretary's ability to permit tribal Class III gaming must be strictly limited to what is allowed under the state's gambling laws, regulations, and ordinances.

6.4 Federal Enforcement

The federal government should actively and aggressively 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.

6.5 The Governors' Role in Congressional and Other Federal Decisionmaking

The Governors should have a concurrent role in any action taken by Congress that would have a significant impact on states, including federal recognition of new tribes and acquisition of trust lands for tribes. Tribal recognition through any federal administrative procedure should require the concurrence of the Governor(s) of the state(s) in which the tribe is located.

6.5.1 **Trust Land Acquisition for Gambling Purposes.** Congress must support its commitment to provide Governors with concurrent authority in the trust land acquisition process. Congress must preserve the Governors' participation in this decisionmaking process—namely, that no trust land acquisition for gambling purposes should be possible without a Governor's concurrence. The U.S. Department of the Interior has acknowledged that a Governor's concurrence is required before noncontiguous land can be acquired for gambling purposes. The ability of a Governor to give partial concurrence to a tribe's proposal to take land into trust for gambling purposes, such as when a Governor is willing to authorize the playing of some types of games but not others, should be recognized. Additionally, the secretary should establish procedures to permit the views of all affected Governors to be heard when a gambling proposal will have an impact across state lines.

6.5.2 **Trust Land Acquisition in General.** The Governors also must have concurrent authority with respect to other trust land acquisition decisions undertaken by the U.S. Department of the Interior.

6.5.2.1. **State and Local Taxation Authority Over New Trust Lands.** Removing land from state and local tax roles may have a significant economic impact on many states and localities. Therefore, Congress should take action to require that before new land is taken into trust by the U.S. Department of the Interior, the state and the tribal government must reach a binding agreement regarding the application of state and local taxes on new trust land. Such an agreement could include a waiver by the state of any taxation authority on the new trust land.

6.6 Commitment to a Solution

The Governors are committed to resolving the complex issues involved in the implementation of IGRA and the management of other congressional and federal decisions that have an impact on the states in this area.

Time limited (effective WINTER MEETING 1999–ANNUAL MEETING 1999 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Winter Meeting 1997.

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1999 Winter Meeting

COMMITTEE ON HUMAN RESOURCES

Governor James B. Hunt Jr., Chair
Governor Mike Huckabee, Vice Chair

Nolan E. Jones, Group Director

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 two new policy positions, amendments to eight existing policy positions, and the reaffirmation of one existing policy position. Policy proposals are time limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

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

   The proposed amendments update the policy to be consistent with provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; to recognize the "H" visas program; to ensure that State Criminal Alien Assistance Program funds are released in a timely manner; and to ensure that states have a role in refugee resettlement determination of primary and secondary migration. In addition, the policy's sunset date is extended for two years.

2. Domestic Terrorism (New Policy Position, HR-10)

   The proposed policy position sets forth the Governors' concerns about the development of a national domestic terrorism strategy. The policy proposal outlines challenges for states, including handling information needs, managing consequences, clarifying the role of the National Guard, and supporting public-private cooperation. It also recognizes the unique nature of terrorism and national security implications. In addition, the policy suggests that the federal government work with state and local governments in developing capabilities for handling any incidents.

3. Child Support Financing (New Policy Position, HR-14)

   This policy expresses the Governors' support for maintaining a strong financial commitment from the federal government for the child support system. Recent attempts by Congress and the administration to reduce federal funding for child support enforcement emphasize the need for an NGA policy in this area. During the fall of 1998, the U.S. Department of Health and Human Services conducted a series of consultations with stakeholders around the country and also contracted a study of state child support financing structures. Initial results from the consultations and the study demonstrate significant state investments in the child support system, but there remains a perception among many that states are not contributing their "fair share."

   Current proposals to reform the child support financing system could result in cost-shifts to states.

4. Medicaid (Amendments to HR-16)

   This policy is a continuation of NGA's firm commitment to state flexibility and opposition to unfunded mandates, prescriptive regulations, and cuts to administrative funding. The policy is updated to reflect that the Balanced Budget Act of 1997 granted states many of the flexibilities requested in previous language in the policy. The policy takes the position that the Americans with Disabilities Act was never intended to supersede Medicaid law and should not be interpreted to require deinstitutionalization or the creation of new mandatory benefits. In addition, the policy's sunset date is extended for two years.

   There are no new federal fiscal impacts from this policy.

5. Long-Term Care (Amendments to HR-17)

The amendments to the Long-Term Care policy express the Governors' support for practical solutions to the problems that Medicaid, Medicare, and other programs will face with the aging of the baby boom generation. The policy calls for increased coordination and integration of these programs to improve health outcomes while maintaining current levels of state and federal financing. The policy calls for eliminating the current institutional bias of the programs, ensuring the coordination of acute, primary, and long-term care, and increasing state options for improving health care in cost-effective ways. In addition, the policy's sunset date is extended for two years.

This policy stresses cost-effective solutions and the calculation of budget neutrality across many programs, so there would be no new federal fiscal impacts from this policy.

5. National and Community Service (Amendments to HR-24)

The policy is amended to incorporate several concepts from policy H.R. 39, Encouraging Mentoring, which is scheduled to sunset. These concepts are budget neutral and have no fiscal implications.

7. Emergency Management (Amendments to HR-25)

These amendments incorporate language from policy HR-15, Emergency Management Assistance Compact, which is scheduled to sunset, and would continue the Governors' support for the compact. Currently there are twenty-five states in the compact.

8. Implementation of Welfare Reform (Amendments to HR-36)

The policy is amended to reflect changes since the enactment of the 1996 welfare reform package, including the Governors' concerns with the pending Temporary Assistance for Needy Families regulations. The amendments also strengthen the Governors' position urging Congress and the administration to uphold the 1996 welfare reform agreement by rejecting any reductions in funding and restrictions on flexibility. In addition, the policy's sunset date is extended for two years.

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

The private sector health care reform policy is amended to address concerns about the increases in overall health care costs and the need for state flexibility in controlling these costs while maintaining quality care. The policy expands the commitment to state regulatory control to Healthmarts as well as Multiple Employer Welfare Arrangements. The policy also strongly states that state laws regarding medical privacy should not be preempted by federal action. In addition, the policy's sunset date is extended for two years.

There are no new federal fiscal impacts from this policy.

10. HIV/AIDS (Amendments to HR-38)

The HIV/AIDS policy is amended to specifically call for federal resources to be awarded through states to ensure coordination of efforts at the state and local levels. The policy encourages federal investments in preventing sexually transmitted diseases and improving access to prenatal care as means of controlling the spread of HIV. The policy stresses NGA's position that federal mandates and preemption of existing state law are inappropriate ways of addressing HIV/AIDS concerns. In addition, the policy's sunset date is extended for two years.

There are no new federal fiscal impacts from this policy.

11. Reaffirmation of Existing Policy

The committee proposes the reaffirmation of existing policy HR-6, Army and Air National Guard.

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 ~~refugee~~ resettlement ~~and immigrant assistance~~ services has resulted in a dramatic shift of program costs from the federal government to state and local taxpayers. This INADEQUATE ~~reduced~~ 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 ~~that~~ 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 ~~are particularly~~ 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. ~~The Governors further believe that an equitable solution to this issue could be achieved without reopening the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and look forward to working cooperatively with Congress and the administration to decide the appropriate vehicle.~~

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 ~~bar refugees and other~~ 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 ~~six- to nine-month~~ 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.

~~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.~~

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.

~~The ceiling should provide for the separation of the two major types of immigrants—families and independent immigrants—into distinct admission categories. In designing the preference system, the principle of family unity should be preserved and the independent immigration system should reflect economic and labor market needs.~~

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.

~~The Governors also support the development of methods to prevent identification document fraud. However, the Governors do not support the development of those methods that unnecessarily invade the privacy of individuals, infringe upon areas that traditionally have been under the scope of state and local authority, or directly or indirectly create unfunded mandates to state and local governments.~~

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, WE 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. ~~In implementing any supplemental worker programs, the federal government must conduct timely labor certifications to ensure labor availability in the event of labor shortages. This program should not cause displacement of American workers.~~

2.1.7 **Cooperation with Western Hemisphere Countries.** A workable immigration program must recognize and involve ~~the major sending countries. The federal government must work cooperatively with Mexico and other western hemisphere countries in the development of mutually beneficial policies. The Governors believe that~~ trade and investment policies THAT are critical elements to reduce illegal immigration.

~~2.1.8 **Research and Data Collection.** Congress should direct the federal government to develop a reliable data system and strengthen the research capacity on migration and its consequences to the United States, especially concerning the immigration flow, estimate of illegal migration, and impact of immigration on states and local communities. To do so, better coordination of federal agencies is needed.~~

~~In order to provide the necessary information on immigration flows and secondary migration, alien registration by the federal government must be reinstated. In addition, data collected should be analyzed and disseminated to the states in a timely manner for the purpose of planning, implementing, and evaluating immigration policy.~~

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 ~~the current~~ backlog problems.

2.1.10 **Emergency Authority and Contingency Plan.** As the President has contingency planning authority, the federal government must CONTINUE TO develop a contingency PLANS ~~plan~~ to deal with unanticipated flows of MIGRANTS, refugees, parolees, or asylum applicants. The states expect an immediate federal government response to such SITUATIONS. ~~a situation.~~ The Governors must be consulted in determining the role of the states. The states anticipate full federal reimbursement of any state and local costs.

~~2.1.11 **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; or~~
- ~~the refugee population has special needs.~~

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.** ~~According to a recent study published by the Urban Institute, the seven states most impacted by illegal immigration housed more than 21,000 adult criminal aliens in their state prisons in March 1994, at an annual cost of nearly $500 million. These figures do not include the cost of incarcerating criminal aliens in youth facilities or supervising paroled criminal aliens.~~

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 ~~action in this area continues to be~~ 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. ~~In California, for example, reports indicate that more than 300 previously deported parolees are illegally reentering the country each month and coming into contact with law enforcement officials. Criminal alien reentry is a violation of federal law punishable by up to twenty years in federal prison and should be enforced for all states.~~

The Governors urge the federal government to provide sufficient funds for proven positive identification systems, like ~~California's Criminal Alien Flagging Project and~~ 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.** 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.

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.

~~In the case of Plyler v. Doe, the U.S. Supreme Court upheld a lower court ruling striking down as unconstitutional a state law that denied educational services to undocumented children. The Court's~~

~~narrow 5-4 decision was based in part on the absence of any "identifiable congressional policy" on the subject and "absent any contrary indication fairly discernible in the legislative record," the Court could "perceive no national policy that supports the state." The Court's dissenting opinion noted that the majority was "making no attempt to disguise that it is acting to make up for Congress' lack of effective leadership in dealing with the serious national problems caused by the influx of uncountable millions of illegal aliens across the border."~~

~~The Governors believe the Plyler decision was in fact a call for Congress to legislate in this area. Yet, since that ruling, the federal government has done nothing to set a national policy regarding the education of undocumented children. Instead, the federal government disingenuously cites Plyler as the final word. Meanwhile, state and local governments are forced to devote scarce resources to comply with a constitutional mandate born of federal inaction and irresponsibility.~~

~~The Governors are not advocating the denial of educational services to undocumented persons. However, some Governors believe that each state should have the right to decide whether it will provide free educational services to undocumented persons, while some Governors believe that all children are granted this right under the U.S. Constitution. The Governors oppose being a captive source of funding for the costs of educating millions of undocumented children.~~ 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 ~~and to report back within one year,~~ so that an accurate assessment can be made.

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. ~~because of their beliefs and support of U.S. policy.~~

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 states are committed to working toward the rapid integration of refugees into our communities. However,~~ The federal government has the total responsibility to meet the basic needs of refugees and entrants. ~~(e.g., cash, medical, social services, and special educational costs) for the initial three years.~~ 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, ~~In recent years,~~ 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 ~~five~~ 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). ~~Unlike legal immigrants, refugees do not have sponsors.~~ 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. ~~Under the Wilson-Fish Amendment to the Refugee Act, states have the option of implementing privatized resettlement programs.~~ 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 ~~services~~ 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.
- ~~There should be a continued requirement that sponsors not be on welfare. The sponsorship program should be modified, and existing sponsorship obligations should be more strictly enforced.~~

~~An advisory committee should be established, representing state and local government officials, VOLAGs, and the refugee community, to examine and advise Congress and federal agencies on a full range of refugee resettlement issues.~~

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

HR-10. DOMESTIC TERRORISM

10.1 PREAMBLE

THE THREAT OF DEVASTATING DOMESTIC TERRORISM ACROSS OUR NATION TODAY IS A REAL AND COMPLEX PHENOMENON. THREATS INVOLVING NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS AND ATTACKS ON CRITICAL INFRASTRUCTURES, INCLUDING WATER, FUEL, COMMUNICATIONS, AND COMPUTER SYSTEMS, CAN STRIKE AT ANY TIME. AS A RESULT, STRATEGIC INTERGOVERNMENTAL PREPAREDNESS AND INTERAGENCY COOPERATION AT ALL LEVELS ARE ESSENTIAL INGREDIENTS TO PREVENT LOSS OF LIFE AND MAJOR PROPERTY DAMAGE. BECAUSE THESE INCIDENTS START ON THE LOCAL LEVEL, IT IS IMPERATIVE THAT PLANNING AND TRAINING FOR STATE AND LOCAL RESPONSE FORCES BE INCLUDED IN ANY NATIONAL STRATEGY.

GOVERNORS HAVE A CRITICAL INTEREST IN DOMESTIC TERRORISM BECAUSE RESPONDING TO THE CONSEQUENCES OF TERRORIST EVENTS ARE CLEARLY WITHIN THEIR ROLES AND RESPONSIBILITIES. GOVERNORS, WITH THE SUPPORT OF THE FEDERAL GOVERNMENT, ARE RESPONSIBLE FOR ENSURING THE ABILITY OF STATE AND LOCAL AUTHORITIES TO DEAL WITH NATURAL DISASTERS AND OTHER TYPES OF MAJOR EMERGENCIES, INCLUDING A TERRORIST INCIDENT.

10.2 CHALLENGES FOR STATES

THERE ARE MANY CHALLENGES FOR STATES IN MANAGING THE CONSEQUENCES OF TERRORISM, INCLUDING HANDLING INFORMATION NEEDS, MANAGING CONSEQUENCES, PREPAREDNESS AND MITIGATION EFFORTS, CLARIFYING THE ROLE OF THE NATIONAL GUARD, AND SUPPORTING PUBLIC-PRIVATE COOPERATION.

10.2.1 **HANDLING INFORMATION NEEDS.** MANY OF THE OPERATIONAL, PROGRAMMATIC, AND FUNDING ACTIVITIES ASSOCIATED WITH TERRORISM CONSEQUENCE MANAGEMENT PREPAREDNESS ARE CLASSIFIED BECAUSE OF NATIONAL SECURITY. THUS, THE SHARING OF CRITICAL INFORMATION IS HAMPERED. ALTHOUGH PROVISIONS EXIST FOR SHARING INFORMATION CONCERNING ONGOING ACTUAL EVENTS, DEALING WITH PREPAREDNESS ACTIVITIES IS MORE PROBLEMATIC. STATE GOVERNMENTS MUST BE VIEWED AS STRONG PARTNERS IN THE UNITED STATES' NATIONAL SECURITY EFFORTS, PARTICULARLY AS RELATED TO TERRORISM.

10.2.2 **MANAGING CONSEQUENCES.** MANAGING THE SHORT- AND LONG-TERM CONSEQUENCES OF TERRORISM IS AMONG THE RESPONSIBILITIES OF STATE AND LOCAL GOVERNMENT SUPPLEMENTED BY THE RESOURCES OF THE FEDERAL

GOVERNMENT, COORDINATED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). ISSUES RELATED TO ACTIVITIES SUCH AS INITIAL RESPONSE, THE NEED TO MANAGE LARGE NUMBERS OF POTENTIALLY CONTAMINATED VICTIMS, EVACUATIONS, WIDESPREAD NEED FOR SECURITY IN COMMUNITIES FOLLOWING AN EVENT, AND SHORT- AND LONG-TERM RECOVERY ARE SOME OF THE MANY RESPONSIBILITIES INCUMBENT OF STATE AND LOCAL ELECTED OFFICIALS.

10.2.3 **SUPPORTING PUBLIC-PRIVATE COOPERATION**. TERRORISM PREPAREDNESS EFFORTS SHOULD BE INCLUSIVE OF KEY PRIVATE SECTOR ENTITIES SUCH AS DEFINING THE APPROPRIATE ROLES AND RESPONSIBILITIES FOR PUBLIC AND PRIVATE HEALTH AND MEDICAL COMMUNITIES. THE ROLE OF THE BUSINESS COMMUNITY AND THE IMPACT ON THE ECONOMIC VIABILITY OF A COMMUNITY WHEN FACED WITH RECOVERY FROM A TERRORIST ATTACK MUST BE CONSIDERED. PREPAREDNESS AND RECOVERY EFFORTS SHOULD FOCUS ON ENSURING THAT LIMITED FEDERAL RESOURCES ARE EFFECTIVELY ALLOCATED ACROSS ALL GEOGRAPHIC AREAS AND COORDINATED WITH THE GOVERNORS TO ACHIEVE A TRULY VIABLE AND EFFECTIVE NATIONAL CAPACITY.

10.2.4 **CLARIFYING THE ROLE OF THE NATIONAL GUARD**. THE ROLE OF THE NATIONAL GUARD IN TERRORISM RESPONSE ACTIVITIES IS TO SUPPORT FEDERAL, STATE, AND LOCAL ENFORCEMENT AGENCIES WITH EQUIPMENT, FACILITIES, AND PERSONNEL. THE NATIONAL GUARD, HISTORICALLY A CRITICAL RESOURCE IN EMERGENCIES, CAN BE AN EFFECTIVE FORCE MULTIPLIER TO CIVIL AUTHORITIES IN RESPONDING TO TERRORISM AT THE STATE, LOCAL, AND FEDERAL LEVELS. THE NATIONAL GUARD MUST BE EQUIPPED, CAPABLE, AND READY FOR RESPONSIBILITIES REGARDING PREPAREDNESS ACTIVITIES, AND RESPONSE AND RECOVERY OPERATIONS AS A PART OF ITS DUAL FEDERAL AND STATE MISSION. ANY ASSIGNMENT OF RESPONSIBILITY SHOULD ENHANCE THE NATION'S TERRORISM CONSEQUENCE MANAGEMENT CAPABILITY AND PROVIDE FOR THE CONTINGENCY OF THE NATIONAL GUARD BEING CALLED TO ASSIST ACTIVE AND RESERVE COMPONENTS IN DEALING WITH A MAJOR MILITARY CONFLICT.

10.3 FEDERAL RESPONSIBILITY

THE UNIQUE NATURE OF TERRORISM COUPLED WITH NATIONAL SECURITY IMPLICATIONS REQUIRES THE SUPPORT AND EXPERTISE OF THE FEDERAL GOVERNMENT IN WORKING WITH STATE AND LOCAL GOVERNMENT IN DEVELOPING CAPABILITIES. A CLEAR NATIONAL STRATEGY DEVELOPED THROUGH A PARTNERSHIP AMONG FEDERAL AGENCIES AND KEY STATE, LOCAL, AND PRIVATE SECTOR STAKEHOLDERS IS ESSENTIAL TO DRIVE OPERATIONAL AND PROGRAMMATIC PLANNING, TRAINING, AND SERVICE DELIVERY IN COMBATING TERRORISM.

GOVERNORS RECOGNIZE THE CURRENT EFFORTS OF THE NATIONAL DOMESTIC PREPAREDNESS OFFICE WITHIN THE U.S. DEPARTMENT OF JUSTICE TO ACCOMPLISH PROGRAM COORDINATION AMONG FEDERAL AGENCIES, WITHIN THE CONTEXT OF POLICY DIRECTION PROVIDED BY KEY FEDERAL AGENCY HEADS UNDER THE COORDINATION OF THE NATIONAL SECURITY COUNCIL. THE GOVERNORS URGE APPROPRIATE FUNDING, MAXIMUM COORDINATION OF PROGRAM COMPONENTS, AND COORDINATED SERVICE DELIVERY WITH STATES AND LOCALITIES.

10.4 CONCLUSION

THE ARTICULATION OF POLICY GOALS AND THE DESIRES OF LOCAL, STATE, AND FEDERAL LEADERS SHOULD SERVE AS THE FOUNDATION FOR ESTABLISHING ANY CORRESPONDING OPERATIONAL AND PROGRAMMATIC WORK EFFORT REGARDING TERRORISM. IT IS ESPECIALLY IMPORTANT THAT INPUT FROM THE NATION'S GOVERNORS IS SOLICITED WHEN DEVELOPING APPROPRIATE POLICY GUIDANCE. A WELL-DEVELOPED NATIONAL STRATEGY AND WORK PLAN, REFLECTING THE DESIRES AND NEEDS OF LOCAL, STATE, AND FEDERAL POLICY OFFICIALS, SHOULD GUIDE THE DEVELOPMENT AND APPROVAL OF NATIONAL PROGRAMS AND POLICIES. MAXIMUM RESOURCES MUST BE COMBINED WITH STATE AND LOCAL EFFORTS TO ACHIEVE A TRULY VIABLE NATIONAL CAPABILITY TO PREPARE AND MANAGE THE CONSEQUENCES OF TERRORISM.

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

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. 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).

HR-16. ~~EC-8.~~ 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 ~~serving more than 37 million~~ beneficiaries, the Governors believe that quality services must be provided as efficiently and effectively as possible.

In 1998 ~~1996~~ approximately $184 ~~$164~~ billion was spent in the Medicaid program. Of that amount, about $80 ~~$71~~ 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. ~~, such as education.~~ 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 ~~States must have relief from the~~ real and pressing problems presented by the Medicaid program WITHOUT CREATING NEW REGULATORY BURDENS. ~~if they are to move forward with long-term solutions. Despite the failure of fundamental Medicaid reform efforts in previous Congresses,~~ 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. **~~Impose No Unilateral Caps for Federal Spending on Medicaid Entitlements.~~** 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. ~~As the President and congressional leaders develop their policy agendas for the 105th Congress, it appears that the Medicaid reform debate will be very different than it was in the 104th Congress. The debate likely will focus more on improvements to the existing Medicaid program than on a fundamental reconsideration of basic program design. Given this premise, Governors are eager to work with Congress and the administration to make needed improvements and promote efficiencies in the Medicaid program as listed in this policy.~~

FURTHER, THE GOVERNORS FIRMLY HOLD THAT ~~At the same time,~~ Medicaid SHOULD NOT ~~will~~ 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, ~~In 1995 and 1996,~~ 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 ~~2002~~ of 7.4 ~~7.7~~ percent. ~~; producing Medicaid savings of almost $86 billion.~~

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. ~~Therefore,~~ 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.

~~The Governors would welcome the opportunity to work with Congress and the administration to develop equitable and effective cost-containment strategies, because the Governors strongly believe that the federal budget must not be balanced by shifting costs to states. In addition, Governors would oppose cost-cutting strategies that unfairly burden states.~~

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. ~~applaud the protection afforded by the new law.~~ 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 ~~also~~ support ALLOWING DEMONSTRATIONS FOR THE INTEGRATION OF ACUTE AND LONG-TERM CARE SERVICES FOR THE ELDERLY, ~~experimentation with mandatory managed care pilot projects for the dually eligible,~~ as discussed in NGA's Long-Term Care Policy, HR-17 ~~EC-7~~. 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 ~~place~~

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.

~~Although the private sector is moving aggressively toward these networks, the Medicaid program continues to require states, in virtually all cases, to apply for a waiver from fee-for-service care in order to enroll Medicaid beneficiaries in such networks. Although the Bush and Clinton administrations have taken significant steps toward simplifying the application and renewal process, states still must apply for renewals every two years. Moreover, states have been unable to sustain networks where there is a predominance of Medicaid beneficiaries because, under current law, states are permitted only one nonrenewable three-year waiver to have beneficiaries served in a health maintenance organization (HMO) where more than 75 percent of the enrollees in the HMO are Medicaid beneficiaries. This requirement should be repealed. To ensure continuity and quality of care and to reduce administrative costs, states should have the option to require Medicaid beneficiaries to stay in an HMO for a period of up to twelve months. States also should be allowed to guarantee enrollment for certain Medicaid beneficiaries in HMOs for a period of up to twelve months.~~

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
~~16.3.11~~ **Managed Care and Quality Standards**. Governors are committed to ensuring that every Medicaid recipient receives high-quality health care. ~~, and~~ Managed care has been an effective strategy for meeting

that goal BY PROVIDING ~~Medicaid managed care has delivered~~ 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 ~~would like~~ to work closely with ~~Congress and~~ the administration as quality issues WERE ~~are~~ 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. ~~Although there can be no disagreement that individuals enrolled in managed care networks should have their health care needs met with quality services, the Governors are concerned that efforts to ensure quality, if not undertaken carefully, could result in rigid guidelines that dictate state contractual relationships or fail to keep up with technological innovations.~~

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 ~~will view~~ any changes in the health care market THAT WILL RESULT IN ~~a context framed by opposition to~~ 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** **Repeal of the Boren Amendment.** The Boren Amendment to the Medicaid provisions of the Social Security Act was passed in the early 1980s to give states greater flexibility in establishing reimbursement rates for hospitals and nursing homes and to encourage health care cost containment. Instead, it has led to havoc in the administration of Medicaid programs. The courts have interpreted the Boren Amendment to embody a restrictive and unrealistic set of requirements in setting reimbursement rates and have in effect given judges the power to establish reimbursement rates levels and criteria. Because of these decisions, states remain frustrated in their ability to bring discipline to their budgets and have been thwarted in their attempts to achieve the original purpose of the amendment. The nation's Governors believe that any coherent approach to improving our nation's health care system must address the inflexible provider reimbursement standard of the Boren Amendment. The Governors call for repeal of the Boren Amendment in its entirety.~~

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 ~~growing~~ 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 ~~clarified~~ 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 ~~completely~~ 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 ~~the passage of the Medicare catastrophic legislation in~~ 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). ~~The Medicare program is a federal program and the federal government should bear all of its costs.~~ 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. ~~Should Medicare not assume full financial responsibility, Congress should at a minimum clarify that copayments may be reimbursed at Medicaid, rather than Medicare, rates. Paying at Medicaid rates preserves equity and access among all Medicaid clients.~~

~~16.3.9 **Reconsider the Nursing Home Reform Mandates in the Omnibus Reconciliation Act of 1987.** Congress mandated extensive new quality assurance measures for the Medicaid nursing home program. The statutory language permits limited state flexibility and puts Congress in the position of micro-managing the program. In addition, Congress should repeal the preadmission screening requirements. Since enactment, states have found preadmission screening to be extremely cost-inefficient and have developed other strategies to ensure the appropriate placement of individuals with disabilities.~~

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 ~~statutes require~~ 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 ~~limit~~ 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. ~~possibly more cost-efficient.~~

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. ~~In thirty-nine states, Medicaid eligibility for children has been expanded beyond federally mandated minimum requirements.~~

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 ~~, including~~ 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. ~~Savings realized through restructuring the benefits provided to existing optional eligibility groups should be used to meet health care needs.~~

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.

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

HR-17 ~~EC-7~~. LONG-TERM CARE

17.1 PREAMBLE

INCREASES IN LIFE EXPECTANCY, IMPROVEMENTS IN MEDICAL TECHNOLOGY, AND THE AGING OF THE BABY BOOM GENERATION ARE CONTRIBUTING TO UNPRECEDENTED GROWTH IN THE POPULATION OLDER THAN SIXTY-FIVE. THE GROWING POPULATION OF SENIORS WILL FUEL AN INCREASING DEMAND FOR PRIMARY, ACUTE, AND LONG-TERM HEALTH CARE SERVICES THROUGH THE MIDDLE OF THE NEXT CENTURY. AT THE SAME TIME DEMOGRAPHIC AND CULTURAL CHANGES ARE DECREASING THE AVAILABILITY OF INFORMAL CARE. THESE FACTORS WILL PLACE A SIGNIFICANT STRAIN ON OUR NATION'S CURRENT LONG-TERM CARE SYSTEM, ON SENIORS AND THEIR FAMILIES, AND ON CURRENT SOURCES OF PUBLIC AND PRIVATE FUNDING FOR THESE SERVICES.

THE MEDICARE PROGRAM WAS ORIGINALLY INTENDED TO PROVIDE HEALTH INSURANCE COVERAGE FOR THE MEDICAL NEEDS OF THE OLDER AMERICANS. HOWEVER, THERE HAVE ALWAYS BEEN SIGNIFICANT GAPS IN COVERAGE. THE MOST IMPORTANT GAPS ARE FOR PREVENTIVE CARE, PRESCRIPTION DRUGS, AND LONG-TERM CARE. ADDITIONALLY, THERE ARE SIGNIFICANT BENEFICIARY COST SHARING RESPONSIBILITIES. AS A RESULT, MEDICARE COVERS ON AVERAGE ONLY ABOUT HALF OF BENEFICIARIES' HEALTH CARE COSTS.

THE GAPS IN MEDICARE COVERAGE ARE WIDENING. ADVANCES IN MEDICAL CARE THAT HAVE EXPANDED THE AVAILABILITY AND USE OF OUTPATIENT TREATMENT AND HOME HEALTH CARE HAVE INCREASED BENEFICIARIES' OUT-OF-POCKET COSTS FOR PART B PREMIUMS, COPAYMENTS, AND PRESCRIPTION DRUGS. MEDICAL ADVANCES HAVE INCREASED LIFE EXPECTANCY SO THAT AN INCREASING NUMBER OF CHRONICALLY ILL SENIORS NEED LONG-TERM CARE AND SUPPORT WITH BASIC ACTIVITIES OF DAILY LIVING, SUCH AS EATING, BATHING, AND DRESSING.

THESE FACTORS CONTRIBUTE TO AND ARE COMPOUNDED BY CHALLENGES FACING THE LONG-TERM FINANCIAL VIABILITY OF MEDICARE. ALTHOUGH THE BALANCED BUDGET ACT OF 1997 (BBA) ENSURES THE SHORT-TERM SOLVENCY OF THE MEDICARE PART A TRUST FUND, THE TRUST FUND IS PROJECTED TO GO BANKRUPT IN 2008 WITHOUT FURTHER REFORM. ADDITIONALLY, PROVISIONS OF THE BBA DESIGNED TO ADDRESS FRAUD AND ABUSE ARE EXACERBATING THE FINANCIAL CRUNCH FOR SOME SENIORS. FOR EXAMPLE, CHANGES IN MEDICARE'S HOME HEALTH PAYMENT METHODOLOGY HAVE LED TO SERVICE REDUCTIONS THAT ARE FORCING MANY BENEFICIARIES TO SEEK PRIVATE, STATE, AND MEDICAID-FUNDED ALTERNATIVES TO

SUPPLEMENT OR REPLACE THEIR MEDICARE HOME HEALTH SERVICES. ALTHOUGH SOME CAN AFFORD TO ABSORB INCREASES IN THEIR OUT-OF-POCKET COSTS, THE MAJORITY CANNOT: 40 PERCENT OF MEDICARE SENIORS HAVE ANNUAL INCOMES OF LESS THAN $15,000 AND 70 PERCENT HAVE ANNUAL INCOMES OF LESS THAN $25,000.

AS MEMBERS OF THE 106TH CONGRESS CONSIDER STRATEGIES FOR ADDRESSING MEDICARE'S FINANCIAL PROBLEMS, THE GOVERNORS URGE CONGRESS TO WORK WITH STATES. THE PROBLEMS THAT FACE MEDICARE CANNOT BE ADDRESSED WITHOUT INPUT FROM THE STATES, BECAUSE THE MEDICARE AND MEDICAID PROGRAMS ARE FUNDAMENTALLY INTERRELATED DEMOGRAPHICALLY, PROGRAMMATICALLY, AND FINANCIALLY. THE MOST OBVIOUS CATEGORICAL CONNECTION BETWEEN THE MEDICAID AND MEDICARE PROGRAMS IS THE POPULATION ELIGIBLE FOR BOTH MEDICARE AND MEDICAID COVERAGE. IN 1997, 30 PERCENT OF MEDICARE SPENDING, OR $62 BILLION, WAS FOR DUAL-ELIGIBLES. MEDICAID SPENDING FOR THESE 6 MILLION DUAL-ELIGIBLES TOTALED $58 BILLION. ALTHOUGH THE ELDERLY AND INDIVIDUALS WITH DISABILITIES COMPRISE ONLY ABOUT ONE-THIRD OF THE MEDICAID CASELOAD, THEY ACCOUNT FOR APPROXIMATELY TWO THIRDS OF ITS EXPENDITURES.

STATES ALSO PLAY A KEY ROLE IN FUNDING SERVICES PROVIDED TO LOW-INCOME INDIVIDUALS WHO ARE NOT ELIGIBLE FOR MEDICAID. THESE SERVICES OFTEN INCLUDE PRESCRIPTION DRUGS; HOME HEALTH; HOMEMAKER SERVICES; PERSONAL CARE; ADULT DAY HEALTH, BOARD, AND CARE; ASSISTED LIVING; AND NONMEDICAL TRANSPORTATION. TO PAY FOR SERVICES, STATES OFTEN USE A COMBINATION OF FUNDS FROM THE SUPPLEMENTAL SECURITY INCOME (SSI) PROGRAM, THE SOCIAL SERVICES BLOCK GRANT, THE OLDER AMERICANS ACT, THE COMMUNITY MENTAL HEALTH SERVICES BLOCK GRANT, AND THE DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT, AS WELL AS U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) RESOURCES AND STATE GENERAL REVENUES. CONSEQUENTLY, MEDICARE SAVINGS APPROACHES THAT RAISE THE COST-SHARING REQUIREMENTS FOR BENEFICIARIES WILL PLACE AN ADDITIONAL BURDEN ON STATES FOR DUAL-ELIGIBLES AND OTHER LOW-INCOME SENIORS AND WILL LEAD TO INCREASING EFFORTS BY STATES TO SHIFT COSTS BACK TO MEDICARE. SIMILARLY, APPROACHES THAT FOCUS ON MANAGING MEDICARE ONLY, SUCH AS THE MEDICARE+CHOICE PROGRAM, ALSO INVITE COST SHIFTING. CHANGES MADE TO THE MEDICARE PROGRAM, WHETHER TO STRENGTHEN THE SOLVENCY OR FOR OTHER PURPOSES, SHOULD ALWAYS BE MADE WITH THE POTENTIAL IMPACT TO MEDICAID IN MIND.

THE GOVERNORS BELIEVE THAT GREATER FLEXIBILITY FOR STATES AND A NEW FEDERAL-STATE PARTNERSHIP ARE KEYS TO DEVELOPING INNOVATIVE AND

IMPROVED SYSTEMS OF HEALTH CARE FOR OLDER AMERICANS. TO ACCOMMODATE SUCH A STRATEGY, CONGRESS, THE ADMINISTRATION, AND THE STATES SHOULD WORK TOGETHER TO:

- DEVELOP STRONG, SUSTAINABLE FEDERAL, STATE, AND LOCAL PARTNERSHIPS THAT ENCOURAGE A CONSUMER-FOCUSED SYSTEM OF CARE;
- ENSURE THAT ADEQUATE CONSUMER PROTECTIONS ARE ESTABLISHED FOR BENEFICIARIES;
- ELIMINATE THE INSTITUTIONAL BIAS OF CURRENT LONG-TERM CARE PROGRAMS AND EXPAND THE AVAILABILITY OF COST-EFFECTIVE HOME- AND COMMUNITY-BASED LONG-TERM CARE SERVICES;
- DEVELOP MECHANISMS AND INCENTIVES FOR PRIMARY, ACUTE, AND LONG-TERM CARE PROVIDERS TO WORK TOGETHER TO COORDINATE CARE, PREVENT DECLINE IN DISABILITY, AND IDENTIFY OPPORTUNITIES FOR PREVENTION OF UNNECESSARY HOSPITALIZATIONS AND LONG-TERM NURSING FACILITY ADMISSIONS;
- ELIMINATE BARRIERS TO THE DEVELOPMENT OF STATE-PROPOSED INTEGRATED CARE PLANS THAT OFFER THE FULL RANGE OF ACUTE AND LONG-TERM CARE BENEFITS;
- BROADEN THE SOURCES OF FINANCING FOR COMPREHENSIVE HEALTH COVERAGE BY STIMULATING THE DEVELOPMENT OF VIABLE PRIVATE LONG-TERM CARE INSURANCE PRODUCTS, BY IMPROVING CONSUMER UNDERSTANDING OF SUCH PRODUCTS, AND BY INTEGRATING FEDERAL, STATE, AND, WHERE POSSIBLE, PERSONAL RESOURCES TO SUPPORT CONTINUITY OF CARE;
- REINFORCE THE ALREADY STRONG DEDICATION TO THE CONCEPT OF QUALITY IN THE PROVISION OF LONG-TERM CARE SERVICES AND THE IMPORTANCE OF TRAINING FOR CAREGIVERS; AND
- CREATE A STATE OPTION TO ENABLE INDIVIDUALS WITH DISABILITIES TO RE-ENTER THE WORKFORCE, AND UP TO REASONABLE INCOME AND ASSET LEVELS, RETAIN THE HEALTH CARE BENEFITS THAT THEY ALREADY RECEIVE.

17.2 ELIMINATING THE INSTITUTIONAL BIAS

BENEFICIARIES GENERALLY PREFER TO LIVE IN THEIR OWN HOMES AND REMAIN AS INDEPENDENT AS POSSIBLE, YET CURRENT FEDERAL ELIGIBILITY, COVERAGE, AND PAYMENT POLICIES ARE BIASED TOWARD INSTITUTIONAL CARE. ALSO, EXISTING

DISTINCTIONS BETWEEN MEDICARE AND MEDICAID POLICIES RELATED TO COVERAGE OF AND ELIGIBILITY FOR NURSING FACILITIES AND HOME- AND COMMUNITY-BASED CARE ARE PARTICULARLY COMPLICATED. OFTEN THE REIMBURSEMENT-DRIVEN POLICIES CREATE A SYSTEM WHERE MEDICARE HAS A FISCAL INCENTIVE TO INSTITUTIONALIZE BENEFICIARIES KNOWING THAT MEDICAID WILL PAY FOR THE BILL. THE LACK OF RESPONSIBLE COORDINATION AND THE COST-SHIFTING IS UNACCEPTABLE FOR BENEFICIARIES AND THE STATES.

ALTHOUGH INSTITUTIONAL CARE MUST BE AVAILABLE AND AFFORDABLE TO THOSE WHO NEED IT, FEDERAL POLICIES MUST BE REDESIGNED TO ELIMINATE THE INSTITUTIONAL BIAS OF THE MEDICARE AND MEDICAID PROGRAMS. FEDERAL POLICIES SHOULD ENCOURAGE THE AVAILABILITY OF A CONTINUUM OF SERVICES, INCLUDING ADDITIONAL HOME- AND COMMUNITY-BASED LONG-TERM CARE OPTIONS, WITH THE GOAL OF PREVENTING OR DELAYING ADMISSION INTO AN INSTITUTION FOR AS LONG AS POSSIBLE. THE INDEPENDENCE OF THE INDIVIDUAL MUST BE MAINTAINED AND ENHANCED TO THE MAXIMUM EXTENT POSSIBLE; FAMILY EFFORTS TO ASSIST THE INDIVIDUAL MUST ALSO BE SUPPORTED. PLACEMENT IN A NURSING HOME SHOULD BE THE EXCEPTION AND REQUIRE SIGNIFICANT JUSTIFICATION, RATHER THAN HOME- AND COMMUNITY-BASED PLACEMENT BEING THE EXCEPTION AND REQUIRING A WAIVER.

17.3 IMPROVING THE COORDINATION OF ACUTE, PRIMARY, AND LONG-TERM CARE

THE LACK OF COORDINATION BETWEEN THE MEDICARE AND MEDICAID PROGRAMS CONTRIBUTES TO FRAGMENTATION OF ACUTE AND LONG-TERM CARE. IT IS CURRENTLY IMPOSSIBLE FOR MEDICAID TO PARTICIPATE IN THE ACUTE CARE DECISIONS MADE WHEN MEDICARE IS THE PRIMARY PAYER. MEDICARE'S CURRENT MANAGED CARE PROGRAM IS INCAPABLE OF ADDRESSING THESE ISSUES, BECAUSE PARTICIPATING MANAGED CARE ORGANIZATIONS ARE NEITHER RESPONSIBLE FOR PROVIDING LONG-TERM CARE SERVICES, NOR ACCOUNTABLE FOR THE COST OF SUCH SERVICES.

AS A RESULT OF THE LACK OF CLINICAL CARE COORDINATION, PRIMARY CARE PHYSICIANS OR SPECIALISTS ARE FREQUENTLY UNAWARE WHEN THEIR PATIENTS ARE ADMITTED TO NURSING FACILITIES, AND HOME CARE CASE MANAGERS ARE OFTEN NOT INFORMED WHEN THEIR CLIENTS ARE HOSPITALIZED. THIS FRAGMENTATION OF CARE AND A LACK OF ACCOUNTABILITY FOR OUTCOMES CONTRIBUTE TO HIGHER RATES OF PREVENTABLE HOSPITALIZATIONS AND TO NURSING FACILITY ADMISSIONS. ULTIMATELY, POOR CLINICAL OUTCOMES AND SERVICE DECISIONS THAT ARE

REIMBURSEMENT-DRIVEN LEAD TO HIGHER EXPENDITURES FOR BOTH MEDICARE AND MEDICAID.

THERE MUST BE MORE EFFECTIVE COORDINATION OF ACUTE AND LONG-TERM CARE SERVICES TO BETTER SERVE BENEFICIARIES AND TO ELIMINATE UNNECESSARY DECLINE IN DISABILITY. TWO GENERAL STRATEGIES EXIST FOR COORDINATING CARE MORE EFFECTIVELY. THE FIRST RELIES MOSTLY ON CASE MANAGEMENT OF INDIVIDUALS WITH ACUTE AND LONG-TERM CARE NEEDS. THE SECOND, MORE COMPREHENSIVE APPROACH, IS TO FULLY INTEGRATE CARE.

17.3.1 **CASE MANAGEMENT MODELS AND INTEGRATED CARE PLANS.** STATES AND THE FEDERAL GOVERNMENT HAVE BEGUN TO ASSESS THE EFFICACY OF CASE MANAGEMENT AND INTEGRATED CARE PROGRAMS FOR SENIORS. HOWEVER, A NUMBER OF SIGNIFICANT OBSTACLES, BOTH STATUTORY AND ADMINISTRATIVE, HAVE ARISEN TO CONDUCTING EFFECTIVE COORDINATED CARE DEMONSTRATIONS. AMONG THE MAJOR ADMINISTRATIVE OBSTACLES IS A FEDERAL WAIVER REVIEW PROCESS THAT CAN TAKE SEVERAL YEARS. AS A RESULT, ONLY ONE STATE IS CURRENTLY OPERATING AN INTEGRATED CARE PROGRAM THAT IS AVAILABLE TO THE FULL RANGE OF UNIMPAIRED, MODERATELY IMPAIRED, AND SEVERELY IMPAIRED DUAL-ELIGIBLE SENIORS.

THE GOVERNORS CALL ON CONGRESS AND THE ADMINISTRATION TO ADDRESS FEDERAL BARRIERS TO THE TIMELY DEVELOPMENT OF CASE MANAGEMENT AND INTEGRATED CARE PROGRAMS SO THAT INTERESTED STATES CAN MAKE SUCH PROGRAMS BROADLY AVAILABLE TO LOW-INCOME BENEFICIARIES. THE AUTHORITY TO TEST NEW APPROACHES COULD BE CLARIFIED EITHER THROUGH EXPLICIT LEGISLATIVE AUTHORIZATION OR THROUGH THE CREATION OF SUBSTANTIAL MEDICARE WAIVER AUTHORITY SIMILAR TO THE WAIVER OPTIONS THAT EXIST IN MEDICAID. A SIMPLE CHANGE THAT WOULD ENABLE THE DEVELOPMENT OF SUCH INTEGRATED PROGRAMS WOULD BE THE EXPLICIT RECOGNITION THAT BUDGET NEUTRALITY SHOULD BE MEASURED ACROSS ALL FEDERAL BENEFIT PROGRAMS, NOT JUST THE MEDICAID PROGRAM. INTEGRATION AND COORDINATION CAN PROVIDE SAVINGS FROM MEDICARE, SSI, SOCIAL SECURITY DISABILITY INSURANCE, AND OTHER PROGRAMS; STATES SHOULD BE ALLOWED TO FACTOR IN THOSE SAVINGS.

IN ADDITION, STRONGER PARTNERSHIPS BETWEEN THE HEALTH CARE FINANCING ADMINISTRATION (HCFA) AND STATES ARE NEEDED TO STRENGTHEN THE COORDINATION OF MEDICARE AND MEDICAID. COOPERATION BETWEEN STATES AND HCFA IN THE DEVELOPMENT OF DEMONSTRATION PROGRAMS THAT INTEGRATE

BENEFIT PACKAGES AND FUNDING STREAMS WOULD PRODUCE BETTER HEALTH OUTCOMES AS WELL AS BE COST-EFFECTIVE.

~~The U.S. population is aging; people are living longer and improvements in medical technology have extended life for many with severe disabilities. These demographic trends and technological advances, when considered together, suggest that the need for long-term care will continue to grow for the next half century. As this demand grows, so will the demand for well-designed private savings and long-term care insurance instruments, carefully integrated with responsive, publicly funded programs. Typically, the frail elderly and people with disabilities require basic support for normal everyday activities. This long-term care may be provided through a variety of home- and community-based care services or institutions (i.e., nursing homes, residential facilities for people with mental illness, and residential facilities for people with mental retardation). It also is important to appreciate that there is a significant amount of family and other private caregiving on behalf of many chronically ill and functionally impaired individuals that should be acknowledged and supported, rather than necessarily replaced, as both public and private policy options for long-term care are developed.~~

~~Among publicly funded long-term care programs, there are four primary populations served—the frail elderly, individuals with physical disabilities, individuals with chronic mental illnesses, and individuals with developmental disabilities. Because of a long tradition of developing public programs around certain population categories, the funding streams and delivery systems for these populations are distinct and tend to reflect the unique needs of individuals in each subpopulation.~~

~~Virtually all publicly financed long-term care programs are administered at the state or local level, with the largest share funded by the Medicaid program. To pay for services, states often use a combination of funds from Medicaid, the Supplemental Security Income (SSI) program, the Social Services Block Grant, the Older Americans Act, the Community Mental Health Services Block Grant, and the Developmental Disabilities Assistance and Bill of Rights Act, as well as state general revenues. Because people who need long-term care also may need specialized housing assistance, states also use Housing and Urban Development (HUD) resources, as well as SSI, to pay for care in facilities (such as board and care) that does not meet institutional Medicaid definitions.~~

~~Although a variety of public programs provide long-term care, most, including Medicaid, are available only to those with limited income and assets. Unfortunately, with a high demand for these services and severe limits on state and federal funding, many Americans do not qualify for care. As such, the burden and the cost of long-term care primarily fall on individuals and their families. Most Americans become aware of the prohibitive costs of prolonged institutional or community-based long-term care only when confronted by family illness. Few alternatives exist to help pay for institutional care; even fewer alternatives exist to pay for home- and community-based care. In most cases, the high costs of care ultimately force people to spend their life savings and then turn to Medicaid for financial assistance.~~

~~Current federal policies are fragmented and emphasize institutional care. Although institutional care must be available to and affordable for those who need it, federal policies must be redesigned to encourage the availability of a continuum of services, including home- and community-based care, with the goal of preventing or delaying admission into an institution for as long as possible. The independence of the individual must be maintained and enhanced to the maximum extent possible; family efforts to assist the individual also must be supported. Moreover, federal policy must encourage Americans to plan for their long-term care needs. In addition to public programs, the federal government should coordinate with states to stimulate viable, private-sector long-term care insurance products and other means to assist individuals and families in securing private sources of protection against at least part of the potential costs of long-term care.~~

~~7.2 A Comprehensive Long-Term Care System~~

~~One of the most important priorities of the 105th Congress will be ensuring the continued financial viability of Medicare. Medicare faces significant challenges related to the short-term financial status of the hospital trust fund, as well as longer-term demands tied to the aging of the baby boom generation. From the perspective of the Governors, the needs of Medicaid and Medicare must be considered together, because the two programs are fundamentally interrelated demographically, programmatically, and financially.~~

~~Regardless of whether Congress and the White House decide to address Medicare reform directly or through a commission, Medicaid long-term care should be part of the discussion. By examining the needs of the two programs jointly, reform offers the potential of creating a more coordinated and cost effective system of care. To undertake Medicare reform without consideration of the impact of changes on Medicaid exposes Medicaid to the risk of cost shifting and misses an opportunity to fundamentally improve an inefficient status quo.~~

~~7.2.1~~ ~~**Nursing Home Care and Home- and Community-Based Care.** Existing distinctions between Medicare and Medicaid policies related to coverage of and eligibility for nursing home care and home- and community-based care are particularly complicated. Simplification would be an important component of a more rational long-term care system, promoting coordination of care across service settings. The most comprehensive approach to simplification would be an integrated model, which would offer a choice of services in a range of settings and would provide a unified plan of care. To accommodate such a strategy, Congress, the administration, and the states should work together to:~~

- ~~encourage a consumer-focused system of long-term health care;~~
- ~~eliminate the institutional bias of current long-term care programs;~~
- ~~increase the supply of long-term care options, including a range of community-based and in-home services;~~
- ~~integrate delivery systems for institutional, residential, and community and in-home services;~~
- ~~ensure that adequate consumer protections are established for beneficiaries;~~
- ~~emphasize cost-effective treatment in the least restrictive setting;~~
- ~~integrate federal, state and, where possible, personal resources, including private sector long-term care insurance policies, to provide continuity of care;~~
- ~~integrate health and social service funding streams; and~~
- ~~stimulate the development of a viable private long-term care insurance product market and encourage industry development of strategies to attract younger buyers of long-term care insurance.~~

~~7.2.2~~ ~~**Managed Care and Long-Term Care.** The most obvious categorical connection between the Medicaid and Medicare programs is the dually eligible population. The dually eligible qualify for both programs and receive a full package of benefits from each. Because the two programs are so closely linked, changes made in one directly impact the other. For example, reductions in Medicare reimbursement rates for hospitals could lead to earlier hospital releases, resulting in increased nursing home enrollment. For the dually eligible, that leads to a transition from Medicare coverage of hospital benefits to Medicaid coverage for nursing home care.~~

~~Successful management of the programmatic connections between Medicaid and Medicare would result in the creation of a more seamless system of benefits for recipients, make home- and community-based care a more viable alternative to institutional placements, and reduce cost shifting. One management strategy many Governors would like the flexibility to pursue is mandatory managed care for the dually eligible.~~

~~Three general strategies exist for the application of managed care practices to long-term care. The first is the integrated care model, which attempts to combine both primary and preventive care, as well as home- and community-based and institutional care, into a single integrated system. The second is the primary/acute care model, which focuses solely on primary and preventive care but excludes long-term care services. This model, though technically not long-term care, is extremely important because health care networks do not have much experience in providing primary and preventive care to the frail elderly and people with developmental or physical disabilities—individuals with unique and demanding health care needs. The third strategy is the long-term care model, which focuses on the integration of home- and community-based care and institutional care but excludes primary and preventive care. Common to all three models is the goal of providing quality and cost-efficient care in the most appropriate setting.~~

~~States and the federal government have begun demonstrations to assess the efficacy of each of these three general approaches. However, a number of significant obstacles, both statutory and administrative, have arisen to conducting effective managed care experiments. The Governors call on Congress and the administration to permit interested states to experiment with mandatory managed care pilot projects for the dually eligible. This authority to experiment could be clarified either through an explicit legislative~~

~~sanction of mandatory managed care programs for the dually eligible or through the creation of substantial Medicare waiver authority similar to the waiver options that currently exist in Medicaid.~~

~~Medicaid fills the gaps in Medicare coverage for low-income senior citizens and certain people with disabilities. When a Medicare health maintenance organization (HMO) option is not available or does not offer prescription drug coverage, Medicaid assumes the cost of providing this important benefit. As Congress and the administration make decisions regarding Medicare HMO rates, special consideration should be given to the disparities that exist between the rates paid to HMOs in rural and urban areas and the impact of those disparities on the range of options and services available to beneficiaries. Adjustments to HMO payment methodologies should be considered that encourage the expansion of Medicare managed care in states where low payments have restricted options and services and have led to low participation.~~

~~The Governors are committed to working with Congress, the administration, and health care providers and beneficiaries to ensure that networks of care are practical and viable for people with developmental and physical disabilities, as well as for people with chronic mental illnesses. All interested parties must build on the lessons learned from existing pilot projects to design integrated service delivery models to meet the special needs of these populations.~~

17.4 Private Long-Term Care Insurance

In recent years, there has been growth in the availability of private long-term care insurance. Although the growth of this market has been slow and has had mixed success, for those who have access to and can afford such coverage, it may represent a reasonable alternative to public financing. Of particular interest are new efforts in some states to create a private-public partnership for long-term care insurance that allows individuals to purchase state-certified private policies and then have a portion of their assets protected once the private benefits are paid out and public financing becomes necessary. Currently, four states are operating these programs, but further expansion has been restricted. These existing public-private partnerships must be permitted to continue, and federal barriers must be eliminated. GOVERNORS ARE DEDICATED TO THE CONTINUED PROVISION OF CONSUMER PROTECTIONS IN THESE PROGRAMS AND ARE READY TO WORK WITH CONGRESS AND THE ADMINISTRATION TO ENSURE THAT ESTABLISHED STATE LAWS ARE NOT PREEMPTED OR INFRINGED. In addition, authority to implement such programs must be expanded to all states.

Although public-private initiatives must be supported, the Governors have been concerned about the quality of many of the private long-term care policies that are available. However, the passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) extends important quality protections to the long-term care insurance market. The Governors call on the federal government to work closely with states when implementing these quality standards to ensure that beneficiaries receive the benefits they have purchased when they need them. (SEE HR-37, PRIVATE-SECTOR HEALTH CARE REFORM)

Despite the real improvements set forth in HIPAA, the Governors continue to have several concerns regarding long-term care insurance. Often, the policies have limited coverage for home care AND OTHER SERVICES THAT ARE PROVIDED TO IMPROVE THE HEALTH AND FUNCTIONAL STATUS OF BENEFICIARIES. In addition, they often have high lapse rates, require medical underwriting, and are unavailable to people with existing disabilities. Also, some insurers have not been forthcoming in paying out benefits. Long-term care insurance policies are often so expensive to purchase that they are unaffordable for a large segment of the general population. However, HIPAA contains several provisions that should make policies more affordable, including tax deductibility and inflation protection. The Governors hope these provisions will make long-term care insurance policies broadly accessible.

The Governors, with the state insurance commissioners, will work with the insurance industry, Congress, EMPLOYERS, and consumer groups to ensure that coverage is available for home- and community-based services, that consumer protection standards are followed, that policies are available that are reasonable in cost, that effective outreach is conducted regarding these policies, and that public education programs are available regarding the importance of early individual planning for long-term care needs.

ALTHOUGH LONG-TERM CARE INSURANCE WILL BE HELPFUL, PRIVATE LONG-TERM CARE INSURANCE IS NOT A COMPLETE SOLUTION FOR ALL THE NATION'S LONG-TERM CARE PROBLEMS. ~~The Governors recognize that private long-term care insurance is not a panacea for the nation's long-term health care problems.~~ In light of the longevity of the population, the growing need for home- and community-based care, the average length of stay for institutional care, and the fixed incomes of those most at risk of needing long-term care, the Governors further recognize that a solution is not easily achievable and that interventions that provide appropriate care, real protections, and fiscal guarantees must be crafted.

17.5 Conclusion

As the baby boom generation begins to retire in 2010, the population needing long-term care will grow dramatically. Federal and state action is needed ~~now to plan for this certainty. Some time remains~~ to develop ~~and assess~~ policies that could lead to cost-efficient, quality medical and support services. ~~However, if this time is not used wisely, the costs in terms of quality of life for individuals and their families, and in state and federal spending, could be quite substantial.~~

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

HR-24. NATIONAL AND COMMUNITY SERVICE

24.1 **Preamble**

Under the leadership of the nation's Governors, states and localities have played a preeminent role in fostering a national commitment to community service and volunteerism in this country. Across the states, men, women, and children are working together to meet many of our pressing social and environmental needs and are vital resources in solving some of our most difficult problems. The Governors recognize the role that community service and volunteers play in meeting the enormous challenges facing the nation. We applaud those individuals and recognize their personal commitment to improving the lives of others. This spirit is an essential component of the fabric of our nation.

The Governors also believe that community service programs provide substantial benefits to both the providers and those who are served. Citizens who participate in these programs develop new skills and have an opportunity to make a personal investment in their own communities, while giving assistance to individuals and communities, often during critical times of need.

24.2 **Principles**

The nation's Governors support public-private partnerships to promote a system of service and volunteer programs that encourages a variety of meaningful opportunities AND ~~reflecting real needs of our communities, our states, and our country. The Governors~~ stand ready to continue our work toward a national service network. FEDERAL, STATE, AND LOCAL GOVERNMENT OFFICIALS SHOULD ALSO BE ENCOURAGED TO SERVE AS MENTORS AND PROMOTE PERSONNEL ACTIVITIES THAT ALLOW FLEXIBLE TIME FOR MENTORING ACTIVITIES. GOVERNORS SUPPORT NATIONAL AND COMMUNITY SERVICE PROGRAMS that ARE ~~is~~ guided by the following principles.

- Promotes a strong partnership among federal, state, and local governments, as well as the volunteer, philanthropic, education, and business communities, to emphasize the importance of communitywide involvement and to help create and build stronger and more cohesive communities.
- Recognizes the multitude of related federal, state, and local programs and seeks to streamline and integrate such programs into a comprehensive network.
- Encourages creativity and diversity among service programs so that citizens of all ages have the opportunity to participate. Assists in enabling individuals and programs to achieve their goals.
- Supports the goal of the President's Summit for America's Future by ensuring that all children and youth have access to the fundamental resources that will maximize their success—an ongoing MENTORING relationship with a caring adult, a safe place and structured activities, a healthy start, marketable skills through effective education, and an opportunity to give back through their own service to their communities.

Based on these principles, the Governors offer the following recommendations.

24.3 **Recommendations**

The Governors recommend that the federal government recognize the key state role in national and community service in the following ways.

- Recognize the key role that states play in promoting and providing service opportunities, and in developing, nurturing, and promoting service initiatives at the local level.
- Provide states with the flexibility to act as the primary facilitator of programs to ensure coordination, public-private cooperation, and sustained resources.

- Continue gubernatorial leadership in involving interested people and organizations, including nonprofit, philanthropic, and community-based organizations, the private sector, and others, in developing or refining statewide strategies for national service and volunteerism, particularly as they relate to achieving the goals set by the President's Summit for America's Future.

24.4 Federal/State/Local Partnership

The Governors recommend that the federal government take the following steps.

- PROVIDE FOR SUSTAINED FEDERAL FUNDING THAT ENABLES CONTINUING AND STRENGTHENED ~~Provide federal support for~~ state and local service programs with maximum flexibility and a minimum of federal procedures or regulations.
- Ensure that all federal support for community service and volunteer programs pass through a gubernatorially appointed state-level service commission or other state agency as deemed appropriate by the Governor. Funding should be provided with maximum flexibility so that it can be allocated according to the needs and priorities of the state.
- Provide for a 10-percent set-aside in designated federal community service program funding support for the purpose of state-determined program innovation and flexibility.
- Make funds available for states and localities to encourage innovative proposals to leverage state, private, and nonprofit resources, including in-kind contributions, and to promote citizen and organizational awareness of model programs and opportunities to serve.
- ~~Provide for sustained federal funding that enables continuing and strengthened state and local service programs with maximum flexibility and a minimum of federal procedures or regulations.~~
- Provide a single point of focus at the federal level to disseminate information about national service and volunteer programs to assist state and local government and groups, individuals, and nonprofit organizations.
- Collect, evaluate, and disseminate information on model programs to promote citizen and organizational involvement in community service and volunteerism.
- Support service as a strategy for ensuring that the goals of the President's Summit for America's Future are implemented.

The Governors believe strongly in the value of community service in that it benefits both the provider and the recipient. We want to provide all of our citizens with a variety of opportunities that will allow them to contribute to their community throughout their lives.

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

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.

25.4 **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 FEMA 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 (NEMA) 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.

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 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. 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.

25.5 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, and others, which provide essential services to victims regardless of their eligibility for federal or state assistance.

25.6 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.

25.7 **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 (CDBG) 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 HUD should amend their regulations to exempt any structures, such as dikes, that will serve to mitigate future disasters.

[Language in brackets moved from policy HR-15, Emergency Management Assistance Compact]

~~HR-15. EMERGENCY MANAGEMENT ASSISTANCE COMPACT~~

25.8 **MUTUAL ASSISTANCE THROUGH STATE COMPACTS**

[~~Disasters and emergencies often transcend political jurisdictional boundaries, and intergovernmental coordination is essential to managing them. Sometimes the resources needed to manage a disaster or emergency may not be readily available within the state, and outside resources are needed to make a prompt and effective response. Individual states do not have all the resources needed to handle the various types of emergencies or disasters that may confront them.~~

Realizing the necessity of sharing mutual assistance in times of emergencies and disasters, ~~fourteen~~ states and territories have BEEN ENTERING ~~entered~~ into the Emergency Management Assistance Compact (EMAC), to facilitate mutual assistance among ~~these~~ states during emergencies and disasters. The ~~U.S. House of Representatives and the U.S. Senate of the~~ 104th Congress ~~passed House Joint Resolution 193 to~~ GRANTED ~~grant~~ their consent to EMAC. ~~In addition, EMAC has been endorsed by the Southern Governors' Association, the Midwestern Governors' Conference, the Western Governors' Association, the Adjutants General Association of the United States, and the National Guard Association of the United States.~~

The ~~National Governors' Association, on behalf of all~~ Governors ~~of the states and territories,~~ fully ENDORSE ~~endorses~~ EMAC and ENCOURAGE ~~encourages~~ every state to consider entering into the compact as soon as ~~it is~~ practical. Participation in the compact should be voluntary. ~~, with the determination made by each Governor and his or her respective state.~~ 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 nation's Governors are committed to providing for mutual assistance~~

~~among the states in managing any emergency or disaster that is duly declared by the Governor of the affected state. The Governors understand that the underlying principle of the compact is to ensure that prompt, full, and effective utilization of resources of the participating states and the federal government are available to guarantee the safety, care, and welfare of the people in the event of any emergency or disaster in an affected state.~~]

Time limited (effective Winter Meeting 1998–Winter Meeting 2000).
Adopted Annual Meeting 1995; revised Annual Meeting 1997 and Winter Meeting 1998.

HR-36. IMPLEMENTATION OF WELFARE REFORM

36.1 **Preamble**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, reallocates responsibilities between the federal government and the states and provides states with the opportunity and flexibility to restructure welfare as a transitional program that will enable recipients to become productive, self-sufficient, working members of society. The welfare legislation incorporated many of the recommendations supported by the nation's Governors, including increased funding for child care, a contingency fund to assist states during periods of economic downturn, and a fund to reward high performing states. The Governors believe that greater flexibility, EVEN beyond that provided in the law, would facilitate implementation and enable Governors to accommodate the unique needs of their own state's economy and welfare population. FURTHER, GOVERNORS STRONGLY BELIEVE THAT CONGRESS AND THE ADMINISTRATION MUST UPHOLD THE COMMITMENT MADE IN 1996 FOR FIVE YEARS OF GUARANTEED FUNDING FOR THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT AND OTHER WELFARE-RELATED PROGRAMS.

STATES HAVE SHOWN EARLY SUCCESS IN WELFARE REFORM AS EVIDENCED BY REDUCTIONS IN CASELOADS AND AN INCREASE IN THE NUMBER OF INDIVIDUALS WORKING. STATES NOW FACE NEW CHALLENGES OF IMPLEMENTATION. FOR EXAMPLE, A GROWING PORTION OF THOSE WHO REMAIN ON THE CASELOADS ARE THE "HARDEST TO SERVE" AND MUST OVERCOME SIGNIFICANT CHALLENGES SUCH AS LOW BASIC SKILLS, ALCOHOL OR SUBSTANCE ABUSE, CHRONIC HEALTH PROGRAMS, AND LEARNING DISABILITIES—WHICH REQUIRE SERVICES THAT GENERALLY CALL FOR A GREATER SHARE OF FINANCIAL RESOURCES. OTHERS MAY HAVE SIGNIFICANT BARRIERS TO WORK, SUCH AS TRANSPORTATION AND CHILD CARE NEEDS. STATES ALSO FACE THE CHALLENGE OF HELPING FORMER WELFARE RECIPIENTS STAY EMPLOYED, BUILD A WORK HISTORY, AND ADVANCE TO HIGHER-SKILL, BETTER PAYING JOBS.

~~States now face the challenge of implementing sweeping changes within a limited period of time. The Governors are committed to ensuring successful implementation of the legislation to achieve the following goals:~~

- ~~increase self-sufficiency by moving families into work and off welfare;~~
- ~~increase the support of both parents for their children;~~
- ~~prevent and reduce out-of-wedlock births; and~~
- ~~encourage the formation and maintenance of two-parent families.~~

In order to meet these AND OTHER CHALLENGES OF IMPLEMENTATION ~~goals~~, the flexibility embodied in the bill must be retained through the regulatory process and any subsequent legislative modifications to the bill. FURTHER, FUNDING MUST BE PROVIDED AT THE LEVELS AGREED TO IN PRWORA. The Governors pledge to continue to work with Congress and the federal government throughout the implementation process so that any problems can be identified early and redressed quickly through legislation or regulation.

36.2 **Principles and Recommendations for Welfare Reform Implementation**

The Governors believe that the implementation and monitoring of welfare reform must be collaborative efforts among federal, state, and local governments and the private sector. ~~Governors must be involved in and consulted on the drafting of regulations and proposed technical changes to the bill.~~ The Governors support the following principles and recommendations to facilitate the CONTINUED successful implementation of welfare reform.

~~36.2.1 **Enact Technical Corrections.** As states have begun to implement the Temporary Assistance for Needy Families (TANF) block grant and other provisions of the new welfare law, it has become apparent that a number of technical corrections need to be made. Many of these changes, although technical in nature, affect state decisionmaking and spending and need to be resolved quickly. The Governors are committed to working with Congress and the administration to ensure that prompt action is taken to enact a technical corrections bill.~~

36.2.1 **Maintain Funding and Flexibility in the Block Grant.** RECENTLY, THERE HAVE BEEN REPEATED ATTEMPTS TO DECREASE THE AMOUNT OF FUNDING AND FLEXIBILITY PROVIDED IN THE 1996 AGREEMENT. P.L. 104-193 provides to states a fixed amount of funding for welfare in the form of a block grant for fiscal 1997 through fiscal 2002. This TANF block grant is funded as an entitlement to states. A state's TANF block grant is based on the level of federal funding that a state received in a base year. The Governors supported the block grant concept for welfare funding because of the added flexibility it provided. However, their support came with the understanding that the full state entitlement funding would be available each year. Congress and the administration must honor their commitment to provide full funding for TANF at the mandatory level provided for in P.L. 104-193.

GOVERNORS VIEW ANY REDUCTION IN FUNDING OR RESTRICTION IN FLEXIBILITY FOR TANF OR OTHER WELFARE-RELATED PROGRAMS AS A VIOLATION OF THE 1996 WELFARE REFORM AGREEMENT. THE GOVERNORS URGE CONGRESS AND THE ADMINISTRATION TO UPHOLD THE AGREEMENT.

GOVERNORS ARE OPPOSED TO THE FEDERAL GOVERNMENT'S INTERPRETATION OF THE APPLICATION OF THE CASH MANAGEMENT IMPROVEMENT ACT (CMIA) TO TANF FUNDS. ALTHOUGH PRWORA PROVIDES THAT A STATE MAY RESERVE AMOUNTS PAID TO THE STATE WITHOUT FISCAL YEAR LIMITATION, THE U.S. TREASURY DEPARTMENT AND THE OFFICE OF MANAGEMENT AND BUDGET (OMB) HAVE REQUIRED THAT A STATE'S UNSPENT TANF DOLLARS REMAIN AT THE NATIONAL TREASURY. THIS CREATES BARRIERS FOR STATES TO CREATE "RAINY DAY FUNDS" OR INVEST IN CERTAIN STRATEGIES, SUCH AS REVOLVING LOAN FUNDS FOR MICROENTERPRISE

DEVELOPMENT OR COMMUNITY INNOVATIONS. TANF FUNDS THAT A STATE MAY WANT TO SAVE AND EXPEND IN LATER YEARS DURING PERIODS OF ECONOMIC DOWNTURN OR HIGHER SERVICE DEMANDS BECOME VULNERABLE WHEN LEFT IN THE U.S. TREASURY. THE GOVERNORS BELIEVE GIVING STATES FULL ACCESS TO THESE FUNDS IS CONSISTENT WITH THE GOAL OF GREATER FLEXIBILITY AND WITH THE INHERENT RISKS STATES HAVE ASSUMED BY ACCEPTING A FIXED LEVEL OF FUNDING OVER A PERIOD OF SEVERAL YEARS.

Additionally, the Governors oppose any efforts to create set-asides or additional requirements in the block grant that limit state flexibility in the use or expenditure of TANF funds. ANY FUTURE FEDERAL ACTIVITY—LEGISLATIVE OR REGULATORY—SHOULD ENHANCE AND NOT NARROW STATE FLEXIBILITY. THE GOVERNORS SUPPORT EXPANDING TRANSFERABILITY BETWEEN BLOCK GRANTS, INCLUDING TANF, THE SOCIAL SERVICES BLOCK GRANT (SSBG), AND THE CHILD CARE DEVELOPMENT BLOCK GRANT (CCDBG), AS INCLUDED IN THE 1996 WELFARE REFORM AGREEMENT. ~~States, and not the federal government, should define "eligible families" and "assistance" under a state welfare program funded with TANF dollars. Any future federal activity—legislative or regulatory—should enhance and not narrow state flexibility. The Governors support greater transferability between block grants, including the Social Services Block Grant and if enacted, a workforce development block grant.~~

36.2.2 **Ensure Maximum Flexibility with State Dollars and Bonus Awards.** The TANF block grant imposes a ~~75 percent~~ maintenance-of-effort (MOE) requirement on state spending OF EITHER 75 PERCENT OR 80 PERCENT, DEPENDING ON THAT STATE'S COMPLIANCE WITH THE WORK REQUIREMENT, in order for states to be eligible for their full TANF block grant. The Governors strongly believe that state dollars spent to meet the MOE requirement SHOULD NOT BE SUBJECT TO THE SAME FEDERAL REQUIREMENTS AS FEDERAL TANF. AS SUCH, PROGRAMS CREATED WITH COMINGLED FUNDS ARE NOT SUBJECT TO THE TIME LIMIT AND ~~either within the state program created by the block grant or in~~ separate state-only funded programs should not be subject to ALL federal requirements such as the time limit, work requirements, data collection, and assignment of child support rights. The imposition of federal requirements on state dollars is inconsistent with the principles of federalism that underlie block grants. All state-only funds spent by a state to meet the objectives of the TANF program should count toward the state maintenance-of-effort requirement. ~~The Governors appreciate the preliminary guidance provided by the U.S. Department of Health and Human Services (HHS) that allows states substantial flexibility in state-only funded programs.~~

THE GOVERNORS ARE CONCERNED THAT PROVISIONS IN THE PROPOSED TANF REGULATIONS COULD DISCOURAGE CREATION OF INNOVATIVE STATE-ONLY PROGRAMS, BECAUSE STATES THAT CREATE SUCH PROGRAMS ARE PLACED AT

GREATER RISK OF PENALTIES. THE REGULATIONS SHOULD BE REVISED TO REFLECT THE STATUTORY INTENT TO ALLOW FOR SEPARATE STATE PROGRAMS.

Similarly, any bonus a state receives, either for high performance or for reducing out-of-wedlock births, should not be subject to TANF requirements. States should have the flexibility to reinvest these funds in innovative ways to meet the goals of welfare reform.

36.2.3 **DEFINE ~~Limit TANF Requirements to Cash~~ Assistance.** The Governors believe that cash assistance to families with children should be available only for a time-limited period. During this period, activities should occur to help these individuals make the transition from welfare to work. The Governors are also committed to increasing work participation and child support collections. At the same time, the Governors believe that federal TANF requirements such as the time limit, the two-year work requirement, the calculation of work participation rates, data collection requirements, and the assignment of child support rights should only be applied to families receiving cash assistance and not other activities or services. This will enable states to more easily provide critical prevention-oriented and support services that are also allowable under TANF. THE GOVERNORS ARE CONCERNED THAT THE PROPOSED TANF REGULATIONS DEFINE ASSISTANCE FAR TOO BROADLY AND URGE THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) TO EXCLUDE CHILD CARE, TRANSPORTATION SUBSIDIES, OR BENEFITS FOR WORKING FAMILIES THAT ARE DIRECTED AT THEIR BASIC NEEDS IN THE FINAL REGULATIONS. ~~The Governors support the preliminary policy guidance provided by the U.S. Department of Health and Human Services that gives states significant flexibility in this area.~~

36.2.4 **Retain Waivers.** Prior to the enactment of P.L. 104-193, many Governors had initiated comprehensive welfare reform under Section 1115 waivers. Although specific policies under states' waiver programs may be different from the new law, these reforms share the same goals. Indeed, many of the provisions of P.L. 104-193 were based on innovations contained in states' welfare waiver programs.

The Governors believe that the transition to the TANF block grant should not disrupt existing state-based welfare reform. States should be able to continue all the existing provisions, terms, and conditions of their waivers until the waivers expire, including phase-ins without penalty to either the state or recipients. Additionally, states that choose to continue all or part of their existing waivers under Title IV-A, Title IV-F, Medicaid, or the Food Stamp program should have an opportunity to renegotiate with the federal government concerning control groups, evaluations, and cost neutrality.

GOVERNORS ARE CONCERNED THAT THE PROPOSED TANF REGULATIONS WILL DISCOURAGE STATES FROM CONTINUING THEIR WAIVERS AND FORCE THEM TO CHANGE THEIR PROGRAMS, IN DIRECT CONTRADICTION TO THE EXPRESSED INTENT OF THE LAW. THE FINAL REGULATIONS SHOULD REFLECT THE EXPLICIT STATUTORY AUTHORITY IN SECTION 1115, WHICH ALLOWS STATES TO CONTINUE WAIVERS THAT MAY BE INCONSISTENT WITH TANF.

States that choose to terminate their welfare waivers should be held harmless from cost neutrality requirements under Title IV-A and Title IV-F, as well as under the Food Stamp program and Medicaid, for those waivers that included changes to these programs or had interactive effects.

36.2.5 **Allow Greater Flexibility in the Work Requirement.** The Governors are committed to a "work first" approach that will quickly move recipients into employment while providing them with opportunities to develop the skills that will lead to better paying jobs. Employers have indicated that they are willing to hire welfare recipients if they are "job ready"—that is, if they are literate, have good communications skills, and understand the requirements of the workplace.

The Governors believe that greater flexibility within the work requirement would enable states to better meet the needs of recipients and employers. The Governors recommend permitting job search and job readiness to count toward the work participation rate for at least twelve weeks each year, allowing greater flexibility to count basic educational activities toward the work requirement, removing teen parents from the 30 ~~20~~ percent vocational education limit, and permitting drug and alcohol treatment to count toward the work requirement. Flexibility is recommended because some Governors do not believe that the definition of work should include all of these options. The calculation of participation rates should include all hours of work activity for all active participants during the reporting month.

~~36.2.7 **Provide Suitable Child Care and Retain Full Funding.** An adequate supply of safe, affordable, and accessible child care is one of the essential components of successful welfare reform. Suitable child care is necessary if parents are to work. Congress and the administration must honor their commitment to fund child care at the levels provided for in P.L. 104-193.~~

36.2.6 **Address Information System Requirements.** The law creates extensive new data collection, reporting, tracking, and monitoring requirements under the TANF, child care, child support enforcement, and Food Stamp programs that will be costly and difficult for states to meet. States do not currently have the capacity to meet the new system requirements. Therefore, the Governors make the following recommendations.

- THE FEDERAL GOVERNMENT SHOULD ACKNOWLEDGE THE EXCESSIVE BURDEN OF REPORTING ON STATES AND ~~Congress~~ should streamline and reduce the reporting requirements in the TANF, child care, child support enforcement, and Food Stamp programs. DATA COLLECTION REQUIREMENTS AND NEW STATE REPORTS INCLUDED IN THE PROPOSED TANF REGULATIONS WILL ENTAIL SIGNIFICANT SYSTEMS OVERHAUL AND REDESIGN THAT WILL REQUIRE SUBSTANTIAL INVESTMENTS IN STAFF AND RESOURCES. ADDITIONALLY, STATES ARE NOW FACING THE DIFFICULT CHALLENGES ASSOCIATED WITH UPDATING SYSTEMS TO BE IN COMPLIANCE WITH YEAR 2000 (Y2K) REQUIREMENTS.
- THE PROPOSED TANF REGULATIONS CALL FOR QUARTERLY STATE TANF-MOE DATA REPORTING DETAILING CASE INFORMATION ON FAMILIES SERVED IN SEPARATE STATE PROGRAMS. THE GOVERNORS BELIEVE THIS REQUEST EXCEEDS HHS' REGULATORY AUTHORITY AND SHOULD BE ELIMINATED. SUFFICIENT INFORMATION WILL BE MADE AVAILABLE THROUGH OTHER REPORTING REQUIREMENTS.
- HHS regulations should exclude from the definition of administration for TANF all costs associated with information technology and computerization; ongoing costs associated with meeting the data collection, reporting, tracking, and monitoring requirements; and any evaluations required in law or existing waivers.

- ~~The federal government should provide technical assistance to states in developing systems and facilitate interstate coordination, particularly in the tracking of time limits.~~ States should not be held responsible or penalized for failure to enforce the five-year lifetime limit and other prohibitions that are dependent on interstate systems if the federal government is not willing to provide funding to create and operate an interstate tracking system.
- Congress should revise the child care data collection and reporting requirements of the child care block grant to specifically allow sampling.
- The federal government should provide enhanced federal funding to states to implement the management information system requirements created by P.L. 104-193.

36.2.7 **Define Administrative Costs.** P.L. 104-193 sets a 15 percent limitation on use of TANF funds for administrative purposes. ~~Administrative costs will be defined in regulation.~~ Under TANF, states have the ability to provide a wide range of services, not just cash assistance. With the emphasis on moving recipients swiftly into work, staff will be expected to do much more than determine benefit eligibility. Case management and employment services provided to meet the work participation requirements will be larger components of service delivery and should not be considered as administrative costs. THE GOVERNORS ARE CONCERNED THAT THE PROPOSED TANF REGULATIONS OVERLOOK THE FACT THAT AS THE ROLE OF FRONT-LINE WORKERS CHANGES, ELIGIBILITY DETERMINATION IS NO LONGER A CLEARLY DEFINED ACTIVITY BUT MORE OFTEN INTEGRATED WITH OTHER ACTIVITIES. FOR PURPOSES OF THE 15 PERCENT CAP, THE REGULATIONS SHOULD CLARIFY THAT ACTIVITIES RELATED TO ELIGIBILITY DETERMINATIONS ARE NOT CONSIDERED ADMINISTRATIVE ACTIVITIES. ~~Regulations developed in consultation with the states must reflect this expanded understanding of service delivery and exclude from administrative costs benefits, direct services, and automation.~~

36.2.8 **Recognize States' Good-Faith Efforts.** Within a very short period of time, states HAVE IMPLEMENTED ~~must implement~~ major changes in their welfare programs—transforming their Job Opportunities and Basic Skills (JOBS) training program into a work-first system; developing new and complex management information systems; redesigning support services; implementing new work requirements and time limits; and implementing requirements on teen parents. Although the Governors are fully committed to successful implementation, it is possible that every state will not be able to meet the requirements of the bill, despite their best efforts. States that have shown a good-faith effort or have a reasonable cause for failure to meet a requirement in the bill should not be penalized by the federal government. As provided for in the bill, states should be allowed an adequate amount of time to correct the violation and comply before a penalty is levied.

36.2.9 **Modify the Contingency Fund.** The inclusion of a contingency fund that provides additional federal matching dollars to states experiencing an economic downturn was a key recommendation made by Governors during the welfare reform debate. Congress adopted the Governors' recommendation of providing $2 billion in the contingency fund for fiscal 1997 through fiscal 2001. The Governors are concerned, however, that restrictions contained in the final bill diminish the value of the fund and will result in states drawing down fewer dollars. These restrictions include limiting the amount a state may access in any month to one-twelfth of 20 percent of its TANF grant, imposing a very narrow definition of what counts toward meeting the 100 percent maintenance-of-effort requirement, and effectively reducing the federal match rate through an end-of-the year reconciliation provision. The Governors urge Congress to consider some modifications in these areas. GOVERNORS ARE FURTHER CONCERNED THAT A $40 MILLION REDUCTION IN FUNDING FOR THE CONTINGENCY FUND AS INCLUDED IN P.L. 105-89, THE ADOPTION AND SAFE FAMILIES ACT, SUGGESTS A LACK OF COMMITMENT TO THIS PROGRAM.

36.2.10 **Measure Performance.** Governors support the performance bonus that will reward states for meeting the goals of P.L. 104-193, including reducing welfare dependency by increasing employment and earnings. Governors strongly urge the U.S. Department of Health and Human Services to CONTINUE TO work closely with the National Governors' Association UNTIL ~~and the American Public Welfare Association, as instructed in the legislation, to develop~~ the FINAL criteria and formula for the award of performance bonuses ARE DEVELOPED.

The work participation rate that states must meet in order to receive full TANF funding is a process rather than an outcome measure and does not measure the number of individuals who have left welfare for work or who have been diverted from the welfare roles. States are actually given more credit for keeping someone in a subsidized job and on welfare than for placing that person in a job with a sufficient income so that he or she no longer is eligible for cash assistance. Although the pro rata reduction in the work requirement attempts to address this issue by rewarding a state for reducing its caseload, it will not benefit a state if its caseload increases during an economic decline, even if the state is continuing to move individuals into the workforce.

The Governors support moving toward an outcome-based system that would allow a state to use performance measures to assess its progress toward meeting benchmarks and goals established by the state.

36.2.11 **Repeal the Maintenance-of-Effort Requirement for Supplemental Security Income (SSI) State Supplements.** Although states are given a great deal of flexibility under TANF, states are still mandated to meet maintenance-of-effort provisions for their SSI state supplementary payments or face severe penalties. Even though states' entrance into this program was optional, current law locks states into continuing these supplemental benefits paid for with state-only dollars. The Governors recommend that the maintenance-of-effort requirement for SSI state supplements be repealed and that states be given the authority to set their own state supplement levels. At a minimum, state maintenance-of-effort levels should be proportionally adjusted downward for individuals who lose eligibility because of federal statutory changes regarding SSI benefits to immigrants, children, and alcohol and substance abusers.

36.2.12 **Promote Agency Collaboration and Coordination.** Successful implementation of welfare reform will require cross-agency coordination and collaboration at all levels of government. The child care, education, workforce, health, child welfare, child support, ~~and~~ housing, TRANSPORTATION, AND WELFARE-TO-WORK systems ~~will~~ all play an integral role in welfare reform. For example, rent subsidies should be more flexible to support families moving from welfare to work. The Governors urge the federal government to follow the states' lead in eliminating regulatory and legislative barriers that impede collaborative efforts.

36.2.13 **Provide Public Assistance to Some Legal Immigrants and Refugees.** The Governors recognize Congress' well-intentioned efforts in regard to legal immigrants and agree that sponsorship requirements can help prevent immigrants from becoming public charges. However, the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that deny certain benefits to this population 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 SSI BENEFITS TO MANY OF THOSE WHO HAD BEEN DENIED ELIGIBILITY UNDER THE ORIGINAL STATUTE.

The Governors REMAIN ~~are particularly~~ 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 requirement 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. ~~The Governors further believe that an equitable solution to this issue could be achieved without reopening the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. We look forward to working cooperatively with Congress and the administration to decide the appropriate vehicle.~~

Even though mandates have been terminated and states have been given the option to establish eligibility for TANF, Medicaid, and the Social Services Block Grant, it is not clear that the judicial system will permit states to bar ~~refugees and other~~ legal immigrants who are in need from critical services provided to other residents of the state. States could be required to sustain benefits, at least during an initial period of judicial deliberation.

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

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 ~~five~~ years and shifts the responsibility to states to decide whether to provide state benefits to these refugees admitted to the country by federal policy. The aged refugees, in particular, confront extraordinary difficulties in becoming citizens (e.g., inability to pass the tests or loss of documents). Unlike legal immigrants, refugees do not have sponsors. Even those refugees able to naturalize would be in jeopardy for a TWO-YEAR ~~six- to nine-month~~ period during the process of applying for naturalization.

~~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.~~

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, LIHEAP, 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.

36.2.14 **MAINTAIN STATE FLEXIBILITY IN DETERMINING BENEFIT LEVELS.** THE 1996 WELFARE REFORM AGREEMENT GRANTED STATES THE FLEXIBILITY TO DETERMINE TANF BENEFIT LEVELS FOR FAMILIES. THIS INCLUDES THE EXPLICIT AUTHORITY TO LIMIT NEW RESIDENTS OF A STATE TO THE TANF BENEFIT LEVEL OF THEIR PRIOR STATE OF RESIDENCE FOR UP TO ONE YEAR. AT LEAST FOURTEEN STATES HAVE ADOPTED SUCH DURATIONAL RESIDENCY POLICIES. CRITICS OF THIS POLICY CLAIM IT IS UNCONSTITUTIONAL AND VIOLATES AN INDIVIDUAL'S RIGHT TO TRAVEL. BASED ON CALIFORNIA'S DURATIONAL RESIDENCY POLICY, THE U.S. SUPREME COURT PLANS TO HEAR THE CASE ANDERSON V. ROE LATER THIS TERM. THE GOVERNORS BELIEVE SUCH DURATIONAL RESIDENCY POLICIES ARE NOT UNCONSTITUTIONAL AND THAT THE FLEXIBILITY STATES WERE GRANTED IN PRWORA TO SET BENEFIT LEVELS SHOULD CONTINUE.

36.3 Programs to Support Welfare Reform

36.3.1 **Earned Income Credit (EIC).** THE EIC IS A KEY COMPONENT OF MOVING LOW-INCOME FAMILIES FROM WELFARE TO SELF-SUFFICIENCY. IT ~~The Governors have supported efforts to~~

~~more narrowly target EIC. The earned income credit~~ should be adjusted over time so that with food stamps, a family of four with a full-time, year-round worker will be brought up to the poverty line. Administration of EIC should be simplified, outreach and education to ensure full participation should be expanded, and worker choice regarding the frequency of payment should be preserved. Employers should be encouraged to advance EIC to qualified employees. States should be allowed to advance EIC to those eligible individuals, including those on public assistance.

36.3.2 **Job Development/Job Creation.** As jobs are created in the economy through various means, every effort should be made to ensure that employment is available to those making the transition from welfare to work. The private sector, the major source of new job opportunities, should be encouraged to train workers and to hire those recipients who are ready to work. Governors are interested in working with the private sector to identify the strategies that are most successful in creating jobs for welfare recipients. Governors also are interested in working with the private sector to develop programs that will enhance job retention and promotion, provide on-the-job training, and provide on-site child care. Governors support removing obstacles that might impede public-private partnerships that provide opportunities for people transitioning from welfare to work.

~~Any federal program providing funds for job creation or retention should be directed to the states, as Governors are accountable for meeting the work requirement and will be penalized for failure to do so. These funds should flow through a state to enable maximum coordination with a state's welfare reform program, which would allow the state to target areas with the greatest needs.~~

Public agencies at all levels of government should lead by example and accept their obligation to employ those in transition from welfare as jobs are developed. Where appropriate, private and not-for-profit organizations under contract to state and local agencies should also bring these individuals into their workforces.

36.3.3 **ONE-STOP SERVICE CENTERS.** GOVERNORS HAVE INITIATED VARIOUS ONE-STOP INITIATIVES IN THEIR STATES TO BETTER COORDINATE SERVICES THAT ARE DESIGNED TO PROVIDE EMPLOYMENT-RELATED SERVICES. THESE SERVICES INCLUDE PROGRAMS ADMINISTERED BY THE U.S. DEPARTMENTS OF HEALTH AND HUMAN SERVICES, LABOR, EDUCATION, AND AGRICULTURE. IN ORDER FOR STATES TO OPTIMIZE THE ONE-STOP VISION, THUS SERVING CUSTOMERS MORE EFFICIENTLY AND EFFECTIVELY, THE GOVERNORS URGE THE SECRETARIES OF THE SUPPORTING FEDERAL AGENCIES TO GRANT STATES MAXIMUM FLEXIBILITY TO CONDUCT INTEGRATED AND COORDINATED SERVICES, AS WELL AS SIMPLIFIED DATA REPORTING. THE GOVERNORS BELIEVE THAT EACH STATE WILL ADMINISTER THE ONE-STOP VISION ACCORDING TO LOCAL NEEDS AND PRIORITIES, MEANING THAT EACH STATE MAY OPERATE DIFFERENTLY. IT IS IMPERATIVE THAT BOTH CONGRESS AND THE ADMINISTRATION ALLOW STATES THE OPPORTUNITY TO ACHIEVE SUCCESS BY ALLOWING FLEXIBILITY AND APPROPRIATE EXPERIMENTATION AND BY LESSENING MANDATES PLACED THROUGH VARIOUS FUNDING SOURCES.

36.3.4 **Child Support.** Governors supported many of the tools provided in the welfare reform law that will give states the ability to enhance the collection of child support. Child support will become an even more crucial part of assistance to families as more families transition to work and time-limits on cash assistance are implemented. ~~Governors encourage employers to work with states to successfully implement the new hire reporting provisions.~~ Financial institutions can also play a major role in supporting a state's ability to implement PRWORA ~~new~~ provisions pertaining to matching financial records; Governors encourage financial institutions to work with states on these efforts. FURTHER, GOVERNORS ENCOURAGE HHS TO PROVIDE MATCH CAPABILITY FOR STATES WITH IN-STATE FINANCIAL INSTITUTIONS IN THE SAME MANNER THAT HHS PROVIDES FOR MULTISTATE FINANCIAL INSTITUTIONS. IN ADDITION, GOVERNORS SUPPORT CONTINUATION OF THE PRWORA "HOLD HARMLESS" PROVISION UNDER TITLE IV-D TO ENSURE ADEQUATE FUNDING FOR CHILD SUPPORT ENFORCEMENT.

~~36.3.4 **Child Support Private Right of Action.** Governors are strongly opposed to the creation of a private right of action under Title IV-D, child support, and the National Governors' Association joined an amicus brief to the U.S. Supreme Court on Blessing v. Freestone. The Governors urge Congress to move swiftly to adopt an amendment to clarify that no private right of action exists under the Social Security Act. The Governors are not opposed to citizen suits but believe such suits should be brought against the level of government enacting the law, in this case, the federal government.~~

36.3.5 **CHILD CARE.** AN ADEQUATE SUPPLY OF SAFE, AFFORDABLE, AND ACCESSIBLE CHILD CARE IS ONE OF THE ESSENTIAL COMPONENTS OF SUCCESSFUL WELFARE REFORM. SUITABLE CHILD CARE IS NECESSARY IF PARENTS ARE TO WORK. CONGRESS AND THE ADMINISTRATION MUST HONOR THEIR COMMITMENT TO FUND CHILD CARE AT THE LEVELS PROVIDED FOR IN P.L. 104-193. IN ADDITION, THE GOVERNORS STRONGLY SUPPORT THE FLEXIBILITY PROVIDED IN THE WELFARE REFORM AGREEMENT THAT ALLOWS TANF FUNDS TO BE SPENT DIRECTLY ON CHILD CARE SERVICES AND TRANSFERRED FROM TANF TO THE CHILD CARE BLOCK GRANT. PRINCIPLES FOR CHILD CARE ARE FURTHER OUTLINED IN EC-11, CHILD CARE AND EARLY EDUCATION.

36.3.6 **TITLE XX/SOCIAL SERVICES BLOCK GRANT.** GOVERNORS GREATLY VALUE THE FLEXIBILITY OF SSBG AND STRONGLY OPPOSE ANY FURTHER ATTEMPTS TO CUT FUNDING OR RESTRICT FLEXIBILITY FOR THE PROGRAM. SSBG IS USED TO REACH BROAD POUPLATIONS IN EACH STATE, PROVIDING VALUABLE SOCIAL SERVICES SUCH AS ADULT AND CHILD PROTECTIVE SERVICES, CHILD CARE, FAMILY SUPPORT AND PRESERVATION, PROTECTIVE AND IN-HOME SERVICES FOR THE ELDERLY, AND SPECIAL SERVICES FOR THE DISABLED.

IN 1996, WITHIN THE GREATER CONTEXT OF WELFARE REFORM, THE GOVERNORS RELUCTANTLY AGREED TO A 15 PERCENT REDUCTION IN SSBG AS PART OF PRWORA WITH THE UNDERSTANDING THAT THE FUNDING WOULD BE GUARANTEED AT $2.38 BILLION FOR FIVE YEARS. HOWEVER, IN THE FOLLOWING YEARS, THE FEDERAL

GOVERNMENT HAS BROKEN THAT COMMITMENT BY REPEATEDLY CUTTING FUNDING FOR THE PROGRAM. IN FISCAL 1998, SSBG WAS CUT TO $2.299 BILLION. IN FISCAL 1999, CONGRESS CUT FUNDING ONCE AGAIN TO $1.909 BILLION, THE AMOUNT INCLUDED IN THE PRESIDENT'S BUDGET. FURTHER, THE TRANSPORTATION AUTHORIZATION LEGISLATION (TEA 21) ENACTED IN 1998 CUT FUTURE FUNDING OF SSBG. UNDER THIS STATUTE, FUNDING WILL BE PERMANENTLY SET AT $1.7 BILLION BEGINNING IN FISCAL 2001—RESULTING IN A TOTAL FUNDING CUT OF CLOSE TO 30 PERCENT OVER FIVE YEARS.

PRWORA ALSO GAVE STATES THE ABILITY TO TRANSFER UP TO 10 PERCENT OF THEIR TANF BLOCK GRANT INTO SSBG. THAT GUARANTEED LEVEL OF FLEXIBILITY HAS NOW BEEN RESTRICTED BY CONGRESS THROUGH PASSAGE OF TEA 21. UNDER THIS STATUTE, STATES WILL BE LIMITED TO TRANSFERRING ONLY 4.25 PERCENT OF THEIR TANF BLOCK GRANT BEGINNING IN FISCAL 2001. ALSO IN 1998, CONGRESS THREATENED TO LIMIT THE AMOUNT STATES COULD TRANSFER IN FISCAL 1999 TO NO MORE THAN WAS TRANSFERRED IN FISCAL 1998.

FURTHER FUNDING CUTS AND RESTRICTIONS ON TRANSFERABILITY WILL GREATLY UNDERMINE THE CONTINUED IMPLEMENTATION OF WELFARE REFORM. IN MANY CASES, SSBG HELPS PROVIDE THE SUPPORT SERVICES NEEDED TO HELP INDIVIDUALS MOVE FROM WELFARE TO WORK AND TO PREVENT INDIVIDUALS FROM MOVING ONTO THE WELFARE ROLLS. THE NATION'S GOVERNORS VIEW ANY CUT IN FUNDING OR RESTRICTION IN FLEXIBILITY FOR SSBG AS A SERIOUS VIOLATION OF THE 1996 WELFARE REFORM AGREEMENT.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Winter Meeting 1997.

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 ~~has~~ exceeded growth in the overall economy. IN THE MID 1990S, THERE WAS A ~~for almost every one of the last thirty years, although recently there has been an encouraging~~ moderation in medical inflation~~. Over the last year, health care cost increases were in line with general 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. ~~In several notable cases, the state is engaged in a comprehensive effort that is likely to provide near-universal coverage for its citizens. In general,~~ 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, ~~Within the private insurance market,~~ 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 ~~More than eighteen~~ 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. ~~, as discussed in an NGA letter dated September 28, 1995.~~

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 ~~51 percent~~ 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 ~~would~~ 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 ~~1930s~~, 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. ~~as implementation decisions are made.~~ 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. 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. 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 ~~EC-8~~.

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 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Winter Meeting 1994; revised Winter Meeting 1995 and Winter Meeting 1997.

HR-38. HIV/AIDS

38.1 Preamble

The human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) are critical public health problems. No state has been untouched by the devastating human and economic costs of HIV and AIDS. U.S. Public Health Service and worldwide projections of future incidence are startling. ~~Through June 1996, 548,102 AIDS cases have been reported in the United States.~~ Since the beginning of the epidemic, NEARLY 400,000 ~~343,000~~ people have died of AIDS in this country. State and local governments have allocated significant financial resources to this problem. In a number of states, state and local funds far exceed federal support. Although ~~encouraging~~ progress has been made in slowing the spread of the disease, the Governors strongly believe that the magnitude of the HIV/AIDS epidemic calls for strong action by all levels of government. THIS INCLUDES ~~, including~~ continued support for HIV/AIDS prevention and TREATMENT, SUPPORT ~~tracking and~~ for the ~~reauthorized~~ Ryan White CARE Act, AND MONITORING THE EPIDEMIC. HIV/AIDS REMAINS A LEADING CAUSE OF DEATH AMONG RACIAL AND ETHNIC MINORITY COMMUNITIES AND DISPROPORTIONATELY IMPACTS THESE POPULATIONS.

38.2 Education, Prevention, Counseling, and Testing

The Governors recognize that the federal government has made a significant contribution toward funding HIV/AIDS prevention activities. Although significant scientific progress has been made, an effective vaccine or a cure for the disease remains years away. ~~In the absence of a vaccine or a cure,~~ Prevention efforts such as education, public information, HIV/AIDS counseling and testing, and personal responsibility are the most effective means available to prevent the disease from spreading further.

State health departments have the primary role in planning and coordinating HIV/AIDS prevention efforts. All states are engaged in HIV Prevention Community Planning with support from the U.S. Centers for Disease Control and Prevention (CDC). Since 1994, state and territorial health departments have been required to implement a planning process through which they collaborate with their communities to identify unmet needs and establish priorities for HIV/AIDS prevention programming. With federal support for prevention efforts, this planning process has given states the flexibility to design and implement targeted prevention programs at the state and local levels that meet state and locally determined needs and are consistent with community values. FEDERAL RESOURCES SHOULD BE AWARDED THROUGH STATES TO ADDRESS THE PRIORITIES IDENTIFIED THROUGH THIS PLANNING PROCESS AND TO ENSURE COORDINATION OF EFFORTS AT THE STATE AND LOCAL LEVELS. Federal restrictions or requirements on the use of available funding interfere with the ability of states to develop comprehensive prevention strategies.

Preventive efforts directed at young people—before they reach the age when they may engage in behaviors that place them at risk of infection—also are important. The nation's youth should be made aware of the risk of the possible spread of HIV/AIDS through sexual activity and the harm posed by contaminated needles. Information about HIV/AIDS should be an integral part of substance abuse prevention efforts.

It is also important to recognize the interrelationships between HIV/AIDS and other sexually transmitted diseases and combine efforts to combat further spread of disease. Although the Governors have initiated a variety of sexually transmitted disease prevention strategies, when HIV/AIDS is transmitted sexually, sexual abstinence is the only 100 percent effective means of prevention and should be strongly reinforced among minors as a way to reduce the risk of contracting HIV/AIDS. STATES ENCOURAGE THE FEDERAL GOVERNMENT TO INVEST IN THE PREVENTION AND CONTROL OF SEXUALLY TRANSMITTED DISEASES AS ESSENTIAL AND EFFECTIVE COMPONENTS OF THE NATION'S EFFORTS TO PREVENT HIV TRANSMISSION.

Finally, special education efforts must be made to ensure that all members of the medical and health care community are knowledgeable and have current information about HIV/AIDS prevention. Health providers must be more diligent in identifying people who are at risk or who are infected with HIV, particularly in populations such as women and adolescents who are not as frequently recognized as at risk. The Governors also recognize the importance of educating providers on the appropriate use of emerging treatments and primary prevention and care services within managed care settings.

Counseling and testing have been important components of the national education and prevention effort. Access to counseling services should be an integral part of the HIV/AIDS testing effort, both before and after testing and regardless of the test results. Counseling and testing represent major opportunities to encourage, on a one-to-one basis, the behavioral changes required to stop further spread of the HIV virus. Although counseling and testing remain important strategies to address this epidemic, the nation must continue to seek any and all strategies that will successfully reduce the transmission of HIV/AIDS. In order to increase early access to new HIV/AIDS treatments, it is critical that counseling and testing programs have the ability to link individuals to primary care services as soon as possible. Federal laws should not challenge or supersede state laws and preferences with respect to issues surrounding testing, ~~and~~ reporting, AND PARTNER/SPOUSAL NOTIFICATION ASSISTANCE.

The social stigma associated with HIV/AIDS has created a particular problem for the prevention and control of the disease. Out of fear of discrimination, individuals with HIV and AIDS worry about being identified. Within the context of sound public health policy, states are encouraged to review their medical information and privacy laws and, where necessary or appropriate, update these statutes to safeguard the rights of tested individuals.

The Governors are concerned that individuals who test positive for HIV/AIDS may face discrimination, despite the fact that all medical evidence to date shows that HIV cannot be transmitted through casual contact. Progress has been made in ending AIDS discrimination, but clarification of or modifications in laws should be made, where necessary, to protect HIV-infected individuals from inappropriately being denied opportunities in areas such as employment and housing.

In addition to the range of very important prevention strategies already underway across the country, prevention activities centered around substance abuse and perinatal transmission are emerging as particular priorities.

38.2.1 **Substance Abuse.** Transmission tied to injecting drug use continues to be a major cause of HIV infection. ~~Thirty-six percent of the total number of AIDS cases reported to CDC are linked to injecting drug use.~~ A key factor in containing the spread of HIV/AIDS is reducing the use of injection drugs. Programs should strive to eliminate the significant waiting time frequently facing those wishing to receive treatment for drug abuse. Yet the vast majority of drug users are not seeking treatment. Consequently, outreach should be extended to drug users who are not currently in treatment in order to get them into treatment, encourage them to be counseled and tested, and educate them about the dangers of high-risk behaviors. Additionally, appropriate models to attract drug users to treatment should be developed, with a particular emphasis on finding effective methods for reaching out to long-term abusers.

38.2.2 **Pediatric AIDS.** The major cause of pediatric HIV/AIDS today is perinatal transmission of infection, although dramatic progress has already been made in reducing transmission rates. Recent findings released by CDC demonstrate a 43 ~~27~~ percent reduction in perinatal transmission between 1992 and 1996 ~~1995~~. The Governors applaud this reduction and the scientific advances and voluntary prevention strategies that made it possible.

The Ryan White CARE Act, as reauthorized in 1996, includes a number of provisions focused on reducing perinatal transmission, including targeted caseload reductions. Failure to comply will cause a state's allocation of Title II funding to be eliminated. Vital treatment funding will be jeopardized as a result of prevention mandates. The Governors strongly oppose efforts to tie the receipt of federal funds to mandatory testing laws.

The Governors are strongly committed to reducing and eliminating HIV/AIDS in children through implementation of universal HIV counseling and voluntary testing guidelines for pregnant women. But mandatory postpartum testing, as set forth in the Ryan White CARE Act, will not in and of itself reduce the spread of HIV/AIDS to newborns. In fact, some states fear that FEDERALLY MANDATED ~~mandatory~~ testing could discourage at-risk women from seeking needed health care. ~~Instead of this focus on mandatory testing,~~ The Governors encourage federal support for the use of AZT during pregnancy, when infection can be prevented. THE GOVERNORS ALSO ENCOURAGE FEDERAL SUPPORT FOR PROGRAMS TO IMPROVE ACCESS FOR WOMEN TO PRENATAL CARE, INCLUDING OFFERING EFFECTIVE TREATMENTS TO PREVENT HIV TRANSMISSION FROM MOTHER TO CHILD.

In an effort to comply with the targeted perinatal caseload reductions mandated by the Ryan White CARE Act, every state will be forced to redirect funds from other equally vital and more effective HIV/AIDS prevention activities. States will no longer be able to develop comprehensive prevention strategies to meet the particular needs of their communities. Instead, federal mandates will require states to focus available resources on one particular category of need. THIS IS ESPECIALLY TRUE FOR STATES WITH LOW INCIDENCES OF HIV/AIDS. MANDATORY TESTING OF ALL NEWBORNS WOULD BE AN INAPPROPRIATE USE OF RESOURCES. IN FACT, THE NEWBORN SCREENING TEST FOR HIV IS NOT A PRACTICE IN A VAST MAJORITY OF STATES. ~~Unfortunately, the science of prevention is not so exact that there is any guarantee that any level of intervention will produce the desired result in any state. The Governors would like to work closely with Congress and the administration to develop prevention strategies that achieve the goal we all support of keeping babies healthy, without jeopardizing funding for other important HIV/AIDS prevention and treatment efforts.~~

The Governors support efforts to reduce the transmission of HIV/AIDS. They do not support the new perinatal transmission mandate imposed by Congress. In addition, the Governors are specifically concerned that because an alternative measure as required by the legislation has not been determined by CDC, it will be virtually impossible statistically for low-incidence states as defined by CDC to realize the required 50 percent reduction in perinatal transmission. For that reason, the Governors believe that while moving toward a more workable perinatal transmission prevention strategy for all states, low-incidence states should be held harmless from the caseload reduction requirements of the Ryan White CARE Act. ~~The Governors also believe that future federal resources made available to reduce perinatal transmission should be targeted to high-incidence states.~~

38.3 Research

A comprehensive national education and prevention program, with significant federal leadership, must be a central component of the nation's fight against HIV/AIDS. At the same time, resources must be devoted to research—both to find a vaccine for HIV/AIDS as well as to develop effective, accessible, and affordable treatments and a cure for present and future HIV/AIDS patients. The federal government has the primary role to play in funding HIV/AIDS-related research activities. The Governors urge that money appropriated for HIV/AIDS research be used expeditiously and that funding provided for HIV/AIDS research not be made at the expense of other public health priorities. THE GOVERNORS ENCOURAGE EXPEDITED FOOD AND DRUG ADMINISTRATION (FDA) APPROVAL OF RAPID HIV DIAGNOSTIC AND SCREENING TESTS, WHICH WILL ALLOW THE MEDICAL AND PUBLIC HEALTH COMMUNITY TO GIVE MANY MORE PEOPLE INFORMATION ABOUT THEIR HIV STATUS AND ENABLE EARLIER TREATMENT.

In addition to the substantial commitment made by the federal government, private sector HIV/AIDS research has led to dramatic breakthroughs. The Governors applaud the pharmaceutical industry for the research and development efforts that have resulted in the creation of protease inhibitors and other useful drug therapies. The Governors urge increased coordination between federal and private sector efforts to ensure the most efficient use of research dollars. The Governors also urge the speedy dissemination of research results to the scientific community, as well as to practitioners, to ensure that research findings can be applied as expeditiously as possible. The Food and Drug Administration's expedited drug approval process has helped make new treatments available more quickly than in the past and should be continued.

38.4 Treatment

~~Over the next few years, the growing number of HIV/AIDS cases will place an increasing strain on the nation's health care delivery system. The estimated cost of treating a person with HIV/AIDS from the time of infection to death is $119,000. Now is the time to begin the fiscal and capacity planning required to address these future health care delivery needs. This should include an assessment of the appropriate burden of HIV/AIDS health care costs that should be borne by the public and private sectors.~~

~~At the same time, we need to provide appropriate services to those individuals presently suffering from HIV/AIDS.~~ Many state and local governments have led the way in providing health care services for people with HIV/AIDS. ~~; however, more research is required to determine the most humane and cost-effective way of providing HIV/AIDS related care.~~ Adequately addressing patients' health care needs requires the establishment of a continuum of care, including inpatient and outpatient hospital services, care in nursing home and alternative residential settings, home care, hospice care, psychosocial support services, and case management services. Treatment protocols relating to chronic disease management of

HIV/AIDS, developed in partnership among federal, state, and private efforts, will lead to changes in existing systems of care, SUCH AS ~~Treatment needs are changing with~~ the advent of promising multidrug combination therapies, which are helping many HIV/AIDS patients live longer and healthier lives. Finally, as the nation moves toward networks of health care, efforts are needed to ensure that the prevention and treatment needs of people at risk for or infected with HIV/AIDS are adequately addressed in managed care settings. In addition, strategies must be developed that ensure that those in managed care arrangements also have access to other support services, such as social supports and home- and community-based services, so that the continuum of care is maintained.

38.5 Ryan White CARE Act

The Governors strongly SUPPORT ~~supported~~ the ~~reauthorization of the~~ Ryan White CARE Act. Funds provided through the act support a network of health care, support services in cities and states, and prescription drugs for people living with HIV infection and AIDS, especially the uninsured who would otherwise be without care. This program is a critical element in HIV/AIDS prevention, education, and treatment efforts by states. BECAUSE HIV TESTING OF NEWBORNS IS NOT A ROUTINE PRACTICE IN THE STATES, THE SECRETARY OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES SHOULD NOT MAKE IT A CONTINGENT REQUIREMENT FOR RECEIVING RYAN WHITE TITLE II FUNDS.

~~However, despite strong support of the Ryan White CARE Act as a whole, certain provisions of the act are of concern to Governors. As previously mentioned, the perinatal transmission mandate restricts state flexibility to allocate limited federal funding. In addition, the AIDS Drug Assistance Program (ADAP) funding made available through the Ryan White CARE Act has not kept up with the increasing costs of the expensive new drug therapies. Accordingly, an increasing percentage of the cost of the new therapies is shifting from the federal government to the states.~~ The Governors call on the federal government to work in partnership with states and the private sector to reduce the costs of treatment and to maintain funding that adequately reflects the growing cost of drug therapies. FUNDS PROVIDED THROUGH THE ACT SHOULD BE AWARDED THROUGH STATES TO ENSURE THE COORDINATION OF EFFORTS AT THE STATE AND LOCAL LEVELS.

THE GOVERNORS BELIEVE THAT ANY ADDITIONAL FEDERAL SPOUSAL NOTIFICATION REQUIREMENT WOULD BE AN INAPPROPRIATE MANDATE SINCE STATES ARE ALREADY CONDUCTING PARTNER NOTIFICATION PROGRAMS.

~~ADAP services currently are delivered by states in a number of different, cost-effective ways, such as Minnesota's successful high-risk insurance pool for HIV/AIDS patients. The Governors believe that although many of these strategies are cost-effective, further study is needed to help states identify and learn from the best practices in the field.~~

~~The Governors also believe that CDC and the Health Resources and Services Administration should work very closely with states when determining whether a good-faith effort has been made to comply with the new mandate in the Ryan White CARE Act requiring states to notify the spouses of individuals with HIV infection. The Governors feel strongly that no state should lose access to its Ryan White CARE Act funds as this new mandate is implemented.~~

In implementing the Ryan White CARE Act and in confronting the HIV/AIDS epidemic more generally, the Governors believe that the best results will be achieved if the federal government, the states, private insurers, the medical and pharmaceutical industries, and interested members of our communities work together in close partnership.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).

Adopted Annual Meeting 1987; reaffirmed Winter Meeting 1992; revised Winter Meeting 1995 and Winter Meeting 1997 (formerly Policy C-17).

HR-6. ARMY AND AIR NATIONAL GUARD

6.1 Preamble

Just as the federal government's relationship to all other aspects of state activity has matured and become institutionalized over the years, so has the state and federal role of the National Guard ripened into a stable and eminently sensible system for living up to the letter and spirit of the U.S. Constitution against a backdrop of the variety and the special characteristics that mark each of the states of the Union. Because the conduct of military operations has evolved into a centrally directed function under the federal government, the role of the National Guard as the foremost "reserve of the Army and the Air Force" is so powerful and significant, that it is sometimes forgotten that the guard, in peacetime, is under the command of the Governors; and that the guard is the only military force that a Governor has available in time of disasters and emergencies. The states have an enormous stake in the ongoing effectiveness and efficiency of their National Guard.

NGA notes that national strategy presumes that in a combat emergency, the Army and Air National Guard will be capable of fighting with the active forces. In keeping with the "Total Forces Policy," many active units cannot enter into combat as effective units unless accompanied by mobilized elements of the National Guard. The National Guard must be properly equipped, efficiently trained, and fully staffed to meet these responsibilities.

6.2 Training

NGA supports annual training exercises of National Guard units. However, the requirements for training and military education should be consistent with the needs of the military force, and should recognize the serious responsibility to members of the guard as "citizen soldiers," to their families, to their employers, and to their communities. This should be kept in mind when developing the right mix of monthly and annual training exercises for the guard. An exception to this might be expected in the special training of certain units, but this must be the exception and not the rule, and on a voluntary basis.

We ask the employers of National Guard men and women to recognize their need to be away during times of training or when activated by the Governor or federal authorities. The services that they perform enhance all of our lives.

6.3 Control of the Guard

The Governors wish to emphasize that, unless activated in federal service, the National Guard is under state control with Governors as commanders-in-chief. We call attention to the U.S. Constitution, Article I, Section 8, clause 16, which enables Congress:

> to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress . . .

Subsequently, Congress enacted Title 32 of the United States Code (USC), which gives the Governors control over the National Guard in peacetime without any restraints such as those pertaining to the Posse Comitatus Act. NGA believes that in peacetime under title 32 of the USC, the nation's Governors are clearly in command and control of the National Guard in their respective states. Congress, likewise enacted a separate title 10 of the USC to handle the active military, and to deal with war and national crises. In this instance, the guard is activated as a part of the regular forces under the command of the President of the United States.

6.4 Training and Equipment

NGA commends the Army and the Air Force for the efforts that are being made to enhance training and to better equip the National Guard in recognition of its vital contribution to our national defense. The guard today continues to maintain its peacetime readiness. However, it is still underequipped, although it is better equipped than ever before in its history. It is still lacking in the area of modernization, but a great effort has been made, and continues to be made, to ensure that units that will deploy early in the stages of any future mobilization are being provided with support on the same basis as active units that deploy early.

From the days of the militia to the present, the National Guard reflects the genius of our system of government. In the evolution since colonial days, through the revolutionary war era, through the wrenching experience of the civil war, it has been an instrument through which citizens voluntarily made their contribution to the common defense of their land, their values, and their heritage.

The Total Forces Policy restored the guard to its more traditional place in the nation's defense strategy. NGA believes that a strong National Guard, which the president can mobilize in time of national crisis, serves to remind friend and foe of our national commitment to freedom and to the system of government for which we are famous and even envied.

Today's active forces, constrained in size and scope by the enormous cost of personnel and material, must rely on National Guard augmentation. Realizing that approximately half of the defense budget is attributed to personnel cost, the guard, which receives only a fraction of a month's pay, represents a most cost-effective way to protect our national security and provide for a professionally trained and committed Army and Air Force for the defense of the nation.

The nation's Governors are proud that the National Guard is able and capable of performing tasks in the interest of national defense and security, and is available at their command to assist the citizens of the states, should the time arise.

6.5 Reorganizing and Restructuring of Military Forces

Changes in Eastern Europe and the arms negotiations have caused the U.S. Department of Defense to evaluate force structure in light of budgetary constraints.

Governors believe that military force reductions prorated across the entire military structure may not be the most cost-effective means of achieving a strong national defense in peacetime. Moving from the active military components into the reserve components could achieve budget savings while continuing to provide for the defense of the nation in a national emergency. Historically, our nation has relied on the National Guard as a mobilization base. National Guard units have achieved high readiness levels, providing a real mobilization asset on short notice. Some units, such as military police, Army and Air Guard air defense, tactical air units, and air transportation units, provide excellent immediate capability for lower peacetime operating costs than active service units.

The Governors support an Army National Guard force structure allowance of 405,000, as approved by the U.S. Secretary of Defense in the "bottom-up" review and the Army "offsite" agreement.

The Governors remain committed to a National Guard that provides the Governors of the states and territories with sufficient forces that have the organic chains of command, equipment, and capabilities necessary to meet the federal and state missions of the nation. The Governors believe that the 405,000-force structure is the minimum prudent number.

The National Guard has not been immune from post-Cold War force reductions. In fact the National Guard today is at the same force structure level as prior to World War II. With the support of the President, the U.S. Secretary of Defense, and the U.S. Secretaries of the Army and Air Force, we have been able to maintain an Army and Air National Guard that is capable of meeting our national security needs and of ensuring that the Governors have under their command the right mix and numbers of forces to meet the myriad emergency and domestic missions that are unique to the National Guard. The Governors believe the National Guard will continue to be the primary reserve force in our country and will continue to play a critical role in peace and war.

The National Guard is at the right level to accomplish its missions here at home and in support of the active forces. The Army and Air Force are encouraged to commit to the full preparation of and maximum, practical utilization of the National Guard in peacetime and wartime missions. The National Guard's strengths are its people, its unique state and federal ties, its unique dual mission, and its cost-effectiveness and combat readiness. It is the national insurance policy for domestic and foreign emergencies.

6.6 Equal Opportunity in the National Guard

The National Guard is composed of men and women of all races, colors, creeds, and religions from more than 3,600 communities in the states.

The National Guard Bureau has established equal opportunity in the guard as one of its primary goals. It is attempting to ensure fair and equal access to all positions in the National Guard.

The Governors, as commanders-in-chief of the National Guard, fully support equal opportunity in all state programs and institutions under the guard regardless of race, sex, or religion; endorse the National Guard Bureau's goal; and pledge full support in achieving equal opportunity in all aspects of the guard.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).

Adopted Annual Meeting 1986; revised Annual Meeting 1990, Winter Meeting 1991, Annual Meeting 1992, Winter Meeting 1994, and Winter Meeting 1995; revised and reaffirmed Winter Meeting 1997 (formerly Policy B-5).

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1999 Winter Meeting

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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 Natural Resources recommends the consideration of one new policy position, amendments to four existing policy positions, and the reaffirmation of one existing policy position. Policy proposals are time limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. Federalism: New Directions for State and Federal Partnerships for Environmental Protection (Amendments to NR-1)

   The proposed amendment guidelines, developed by the U.S. Environmental Protection Agency under Title VI of the Civil Rights Act, could result in unintended consequences with regard to state and local land use policies and urban redevelopment and revitalization efforts. The amendment supports the development of a workable alternative in consultation with the states that ensures adjudication of environmental justice complaints; has a clear basis in regulation or statute; assists states in preventing or reducing complaints; includes precise definitions based on peer-reviewed science; and recognizes alternative state programs that satisfy federal requirements. In addition, the policy's sunset date is extended for two years.

   There is no direct fiscal impact on the federal government or the states.

2. Environmental Priorities and Unfunded Mandates (Amendments to NR-6)

   This amendment incorporates the salient recommendations of policy NR-15, Geologic Mapping, which will sunset. The amendment supports the formation and use of geologic mapping and spatial data infrastructure and recommends that such infrastructure be implemented equitably among states, local governments, and federal agencies. The amendment supports reauthorization of the National Cooperative Geologic Mapping Act and sufficient funding. In addition, the policy's sunset date is extended for two years.

   There is no direct fiscal impact to states.

3. Pollution Prevention (Amendments to NR-18)

   This proposed amendment demonstrates that state pollution prevention programs have been very successful and cost effective. The policy also supports the "prevention first" hierarchy, which lists waste minimization first and land disposal last, established in the Pollution Prevention Act of 1990, and suggests that this hierarchy be fully integrated into federal, state, and local environmental protection programs. In addition, the policy's sunset date is extended for two years.

   There is no direct fiscal impact on states, though successful pollution prevention programs would save money that would be otherwise be spent on regulation and disposal.

4. Low-Level Radioactive Waste Disposal (Amendments to NR-19)

   The proposed amendments update the policy by striking one recommendation already accomplished. Language is also added urging Congress to exercise restraint with respect to imposing its views on the management of low-level waste compacts. In addition, the policy's sunset date is extended for one year.

   There is no direct fiscal impact on the federal government or the states.

5. Investing Nonrenewable Resource Revenues (New Policy Position, NR-24)

The proposed new policy asks the federal government to share a meaningful portion of revenues from mineral leasing activities on the Outer Continental Shelf (OCS) and to address the large buildup of funds in the Abandoned Mine Land Reclamation Trust Fund.

Current federal receipts from OCS mineral leasing total about $4 billion annually. The proposed policy recommends that these funds be provided to Governors for investment in natural resource priorities including but not limited to coastal restoration, protection, and impact assistance; park and recreation investments; and wildlife conservation and education.

The balance in the Abandoned Mine Land Reclamation Trust Fund is currently estimated to be $1.3 billion. These funds, which are earmarked to the trust fund by a dedicated tax on coal production, are intended by law to be directed to states for reclamation of abandoned mine lands.

The proposed policy conditions NGA support for any federal action consistent with these principles on Congress identifying an appropriate source of funds, and indicates that the Governors would not support any initiative that is funded at the expense of other federally supported state programs.

6. Reaffirmation of Existing Policy

The committee proposes the reaffirmation of existing policy NR-4, Superfund. The policy calls on Congress and the administration to streamline the Superfund process, release from federal liability parties that volunteer to clean up sites under state programs, and allow states to assume or be delegated parts or all of the Superfund cleanup process at sites in a state. In addition, the policy would hold the federal government accountable for cleaning up contaminated federal facilities.

There would be a cost to states that voluntarily undertook delegation of the Superfund program, but a positive fiscal impact on responsible parties from streamlining the Superfund process in accordance with these recommendations.

NR-1. FEDERALISM: NEW DIRECTIONS FOR STATE AND FEDERAL PARTNERSHIPS FOR ENVIRONMENTAL PROTECTION

1.1 Preamble

The Governors share the commitment of the American people to environmental protection. Yet the Governors also realize that we do not protect the environment by the promulgation of rules alone. Someone must carry out the rules and that "someone" often is state and local government. The Governors are convinced that the future success of environmental protection and remediation depends on the success of state and local governments.

Underfunded and inflexible environmental regulations often exceed the financial and technical capabilities of the governing agencies that must implement them. Although this is particularly true in small towns and rural America, it is becoming increasingly clear that large municipalities also share these problems.

Resources are finite, but current regulatory practices—which may not include the flexibility to adapt to distinctive, specific characteristics of individual areas—often preclude the intelligent application of resources to problems.

1.2 Principles for Partnerships

Many aspects of federal environmental statutes are implemented primarily by, and through, state environmental agencies. To receive program delegation from the U.S. Environmental Protection Agency (EPA), a state must satisfactorily demonstrate that it has the financial, technical, and legal capability to adequately administer and enforce the requirements of the federal statute. Delegations have been made to states in a number of programs under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act.

When these federal statutes were first passed, state laws and experiences varied greatly, and there was little program consistency among the states. To ensure reasonable consistency, the statutes provided for, and EPA undertook, implementation of many aspects of these laws and extensive oversight activity where states were delegated programs.

Through years of direct, hands-on, regulatory experience, the sophistication and capability of state regulatory and legal staff have grown substantially, as reflected both in the increased number of delegated programs and much greater expertise in those programs. State capabilities now equal and often exceed those of the EPA regional offices, which continue to function in the oversight role. This EPA oversight of state environmental programs should be reduced to reflect the growth in state capabilities and to recognize state accomplishments.

Excessive oversight can result in significant duplication of effort and unproductive use of valuable staff time. Instead, EPA should build oversight relationships that recognize the role of states as coregulators, seeking partnerships that capitalize on the distinctive strengths of each partner. Therefore, the Governors urge Congress and EPA to take the following principles into account when considering the appropriate roles of state and federal governments.

1.2.1 **Administration.** Clear principles of program administration should be developed, agreed to, and established in memorandums of understanding between EPA and the states. States should be held responsible for administering, and EPA should be held responsible for overseeing, the delegated programs in accordance with those principles.

1.2.2 **Veto Authority.** Permit-by-permit review and veto authority by EPA over state permit or regulatory actions are inappropriate given the ability, sophistication, and accomplishments of state programs.

1.2.3 **Program Audits.** Program audits can be a valuable means of oversight. If the audit reveals deficiencies or inappropriate action, the state and EPA should work collaboratively to ensure timely corrective action. Any necessary program revisions should be identified and undertaken in a spirit of partnership to ensure that every effort is made to ensure success.

1.2.4 **Staff Structure.** EPA should be encouraged to station staff in state environmental program offices on a rotating basis to work with state staff in administering delegated programs to foster understanding and develop knowledge of state programs.

1.3 **New Directions for EPA**

The Governors find that the report of the National Academy of Public Administration (NAPA) titled Setting Priorities, Getting Results—A New Direction for EPA is consistent with the long-held principles of NGA. NAPA reviewed EPA's structure, priorities, and methods of resource allocation and concluded that Congress and EPA must make significant changes to ensure that EPA's resources are directed to the areas of greatest need. NAPA's recommendations include the following.

- Clearly define EPA's mission and give EPA flexibility to accomplish this mission.
- Ensure an accountable devolution of responsibility and decisionmaking authority to the states.
- Provide flexibility and accountability for local governments and the private sector for better-than-required performance.
- Reorganize EPA's management structure.
- Expand and refine EPA's use of risk analysis and cost-benefit analysis.
- Integrate environmental statutes as a part of breaking down the internal walls of the agency's major "media" program offices.

The Governors believe the NAPA report is an appropriate impetus for better ensuring the wisest use of the limited resources available for environmental protection. The Governors urge Congress and EPA to pursue implementation of its recommendations.

1.4 **Principles for Success**

The Governors are committed to protecting the environment but recognize that environmental protection will not succeed unless regulations are workable. The Governors suggest that adherence to the following five principles would improve environmental compliance, and thus environmental results, nationwide.

1.4.1 **Risk-Based Environmental Regulation.** As recommended by the Science Advisory Board of EPA, EPA should set risk-based priorities for environmental protection. EPA should target its efforts to reducing the most serious remaining risks to the environment and public health. Risk identification and resulting environmental regulation should be the product of scientific study.

1.4.2 **Implementation Flexibility.** Too often environmental rules are written to a "one-size-fits-all" standard that does not account for regional variation. Inflexible standards can lead to inadequate protection and wasted resources. The Governors believe the following.

- Rules should account for regional resource variation, and states and localities should have the flexibility to tailor implementation to local or regional resource needs.
- State and local governments must have the authority to prioritize environmental problems and allocate resources on a "worst-first" basis.
- States should have the authority to shift EPA-administered grant funds among programs to target local priorities.

1.4.3 **Assessment of Cumulative Impacts.** Environmental regulations are often developed independently of other regulations without consideration of the cumulative regulatory impact.

The Governors urge EPA to ensure integration of rule development across program areas. EPA should consider governments as well as the regulated community.

1.4.4 **Focus on Results.** In the final analysis the public expect to see tangible results from the actions taken and the monies spent. Congress, EPA, the states, and local governments must not confuse activity with results. An analysis of results should highlight the basics: what has been accomplished in terms of protection of the public health and the environment.

1.4.5 **Regulatory Innovation.** The Governors recognize that the enforcement of existing environmental laws and regulations plays an indispensable role in the protection of human health and the environment. Environmental gains achieved over the past three decades are the direct result of compliance with our traditional regulatory programs.

However, the Governors also recognize that innovative regulatory approaches hold great promise for building on environmental successes and may be often necessary to address our most pervasive environmental problems. The Governors have supported regulatory innovation that recognizes environmental excellence, harnesses market forces, and achieves environmental goals that otherwise may be unattainable.

The Governors have enacted programs and policies in their states promoting pollution prevention, voluntary and incentive-based compliance strategies, environmental management systems, and outcome/performance-based oversight. These are examples of innovative approaches that can produce collaborative solutions among levels of government, regulators, and the regulated community.

Greater state flexibility, prudent risk-taking, decentralization of decisionmaking, and value-added experimentation are necessary to create an environment conducive to regulatory innovation. Verifying performance is also an essential component to successful innovation. The Governors:

- encourage the federal government to affirm its commitment to working with states to promote environmental regulatory innovation;
- support increased state efforts to inform and consider the perspectives of all stakeholders on the development and implementation of successful regulatory innovation strategies; and
- support the exploration by states of plausible federal statutory change that would affirm and expand states' authority to develop and test more effective regulatory innovations.

1.5 STATE PROGRAM COMPLIANCE WITH FEDERAL ENVIRONMENTAL JUSTICE REQUIREMENTS

THE GOVERNORS FULLY SUPPORT THE IMPLEMENTATION OF STATE ENVIRONMENTAL PROGRAMS THAT PROTECT THE HEALTH OF CITIZENS AND THE ENVIRONMENT IN A MANNER COMPLIANT WITH FEDERAL LAW AND THAT DO NOT SUBJECT ANY PERSON TO DISCRIMINATION ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN, PURSUANT TO TITLE VI OF THE CIVIL RIGHTS ACT. THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) HAS ISSUED INTERIM GUIDANCE TO PROVIDE A FRAMEWORK FOR INVESTIGATING ENVIRONMENTAL JUSTICE COMPLAINTS THAT ALLEGE DISCRIMINATION IN THE CONTEXT OF STATE ENVIRONMENTAL PERMIT DECISIONS.

STATES AND LOCAL GOVERNMENTS HAVE ASSERTED THAT EPA'S INTERIM GUIDANCE COULD RESULT IN UNINTENDED CONSEQUENCES WITH REGARD TO STATE AND LOCAL LAND USE POLICIES AND URBAN REDEVELOPMENT AND REVITALIZATION EFFORTS. THEY HAVE ALSO IDENTIFIED MAJOR IMPACTS THE INTERIM GUIDANCE WOULD HAVE ON HOW MOST STATES MANAGE THEIR ENVIRONMENTAL PERMIT PROGRAMS.

THE GOVERNORS RECOGNIZE THAT EPA HAS AN OBLIGATION TO MOVE FORWARD IN AN EXPEDITIOUS MANNER TO RESOLVE THE CURRENT BACKLOG OF ADMINISTRATIVE COMPLAINTS. THEY ALSO STRONGLY BELIEVE FEDERAL POLICIES IN THIS REGARD MUST COMPLEMENT, AND NOT IMPEDE, VARIOUS PROGRAMS TARGETED TOWARD ENHANCING OPPORTUNITY AND THE QUALITY OF LIFE FOR ECONOMICALLY DISADVANTAGED AREAS. FOR THIS REASON, GOVERNORS SUPPORT THE DEVELOPMENT OF A WORKABLE ALTERNATIVE IN CONSULTATION WITH STATES, LOCAL

COMMUNITIES, AND OTHER INTERESTED STAKEHOLDERS. IN DEVELOPING A WORKABLE APPROACH, THE FEDERAL GOVERNMENT MUST ENSURE:

- THAT ADJUDICATION OF ENVIRONMENTAL JUSTICE COMPLAINTS HAVE A CLEAR BASIS IN REGULATION OR STATUTE AND ARE LIMITED ONLY TO ISSUES OVER WHICH STATE ENVIRONMENTAL PERMITTING AGENCIES HAVE LEGAL AUTHORITY;
- THAT PROCESSES DEVELOPED SHOULD ASSIST STATES IN PREVENTING OR REDUCING COMPLAINTS, AVOID SHIFTING PERMIT DECISIONMAKING FROM THE STATE AND LOCAL LEVEL TO THE FEDERAL GOVERNMENT, AND AVOID CREATING DELAYS IN THE STATE ENVIRONMENTAL PERMITTING PROGRAMS;
- THAT DEFINITIONS, STANDARDS, AND METHODOLOGIES IN ANY FINAL GUIDANCE MUST BE PRECISE, BASED ON SOUND, PEER-REVIEWED SCIENCE, AND PROVIDE A HIGH DEGREE OF CERTAINTY IN THE REGULATORY PROCESS; AND
- THAT STATES' DEVELOPMENT OF ENVIRONMENTAL EQUITY PROGRAMS IS PROMOTED BY RECOGNIZING ALTERNATIVE STATE PROGRAMS THAT SATISFY FEDERAL REQUIREMENTS.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Annual Meeting 1997–Annual Meeting 1999~~).
Adopted Winter Meeting 1993; revised Annual Meeting 1994, Annual Meeting 1995, and Annual Meeting 1997.

NR-6. ENVIRONMENTAL PRIORITIES AND UNFUNDED MANDATES

6.1 **Preamble**

The nation's Governors are committed to protecting public health and conserving the environment for the American people. The Governors strongly support and are committed to achieving the national environmental goals outlined by Congress in recent decades. The successful implementation of many environmental programs at the state level demonstrates the Governors' significant contribution to environmental protection. In order to further environmental progress in the states, the Governors pledge to continue working with Congress and the administration on the development of new or revised federal environmental programs.

6.1.1 **Costs of Environmental Protection.** The Governors are deeply concerned about the high and growing costs of environmental protection, including both the programmatic and capital costs required to comply with federal environmental mandates. These costs, borne by states, local governments, and the private sector, result in part from new federal requirements related to air, drinking water, water quality, and waste management that require substantially more sophisticated programs and additional environmental infrastructure throughout the nation.

The Governors believe that flexibility in achieving environmental goals is essential. We urge the federal government to support nonregulatory approaches to meeting federal environmental standards so that integrated environmental protection is encouraged and narrow pollution control regulations are discouraged. The increased efficiency afforded by nonregulatory approaches, coupled with the appropriate use of tools such as environmental management systems, has the potential to provide better environmental protection, promote business efficiency and cooperation, and give public-private partnerships more opportunities to prevent pollution.

6.1.2 **Reduction of Unfunded Mandates.** The Governors also are committed to reducing unfunded federal mandates, including environmental requirements. Although many environmental requirements have merit, the cumulative effects of unfunded mandates challenge states either to fund the federal requirements from very limited revenues or to divert funds from other state priorities. Therefore, the Governors believe that Congress must provide adequate resources to fund mandatory environmental programs.

In this era of reinventing government, the federal government and the states must commit to a new partnership for environmental protection that aggressively promotes high standards of performance—not bureaucratic processes. All levels of government must stress the importance of maximizing efficiency in the use of available resources in order to work more effectively for the protection of the environment. In turn, the Governors call on the federal government to commit to the following important principles.

6.2 **Principles**

6.2.1 Federal environmental laws and regulations must recognize the need to set priorities and focus on the most important environmental objectives at the national, state, and local levels. In order to promote risk-based priority setting, environmental requirements should be based on sound science and risk-reduction principles, including the appropriate use of cost-benefit analyses that consider both quantifiable and qualitative measures. Such analyses will ensure that funds expended on environmental protection and conservation address the greatest risks first and provide the greatest possible return on investment.

6.2.2 **The federal government must discipline environmental legislation and regulation based on the following criteria.**

- If an environmental problem warrants passage of federal legislation or adoption of regulations, state and local governments should receive federal assistance to carry out the resulting requirements.
- If the federal government does not provide the necessary financial assistance for states to comply with federal environmental mandates, the federal government should allow state and local governments to carry out environmental protection activities based on their own priorities and programs.

- If new problems emerge that require federal attention but additional federal resources are not available, the federal government should balance existing requirements against new requirements so that the highest priority work can be accomplished within existing budgets.

6.2.3 **The Governors believe that the use of appropriate risk assessment and analysis methodology will ultimately enable policymakers at both the federal and state levels to ensure that increasingly limited public resources are used most effectively and efficiently in achieving environmental quality.** Use of the following guidelines can better focus the nation's efforts in environmental protection.

- In implementing federal environmental laws and regulations, state and local governments should be afforded maximum flexibility and deference by Congress and federal regulatory agencies.
- Future environmental regulations with a substantial potential impact on public health or the economy must be subject to risk assessments, comparative risk assessment, and risk management techniques that include analyses of costs and benefits. Amendments to current legislation must incorporate a requirement for risk assessments, comparative risk assessment, and risk management techniques that include analyses of costs and benefits.
- The regulatory agency should be required to certify that a regulation is likely to produce benefits that justify the costs. In determining that the benefits justify the costs, the agency should consider the full scope of qualitative and quantitative costs and benefits, exercise sound judgment, use realistic assumptions, weigh all reasonable alternatives, and strike an appropriate balance between costs and benefits.
- Judicial review of an agency's determination that the benefits justify the costs should be based upon a consideration of whether such agency's determination is arbitrary and capricious. With respect to the promulgation of a major environmental regulation, the failure of an agency to perform any risk assessment, risk comparison, or cost/benefit analyses should be treated as a rebuttable presumption that the final regulation issued by such agency is arbitrary and capricious.

6.3 State-Tribal Environmental Relations

The Governors recognize and respect the sovereignty of Indian tribes and the regulatory authority possessed by tribal governments to manage natural resources within their jurisdiction. The Governors know that Indian management of tribal resources is important to Indian nations. The same is true for states. However, the Governors are concerned that tribal decisions on natural resources and environmental issues may have significant economic and other impacts beyond tribal boundaries. Although the Governors realize that many states and tribes already cooperate on this important issue, Congress and the administration should recognize that these impacts can diminish state authority and be destructive to tribal-state relationships. Congress and the administration should immediately enact or promulgate specific processes, standards, and criteria that respect state authority, equitably address such impacts, and promote cooperation when decisions affect areas beyond tribal boundaries.

6.4 State Environmental Audit Policies and Programs

The Governors believe that state governments should have adequate flexibility to develop innovative approaches to achieving environmental objectives. Given the current climate of constrained public resources at the federál, state, and local levels, it is crucial that the federal government and states work together to encourage the development of innovative and cost-effective policies.

Several states have enacted or are considering the enactment of environmental self-audit programs. These initiatives should take into consideration the views of state agencies; federal, state, and local law enforcement officials; the regulated community; and the public. These initiatives should be designed to achieve greater environmental compliance by providing incentives for the regulated community to conduct its own proactive environmental reviews and to report and correct compliance problems. These types of programs may serve to promote pollution prevention activities and may generate greater cooperation between regulators and the regulated community. If adopted, environmental audit programs should be implemented in a manner that achieves these objectives and should not compromise state enforcement authority. In addition, environmental audit programs, if properly structured, can provide states with a potentially useful mechanism to complement existing laws and regulations without compromising state enforcement programs.

The Governors have consistently supported the concept of advancing voluntary, nonregulatory, incentive-based strategies to further enhance protection of public health and the environment. We recognize that these strategies, when appropriately developed and implemented, can often result in achieving desirable environmental goals in a more cost-effective manner, benefiting taxpayers and job providers. In this context, environmental audits may hold great promise for achieving environmental goals. Voluntary audit programs are not substitutes for full compliance with federal and state laws.

With respect to the federal-state regulatory relationship, states have a strong record of demonstrating effective capabilities when undertaking responsibility for the implementation of federal environmental programs through delegation or authorization processes. Under federal law, states are required to demonstrate that they have the financial, technical, and legal capability needed to assume the authority to implement a federal program. Although states are not proposing to change these requirements, there is concern on the part of some states that the enactment of their programs may be viewed as a threat to this existing regulatory framework.

The Governors strongly urge federal agencies to provide great deference to appropriate state authorities when evaluating the impact of state environmental audit programs. The federal government should not unduly interfere with state delegation or authorization of federal environmental programs on the sole basis that states have implemented environmental audit programs, unless it can be demonstrated that such state programs would undermine state enforcement authority or otherwise obstruct the achievement of environmental objectives established by a federal program. As with air pollution credit trading and other innovative compliance incentives, state audit programs should be evaluated based on the net environmental benefits that are likely to be achieved under these nonregulatory approaches and whether they are consistent with the requirements of federal laws.

This policy endorses the concept of self-audit programs when developed and implemented in a way that does not compromise state enforcement authority. The policy does not endorse any particular self-audit approach.

6.5 IMPROVEMENT OF GEOGRAPHIC AND GEOLOGIC INFORMATION TO PROMOTE CONSISTENT AND MORE INFORMED DECISIONMAKING

THE NATION'S GOVERNORS STRONGLY SUPPORT THE CONTINUED FORMATION OF THE NATIONAL SPATIAL DATA INFRASTRUCTURE AND REAUTHORIZATION OF THE NATIONAL COOPERATIVE GEOLOGIC MAPPING ACT (NCGMA). THE NATION'S SPATIAL DATA AND GEOLOGIC MAP INFRASTRUCTURE SHOULD BE DEVELOPED AND IMPLEMENTED EQUITABLY AMONG STATES, LOCAL GOVERNMENTS, AND FEDERAL AGENCIES. SUFFICIENT FUNDING AT BOTH THE FEDERAL AND STATE LEVELS IS ESSENTIAL TO PERMIT COLLECTION AND AUTOMATION OF DATA AT AN APPROPRIATE LEVEL OF DETAIL WITHIN THE TIMEFRAMES NEEDED FOR DECISIONMAKING.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Annual Meeting 1998–Annual Meeting 2000~~).

Adopted Winter Meeting 1994; revised Winter Meeting 1996, Annual Meeting 1996, and Annual Meeting 1998.

NR-18. POLLUTION PREVENTION

18.1 **Preamble**

Pollution prevention is an internationally recognized strategy to reduce and eliminate the waste generated by the extraction and use of raw materials and the production and consumption of goods. In the United States, there are numerous pollution prevention programs and initiatives that encourage a reduction in the quantity and toxicity of waste before it enters the environment. The Governors support the implementation of ~~well-planned,~~ voluntary pollution prevention AND ENERGY EFFICIENCY strategies, including those that encourage process substitution, and that reduce risk to public health, protect the environment, and conserve our natural resources.

The Governors believe that efforts to sustain economic activity and growth need to ensure that we are improving and maintaining our environment, so as not to pass along an unmanageable environmental legacy to future generations. The Governors further believe that pollution prevention promotes a robust and expanding economy. Well-planned and implemented pollution prevention programs ~~will~~ have positive economic and environmental results at all levels of society.

Pollution prevention should become central to the effort to enhance environmental quality in America for present and future generations.

18.2 **Recommendations**

THE "PREVENTION FIRST" ENVIRONMENTAL PROTECTION HIERARCHY ESTABLISHED IN THE POLLUTION PREVENTION ACT OF 1990 SHOULD BE FULLY INTEGRATED INTO FEDERAL, STATE, AND LOCAL ENVIRONMENTAL PROTECTION PROGRAMS SO THAT GOVERNMENTS CAN MORE EFFECTIVELY FACILITATE POLLUTION PREVENTION. THE GOVERNORS RECOMMEND THAT THIS PRINCIPLE GUIDE THE NATION'S ENVIRONMENTAL POLICY SO THAT OUR AIR, WASTE, AND WATER LAWS AND REGULATIONS DO NOT INADVERTENTLY CREATE DISINCENTIVES FOR INDUSTRY TO ACHIEVE THE CLEANEST PRODUCTION AVAILABLE.

THE SCOPE AND SOPHISTICATION OF STATE AND LOCAL POLLUTION PREVENTION PROGRAMS HAS EXPANDED GREATLY SINCE THE ENACTMENT OF THE POLLUTION PREVENTION ACT. THESE PROGRAMS PROVIDE TECHNICAL ASSISTANCE TO BUSINESSES AND HAVE BEEN TRUE SOURCES OF INNOVATION. RESULTS SHOW THAT FUNDS FOR THESE PROGRAMS ARE WELL SPENT IN TERMS OF ENVIRONMENTAL BENEFITS AND INCREASED EFFICIENCY AND COST SAVINGS TO BUSINESSES. WITHOUT JEOPARDIZING EXISTING STATE ASSISTANCE, THE FEDERAL GOVERNMENT SHOULD INCREASE SUPPORT FOR THESE PROGRAMS AND ELIMINATE BARRIERS TO THEIR SUCCESS.

~~The federal government should cooperate with and recognize state efforts to create incentives for business and industry to adopt pollution prevention measures and management systems. The Governors recommend that the goal of such systems should be to reduce the environmental impact throughout the life cycle of products, to improve overall ecologically sound development, and to ensure the overall reduction of the quantity and impacts of waste generated and released. Pollution prevention and other environmentally protective innovative programs must be integrated into federal, state, and local~~

~~environmental protection programs so that government can more effectively facilitate pollution prevention.~~

Cooperative efforts of government, business and industry, and nongovernmental organizations should be aimed at developing workable pollution prevention strategies as well as education and training. The Governors believe that in order for pollution prevention strategies to be successful, the merits and methods of incorporating pollution prevention strategies into our everyday lives will have to be made widely known.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Winter Meeting 1997.

NR-19. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

19.1 **Preamble**

The Low-Level Radioactive Waste Policy Act was enacted in 1980 and amended in 1985 to make states responsible for the disposal of commercial low-level radioactive waste (LLRW) and to allow states to form compacts for LLRW disposal at regional facilities to be located within each compact. As early as 1980, the Governors had a policy on LLRW.

The Governors have long recognized that states possess the technical and administrative capacity to manage low-level waste. ~~, and have urged Congress to exercise restraint with respect to interposing its own views on the substance of LLRW compacts submitted for congressional compact ratification.~~ More than a decade after the 1985 amendments to the act, the states and their compacts still require, to varying degrees, the cooperation AND TECHNICAL ASSISTANCE of the federal government as the states seek to carry out their responsibilities under the act. ~~In the case of the Texas-Maine-Vermont Compact, ratification by Congress is necessary to limit the acceptance and disposal of waste to that from the compact states.~~ In the case of the Southwestern Compact (serving Arizona, California, North Dakota, and South Dakota) the federal government's cooperation is required to accomplish the transfer of public land in Ward Valley to the state of California for a disposal facility.

19.2 **Recommendations**

The Governors urge that as states present compacts, and amendments to existing compacts, for the disposal of LLRW to Congress, Congress and the President should ~~demonstrate their~~ support ~~for~~ prompt ratification of those compacts. ADDITIONALLY, CONGRESS SHOULD EXERCISE RESTRAINT WITH RESPECT TO IMPOSING ITS OWN VIEWS ON THE MANAGEMENT OF COMPACTS.

The Governors also urge the prompt transfer of the Ward Valley site to the state of California, either immediately through administrative action, or through rapid enactment of congressional legislation.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2000 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Winter Meeting 1997.

NR-24. INVESTING NONRENEWABLE RESOURCE REVENUES

24.1 PREAMBLE

THE GOVERNORS REAFFIRM THE PRINCIPLE THAT WHEN NONRENEWABLE RESOURCES BELONGING TO ALL AMERICANS ARE LIQUIDATED, SOME OF THE PROCEEDS SHOULD BE IMMEDIATELY REINVESTED IN ASSETS OF LASTING VALUE TO THE NATION.

24.2 RECOMMENDATIONS

24.2.1 **OCS REVENUES REINVESTMENT.** THE GOVERNORS URGE THE U.S. CONGRESS TO SHARE A MEANINGFUL PORTION OF OUTER CONTINENTAL SHELF (OCS) MINERAL REVENUES WITH ALL STATES AND TERRITORIES. SUCH ACTION SHOULD NOT PROVIDE INCENTIVES TO STATES FOR ADDITIONAL EXPLORATION OR PRODUCTION ON THE OCS, AFFECT CURRENT MORATORIA ON OFFSHORE OIL OR GAS LEASING, OR PROVIDE ANY PRETEXT OR RATIONALE FOR THE ROYALTY VALUATION METHODOLOGY USED TO ASSIGN VALUE TO OIL AND GAS PRODUCED ON THE OCS.

OCS MINERAL REVENUES PROVIDED TO STATES MUST ALLOW FLEXIBILITY FOR GOVERNORS TO TARGET INVESTMENTS TO STATE NATURAL RESOURCE PRIORITIES INCLUDING BUT NOT LIMITED TO:

- COASTAL PROTECTION, RESTORATION, AND IMPACT ASSISTANCE;
- PARK AND RECREATION RESOURCES; AND
- WILDLIFE CONSERVATION AND EDUCATION.

24.2.2 **ABANDONED MINE RECLAMATION TRUST FUND.** THE GOVERNORS URGE CONGRESS TO ADDRESS THE BUILD-UP OF A LARGE UNAPPROPRIATED BALANCE IN THE ABANDONED MINE RECLAMATION TRUST FUND. AS DESCRIBED MORE FULLY IN NGA POLICY NR-23, ABANDONED MINE RECLAMATION FINANCING, PURSUANT TO TITLE IV OF THE SURFACE MINING CONTROL AND RECLAMATION ACT, RECLAMATION FEES COLLECTED FROM COAL OPERATORS ARE INTENDED TO BE USED TO ADMINISTER THE ABANDONED MINE LAND GRANT PROGRAM.

24.3 CONCLUSION

NGA SUPPORT FOR SUCH ACTION CONSISTENT WITH THESE PRINCIPLES ULTIMATELY DEPENDS UPON IDENTIFYING APPROPRIATE FUNDING FOR THESE INVESTMENTS. GOVERNORS WOULD NOT SUPPORT ANY INITIATIVE THAT IS FUNDED AT THE EXPENSE OF OTHER FEDERALLY SUPPORTED STATE PROGRAMS.

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

REAFFIRM

NR-4. SUPERFUND

4.1 Preamble

Superfund, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), is under debate in Congress. In recent years, Superfund has come under increasing scrutiny by the U.S. Environmental Protection Agency (EPA), states, environmental groups, and the business community. Although these stakeholders often have widely divergent views about what is right and wrong with Superfund and how it should be changed, they all share concerns about the efficiency, effectiveness, and equity of Superfund cleanups. Clearly, a variety of legislative remedies and regulatory and administrative changes are needed to improve the program's ability to expeditiously clean up the nation's worst hazardous waste sites. Moreover, the taxing authority used to support the trust fund has expired, lending urgency to the need to reauthorize the program.

It is imperative that Congress recognize that under the current system, most cleanup work underway is occurring under state programs. The 1,300 sites on the National Priority List (NPL) represent only a fraction of the nation's cleanup sites. Changes to CERCLA will impact both NPL sites and cleanup work moving forward at the state level. Therefore, the Governors strongly believe that changes to CERCLA must not jeopardize the continued effectiveness of state programs. The Governors look forward to participating in this process and to playing a major role in the implementation of the national hazardous waste site cleanup effort.

4.2 Streamlining Remedy Selection

The Governors believe that centralized decisionmaking has unnecessarily slowed the Superfund program and that the protection of public health and ecosystems demands quicker response actions. The site assessment and remedial action programs are particularly cumbersome. They should be streamlined by focusing Superfund regulations and guidance more on specifying the desired end results of cleanup actions and less on the process for determining such results. The Governors believe the following changes would result in more cost-effective cleanups, a simpler remedy selection process, and a more results-oriented approach.

- Cleanup standards should be developed with consideration of different types of land uses. When appropriate, feasible, and cost-effective, these standards should allow unrestricted use of the remediated site.
- "Presumptive" remedies should be available to narrow analysis of alternative remedies at sites fitting certain land use, generic contamination, population, and hydrogeologic conditions.
- States must be able to apply their own standards at sites within the state to accommodate specific environmental conditions and public views. A more streamlined process should be devised for incorporating these standards into the final remedy.

Risk assessment and cost-benefit analysis can be useful tools in selecting cleanup remedies under certain conditions. First, these tools should be used only to select among remedies designed to meet a specified cleanup standard. Second, the use of risk assessment and cost-benefit analysis should be based on generally accepted and uniform procedures and should clearly articulate underlying assumptions and the impact of alternative assumptions, include public participation, and acknowledge nonquantifiable benefits and costs. Third, these techniques should not provide opportunities for preenforcement review.

4.3 State-Federal Role

The impacts of hazardous waste sites are felt primarily at the state and local levels. Therefore, the state role in the program needs to be strengthened. States should have a stronger voice in Superfund decisionmaking, and EPA should be required to authorize or delegate full or partial management of the remedial and emergency removal programs to all capable states interested in administering cleanups. This will accelerate cleanup, avoid duplication of effort, increase efficiency for government and the private sector, reduce transaction costs, provide greater certainty in the program, and maximize the effectiveness of limited state and federal resources.

EPA's role should be to ensure the proper implementation of the program throughout the nation by establishing program requirements for delegation. EPA's role also should be to provide technical assistance, to manage part or all of the cleanup program at priority sites in states choosing not to pursue full authorization or delegation, and to ensure that adequate funding is available to states for program implementation. Full authorization or delegation should provide the maximum flexibility necessary to meet state needs and objectives without undue or unnecessary federal oversight. The process for securing delegation should involve as little administrative burden as possible. In the case of authorization, which would allow states to operate their programs in lieu of the federal program, CERCLA should establish, through statutory provisions, program criteria for a state-initiated self-certification process to ensure that the program adequately protects human health and the environment. EPA should periodically review state performance, instead of involving itself in site-by-site oversight.

CERCLA should be amended to allow interested states to develop a statewide response program for all contaminated sites in the state, and the administrator of EPA should be required to approve such programs within a reasonable period or show cause as to why he or she has not done so. EPA approval should be based on reasonable performance criteria that are developed with state participation and ensure outcomes substantially consistent with the goals of the federal program. Once this program has been approved, the state should be permitted to assume full and complete responsibility for management of the cleanup effort at all sites listed by the state as requiring cleanup. Such responsibility should include establishing priorities, undertaking remedial investigations/feasibility studies, selecting remedies, selecting contractors, and conducting remedial cleanups. Authorized states should nominate sites for federal cleanup funds, and EPA should allocate available funds based on competing national and regional priorities.

4.4 Liability

The liability scheme employed in any hazardous waste cleanup program is critical to the success of that program. The current CERCLA liability scheme serves some purposes well. Its effectiveness at encouraging better waste management is beyond dispute and it has provided resources for waste site cleanups. On the other hand, the Governors believe the current system is flawed in several important respects. Among others, it too often leads to expensive litigation and transaction costs.

The current liability scheme is under scrutiny in Congress and the Governors recognize that the outcome of the debate on federal liability will have significant, direct effects on state cleanup programs. The program must be responsive to the needs of all parties, including the regulated community, taxpayers, and communities threatened by pollution. The Governors would like to work constructively with Congress in revising the current scheme.

Any resulting liability scheme must:

- ensure that adequate funds are available for cleaning up waste sites and that no unfunded mandates are created for the states;
- allocate cleanup costs fairly and equitably among those responsible for pollution. The liability and transaction costs of small contributors and municipalities must be addressed;
- minimize transaction costs to the greatest extent possible. We must ensure that changes to the existing system do not create new transaction costs or additional opportunities for extensive litigation of new or previously well-settled issues that will only further delay cleanups;
- encourage pollution prevention and improved waste management;
- continue to provide substantial incentives for responsible parties to negotiate cleanup settlements before government enforcement action is necessary;
- complement existing state programs;
- ensure that sites are cleaned up promptly and efficiently; and
- ensure that at non-NPL sites, a release of liability under state cleanup laws protective of human health and the environment constitutes, by operation of law, a release from federal liability.

4.5 State Program Grants

The Governors believe that Superfund cleanup will be faster and more effective if states have adequate capacity to plan and implement the program. To develop such capacity, the fund should be used to support grants to states for program development, site identification and assessment, enforcement, site remediation, oversight, and administrative expenses at all sites.

4.6 **State Match**

The Governors believe that there is no justification for requiring a larger state match for Superfund cleanup at sites that are publicly operated than for private sites. CERCLA should be amended to provide that the match required for remedial actions is 10 percent at all sites, whether or not they are operated by the state or a political subdivision. There should continue to be no cost share required for removal actions. The 10 percent state share for sites operated by states or political subdivisions should be considered a final settlement of all liability under CERCLA for the state or political subdivision. The Governors support the continued ability of states to apply in-kind services toward the state match requirement.

4.7 **Operation and Maintenance Expenses**

CERCLA should be clarified to provide that the response trust fund can be used to support operation and maintenance activities during the period in which they are required. It should be clear that these expenditures are subject to the same state match requirements as cleanup actions.

4.8 **Natural Resource Damage Claims**

The natural resource damage provisions of CERCLA allow federal, state, and tribal natural resource trustees to require the restoration of natural resources injured, lost, or destroyed as the result of a release of hazardous substances into the environment. The Governors believe this is an important program that must be maintained. The Governors urge Congress to strengthen the program by amending the statute of limitations to run three years from completion of a damage assessment; removing the prohibition on funding natural resource damage assessments from Superfund; and providing for judicial review of trustee decisions on the administrative record, subject to the arbitrary and capricious standard. Further, the Governors urge Congress to resist efforts to weaken the program by capping liability for natural resource damages at some level per site or eliminating compensation for non-use values.

4.9 **Federal Facilities**

The Governors continue to support legislation that ensures a strong state role in the oversight of federal facility cleanups. Federal facilities and former federal facilities are among the worst contaminated sites in the nation. This condition is a legacy of the lack of regulatory oversight at these sites for most of their history. The double standard of separate rules applying to private citizens and the federal government continues to have a detrimental effect on public confidence in government at all levels. Federal facilities should be held to the same standard of compliance as other parties.

Because EPA cannot effectively enforce CERCLA, or any other environmental statute against other federal agencies, it is critical that states have clear authority to do so. Therefore, the Governors urge Congress to include in any CERCLA reauthorization bill provisions authorizing states to require and oversee response activities at federal facilities, including former federal facilities.

In virtually every other environmental statute, Congress has waived sovereign immunity and allowed qualified states to enforce state environmental laws at federal facilities. Such authority has been provided in the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act. As recently as 1992, when the Federal Facility Compliance Act was enacted, Congress once again confirmed its commitment to state enforcement of environmental laws at federal facilities. We urge this Congress to ensure that CERCLA also follows this sound policy.

4.10 **Voluntary Cleanups**

The Governors believe that voluntary cleanup activities can make a significant contribution toward the nation's hazardous waste cleanup goals. A number of states have developed highly successful voluntary cleanup programs that have enabled sites to be remediated more quickly and with minimal governmental involvement. CERCLA should be amended to give credit, in the form of a legal release, to volunteers who have cleaned a site to protection standards in accordance with a state voluntary cleanup law protective of human health and the environment. These changes will encourage voluntary cleanup and thus increase the number of cleanups completed. In addition, CERCLA should encourage and provide clear incentives, such as tax exemptions and liability protections for nonculpable parties, for so-called "brownfields" programs at the state level to encourage potentially responsible parties, and for prospective purchasers to reuse and redevelop these contaminated properties.

4.11 **National Priorities List**

The NPL should be used to facilitate the cleanup of contaminated sites and to protect human health and the environment. Governors should be given the statutory right to concur with the listing of any new NPL sites in their states. The Governors are concerned about proposals to legislatively cap or limit the NPL because of differences in capacities among states, the complexity and cost of some cleanups, the availability of responsible parties, enforcement considerations, and other factors. There must be a continuing federal commitment to clean up sites under such circumstances. Emphasis should be on prioritizing cleanup fund expenditures to provide the greatest human health and environmental benefits. In the event EPA discovers an imminent and substantial threat to human health and the environment, it may continue to use its emergency removal authority, but any assignment of liability must be consistent with liability assigned under state cleanup laws.

4.12 **Remediation Waste**

The Governors support the ability of the states to manage remediation waste under state remedial action plans (RAPs) in lieu of traditional Resource Conservation and Recovery Act permits and land disposal treatment requirements. State RAPs should be developed and administered in accordance with state laws pertaining to public participation, remedy selection, and state oversight. A streamlined authorization process should be established through statutory provisions, identifying program criteria for a state-initiated self-certification process to ensure that the program adequately protects human health and the environment. EPA should periodically review state performance, instead of involving itself in RAP-by-RAP oversight.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Annual Meeting 1993; revised Annual Meeting 1995 and Winter Meeting 1997.

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1999 Winter Meeting

EXECUTIVE COMMITTEE

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Governor Michael O. Leavitt, Vice Chair

Raymond C. Scheppach, Executive Director

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

The Executive Committee recommends the consideration of one resolution, an amendment (in the form of a substitute) to replace two existing policy positions, and the reaffirmation of three existing policy positions (one with technical amendments). Policy proposals are time limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. Streamlining State Sales Tax Systems (Amendment in the form of a substitute to EC-12 and EC-16)

   The amendment in the form of a substitute updates the policy in accordance with policy adopted at the 1998 Winter Meeting, EC-16, Internet Development Act of 1998. The amendment redirects the policy toward all out-of-state sales, not just mail order sales. It restructures the policy in line with EC-16 by asserting that state action is needed to streamline and simplify sales taxes and that federal action is needed to ensure that these simplified taxes can be applied fairly to all forms of remote commerce. From EC-16, it incorporates the requirement of one rate per state, uniform definitions, and simplified administration and compliance. It also incorporates the trade-off established in EC-16 that states be able to impose an expanded duty to collect their sales taxes on remote sellers once the uniformity and simplicity has been attained in that state. The amendment also incorporates the *de minimis* levels of EC-16 to assure small businesses involved in electronic commerce that they will not face prohibitive collection costs.

   There is no federal fiscal impact to this policy.

2. Expansion of Ed-Flex Demonstration Program to All Qualified States and Territories (Resolution, based on policy HR-11)

   This resolution elaborates on NGA policy HR-11, Governors' Role in Supporting Standards-Based Education Reform, by calling for the expansion of the Education Flexibility Demonstration program so all states would have the opportunity to apply for waivers from federal education statutes and regulations in exchange for a higher level of accountability. The program simply provides states and local school districts with waiver authority and therefore does not have any budget implications.

3. Reaffirmation of Existing Policy

   The committee proposes the reaffirmation of existing policies EC-2, Congressional Action for Political Self-Determination for Puerto Rico (with technical amendments), EC-10, Political Status for Guam, and EC-14, Equal Rights.

EC-12. STREAMLINING STATE SALES TAX SYSTEMS

12.1 PREAMBLE

THE NATIONAL GOVERNORS' ASSOCIATION SUPPORTS STATE EFFORTS TO PURSUE, THROUGH NEGOTIATIONS, THE COURTS, AND FEDERAL LEGISLATION, PROVISIONS THAT WOULD REQUIRE LARGE OUT-OF-STATE MAIL ORDER FIRMS TO COLLECT SALES AND USE TAXES FROM THEIR CUSTOMERS. SUCH ACTION IS NECESSARY TO RESTORE FAIRNESS TO COMPETITION BETWEEN LOCAL RETAIL STORE PURCHASES AND OUT-OF-STATE MAIL TRANSACTIONS AND TO PROVIDE A MEANS FOR THE STATES TO COLLECT TAXES THAT ARE OWED UNDER EXISTING LAW. THE RECENT RAPID GROWTH OF THE INTERNET HAS UNDERSCORED THE IMPORTANCE OF THIS EQUITABLE TREATMENT. THE GOVERNORS HAVE CALLED FOR THE DEVELOPMENT OF A TWENTY-FIRST CENTURY SALES TAX THAT CAN ACHIEVE THIS FAIRNESS FOR ALL FORMS OF SALES: MAIN STREET, MAIL ORDER, AND INTERNET. A STREAMLINED SALES TAX WITH SIMPLIFIED COMPLIANCE REQUIREMENTS WILL ENSURE THAT STATES ARE PREPARED TO SUPPORT THE GLOBAL ELECTRONIC MARKETPLACE OF THE NEXT CENTURY.

THE U.S. SUPREME COURT IN THE QUILL DECISION EXPLICITLY REAFFIRMED THE AUTHORITY OF CONGRESS TO ADDRESS STATE TAX ISSUES THAT AFFECT INTERSTATE COMMERCE. ALTHOUGH STATE ACTION IS NEEDED TO SIMPLIFY THE SALES TAX, FEDERAL ACTION WILL BE NEEDED TO ENSURE THAT IT CAN BE FAIRLY APPLIED.

12.2 STREAMLINED SALES TAX

SALES TAX SIMPLIFICATION SHOULD CONFORM TO THE FOLLOWING PRINCIPLES.

12.2.1 **ONE SALES TAX RATE PER STATE.** STATES WILL CONTINUE TO HAVE THE OPTION OF NOT IMPOSING THE SALES TAX. IN STATES WHERE A SALES TAX IS LEVIED, EACH STATE WILL NEED TO ESTABLISH A SINGLE RATE FOR REMOTE SELLERS TO COLLECT. STATES WILL ALSO NEED TO ESTABLISH A METHOD OF DISTRIBUTING TO LOCAL GOVERNMENTS THEIR APPROPRIATE SHARE OF SUCH TAXES.

12.2.2 **UNIFORM STRUCTURE AND SIMPLIFIED COMPLIANCE WITH THE SALES TAXES.** THE GOVERNORS CALL FOR JOINT INDUSTRY/GOVERNMENT DEVELOPMENT OF A SYSTEM IN WHICH THE DEFINITIONS OF THE GOODS OR SERVICES THAT MAY BE TAXED ARE UNIFORM AND CONSISTENT ACROSS STATE LINES. STATES WILL BE ALLOWED TO CHOOSE WHETHER OR NOT TO TAX SPECIFIC GOODS OR SERVICES THAT ARE UNIFORMLY DEFINED ACROSS ALL STATES. BESIDES SIMPLIFYING THE TAX, THESE DEFINITIONS WILL GIVE STATES THE ABILITY TO IDENTIFY AND ADDRESS INSTANCES WHERE DISCRIMINATORY OR MULTIPLE TAXATION CURRENTLY EXISTS. THE

GOVERNORS ALSO CALL FOR JOINT INDUSTRY/GOVERNMENT DEVELOPMENT OF SIGNIFICANT SIMPLIFICATIONS IN THE ADMINISTRATION OF THE SALES TAX IN AREAS SUCH AS UNIFORM REGISTRATION, TAX RETURNS, REMITTANCE REQUIREMENTS, AND FILING PROCEDURES.

ONE POTENTIAL APPROACH TO ADMINISTRATION OF SALES TAXES WOULD BE TO ENCOURAGE ESTABLISHMENT OF A SYSTEM OF INDEPENDENT THIRD-PARTY ORGANIZATIONS THAT WOULD BE RESPONSIBLE FOR REMITTING TAXES TO THE STATES. REMOTE SELLERS WOULD USE A SOFTWARE PACKAGE PREAPPROVED BY THE STATES THAT WOULD CALCULATE THE TAX DUE ON THE PURCHASE BASED ON THE STATE RATE WHERE THE ITEM IS SENT, AND ELECTRONICALLY REMIT THAT TAX TO THE COLLECTION ORGANIZATION. REMOTE SELLERS THAT OPT TO USE THE THIRD-PARTY SYSTEM WOULD ENJOY ADDITIONAL BENEFITS OF COMPLIANCE, INCLUDING NOT FILING RETURNS AND NOT REMITTING FUNDS TO STATES.

12.3 EXPANDED DUTY TO COLLECT

THE GOVERNORS CALL ON CONGRESS TO RE-ESTABLISH FAIRNESS IN STATE SALES TAX SYSTEMS BY REQUIRING REMOTE SELLERS TO COLLECT SALES TAXES FOR ANY STATE THAT SIMPLIFIES ITS TAX SYSTEM IN ACCORDANCE WITH THE FOREGOING PRINCIPLES. STATES THAT CHOOSE NOT TO SIMPLIFY THE SALES TAX WOULD RETAIN A NARROW AND LIMITED PHYSICAL NEXUS STANDARD. THE EXPANDED DUTY TO COLLECT WOULD REQUIRE REMOTE VENDORS TO COLLECT SALES AND USE TAX IN EVERY STATE WHERE THEY SOLD TAXABLE PRODUCTS AND SERVICES ONLY IF:

- THEY HAD NATIONAL SALES ABOVE SOME DE MINIMIS LEVEL IN THE PAST YEAR; AND
- THEY HAD SALES TO THAT INDIVIDUAL STATE'S CONSUMERS ABOVE SOME LOWER DE MINIMIS LEVEL IN THE PAST YEAR.

IT IS THE GOVERNORS' INTENTION THAT SMALL COMPANIES (FOR EXAMPLE WITH ANNUAL GROSS SALES BELOW $100,000 OR $200,000) SHOULD NOT BE REQUIRED TO COLLECT STATE SALES TAXES ON OUT-OF-STATE SALES EXCEPT UNDER THE PROPOSED INDEPENDENT THIRD-PARTY ADMINISTRATION SYSTEM DESCRIBED ABOVE. EVEN IN THAT INSTANCE, THERE SHOULD BE NO CHARGE TO SUCH SMALL COMPANIES.

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

~~EC-12. OUT-OF-STATE SALES TAX COLLECTIONS~~

~~The National Governors' Association supports state efforts to pursue, through negotiations, the courts, and federal legislation, provisions that would require large out-of-state mail order firms to collect sales and use taxes from their customers. Such action is necessary to restore fairness to competition between community and out-of-state mail transactions and to provide a means for the states to collect taxes that are owed under existing law.~~

~~Past court cases—in particular, the North Dakota Supreme Court's decision regarding the Quill Corporation—have acknowledged the dramatic changes in direct marketing over the past twenty-four years by requiring that certain mail-order merchants collect a state's sales tax from their customers.~~

~~Federal legislation should conform to the following principles:~~

- ~~apply to only large firms with national or single state sales of tangible personal property in excess of reasonable *de minimus* levels nationally and in each state;~~
- ~~apply to firms engaged in regular, systematic solicitation of sales in a state;~~
- ~~be imposed only when the state has established a uniform rate for the state, including any minimum, statewide, local sales tax rates;~~
- ~~include reasonable return and remittance requirements of not more than quarterly; and~~
- ~~apply the tax to the sales or use of tangible personal property.~~

~~The Governors call upon Congress to exercise its powers to regulate interstate commerce to grant the states authority to collect their own tax owed on these interstate mail transactions. Such action would restore fairness to competition between community and out-of-state mail transactions and provide a means for the states to collect already owed taxes.~~

~~NGA supports the ongoing negotiations between states and direct marketers that will encourage out-of-state retailers to collect state sales and use taxes and provide simplified collection procedures for multistate retailers.~~

~~NGA also supports vigorous enforcement of laws requiring out-of-state marketers to collect state sales and use taxes where there is constitutional nexus and where the marketer has entered the state to market to local consumers. At the same time, NGA encourages the development of reasonable nexus guidelines to clarify tax enforcement policies and to encourage out-of-state marketers to purchase goods and services from in-state vendors.~~

~~Time limited (effective Winter Meeting 1997–Winter Meeting 1999).~~
~~Adopted Annual Meeting 1987; revised Annual Meeting 1991; reaffirmed Winter Meeting 1995; revised and reaffirmed Winter Meeting 1997 (formerly Policy A-12).~~

~~EC-16. INTERNET DEVELOPMENT ACT OF 1998~~

~~16.1 Preamble~~

~~Technology is reinventing the way Americans do business in the global marketplace of the twenty-first century. The twentieth century marketplace of consumers going to the place they want to do business is being replaced by a twenty-first century global marketplace of businesses coming to consumers at computers in their home or office. Tax policy should encourage connecting citizens to this marketplace.~~

~~The twenty-first century marketplace requires a twenty-first century sales tax system that is more uniform, consistent, and streamlined. The Governors propose enactment of the Internet Development Act of 1998 to prohibit further taxes on access to the Internet and to establish the simplified twenty-first century state sales tax system.~~

~~Today there are thousands of jurisdictions across the country imposing sales taxes. The new simplified system will reduce costs and administrative burdens for businesses and consumers. This will provide U.S. companies, large and small, competitive advantage in the global marketplace. It also will provide a tool for states to create equity between Main Street businesses and remote sellers.~~

~~Not only will tax simplification make businesses more competitive, but it will make government more efficient, resulting in personal benefits to every consumer and citizen. Further, this dramatically simplified system does not come at the expense of state and local governments. Their integrity is preserved, and they are provided an opportunity to participate in the twenty-first century global marketplace.~~

~~The Governors believe that the Internet offers citizens a chance to access worldwide information, goods, and services with the push of a button. It also offers a unique opportunity for restructuring government services, making them more cost effective and readily available. The more widespread the use of the Internet becomes, the faster business, government, and citizens can benefit.~~

~~One of the Governors' primary objectives is to avoid discriminatory and multiple taxation that could inhibit growth of the Internet.~~

~~16.2 Internet Development Act of 1998~~

~~To lead business, consumers, and state and local governments into the twenty-first century global marketplace, the Governors propose the following federal legislation.~~

~~16.2.1 **Prohibition on Any New Federal, State, and Local Taxes Levied on Internet Access Fees, As Well As Taxes on Bandwidth Capacity and Bit Volume.** The Internet Development Act of 1998 would prohibit new federal, state, and local laws to tax charges to individual consumers for access to the Internet (the monthly fee, e.g., $19.95). The legislation also would prohibit taxes on bandwidth capacity and bit volume, both designed solely to tax electronic commerce. These prohibitions are part of a broad solution-oriented approach to the serious issues involved in the taxation of electronic commerce. The act will not allow the preemption of any other state or local taxes.~~

~~16.2.2 **One Sales Tax Rate per State.** The Internet Development Act of 1998 would call on each state to establish a single statewide sales tax rate on all taxable electronic commerce and mail order purchases. States will continue to have the option of not imposing the sales tax. If a sales tax is levied, remote sellers, regardless of whether or not they use the Internet, will be able to collect the tax with a single rate per state. The act also would call on states to establish a method of distributing to local governments their appropriate share of such taxes.~~

~~16.2.3 **Uniform Structure and Simplified Administration of the Sales Taxes.** The Internet Development Act of 1998 would require a simplified state sales tax structure and simplified administration. The Governors call for joint industry/government development of a system in which the definitions of the goods or services that may be taxed are uniform and consistent across state lines. States will be allowed to choose whether or not to tax specific goods or services that are uniformly defined across all states. Beyond uniformity in the sales tax, these definitions will give states the ability to identify and address instances where discriminatory or multiple taxation currently exists. The Governors also call for joint industry/government development of significant simplifications in the administration of the sales tax in areas such as uniform registration, tax returns, remittance requirements, and filing procedures. The Governors urge the National Tax Association's Communications and Electronic Commerce Taxation Project to address these issues as soon as possible.~~

~~One potential approach to administration of sales taxes would be to encourage establishment of a system of independent third-party organizations that would be responsible for remitting taxes to the states. Remote sellers would use a software package preapproved by the states that would calculate the tax due on the purchase based on the state rate where the item is sent, and electronically remit that tax to the collection organization. Remote sellers that opt to use the third-party system would enjoy additional benefits of simplification, including not filing returns and not remitting funds to states.~~

~~16.2.4 **Expanded Duty to Collect.** The Internet Development Act of 1998 would reward those states that achieve one rate, uniform definitions, and simplified administration of the sales tax by authorizing those states to require certain remote sellers to collect the appropriate sales/use tax on goods and services sold into the state. This expanded duty to collect would replace the concept of physical nexus that currently limits remote sellers' duties to collect sales/use tax to states where they have a physical presence. States that choose not to simplify the sales tax would retain a narrow and limited physical nexus standard. The expanded duty to collect would require electronic commerce and mail order vendors to collect sales and use tax in every state where they sold taxable products and services only if:~~

- ~~they had national sales above some *de minimis* level in the past year; and~~
- ~~they had sales to that individual state's consumers above some lower *de minimis* level in the past year.~~

~~It is the Governors' intention that small companies (for example with annual gross sales below \$100,000 or \$200,000) should not be required to collect state sales taxes on out-of-state sales except under the proposed independent third-party administration system described above. Even in that instance, there should be no charge to such small companies.~~

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

RESOLUTION*

EXPANSION OF ED-FLEX DEMONSTRATION PROGRAM TO ALL QUALIFIED STATES AND TERRITORIES

STATE LEADERSHIP IN EDUCATION REFORM

THE GOVERNORS STRONGLY AFFIRM THAT STATES ARE RESPONSIBLE FOR CREATING AN EDUCATION SYSTEM THAT ENABLES ALL STUDENTS TO ACHIEVE HIGH STANDARDS AND BELIEVE THAT THE FEDERAL GOVERNMENT SHOULD SUPPORT STATE EFFORTS BY PROVIDING REGULATORY RELIEF AND GREATER FLEXIBILITY.

THE GOVERNORS SUPPORT THE EXPANSION OF THE EDUCATION FLEXIBILITY (ED-FLEX) DEMONSTRATION PROGRAM. ED-FLEX HAS HELPED STATES FOCUS ON IMPROVING STUDENT PERFORMANCE BY MORE CLOSELY ALIGNING STATE AND FEDERAL EDUCATION IMPROVEMENT PROGRAMS AND BY SUPPORTING STATE EFFORTS TO DESIGN AND IMPLEMENT STANDARDS-BASED REFORM. BY REQUIRING STATES TO WAIVE THEIR OWN COMPARABLE STATE LAWS AND REGULATIONS, THE ED-FLEX PROGRAM PROVIDES MAXIMUM LEVERAGE TO STREAMLINE THE OPERATION OF LOCAL, STATE, AND FEDERAL EDUCATION PROGRAMS. A STATE CAN ONLY APPROVE WAIVERS THAT MAINTAIN THE UNDERLYING INTENTIONS OF THE DESIGNATED PROGRAMS.

THE TWELVE STATES THAT CURRENTLY PARTICIPATE IN ED-FLEX HAVE UTILIZED THIS INCREASED FLEXIBILITY TO ALLOW THEIR SCHOOL DISTRICTS TO BE INNOVATIVE AND CREATIVE IN USING FEDERAL RESOURCES TO BETTER SERVE THE NEEDS OF THEIR STUDENTS. A NUMBER OF ED-FLEX STATES HAVE USED THE WAIVER AUTHORITY TO CONSOLIDATE SCHOOL IMPROVEMENT RESOURCES INTO A SINGLE PLAN, TO STRENGTHEN VOCATIONAL EDUCATION PROGRAMS FOR HIGH SCHOOL STUDENTS, AND TO REDUCE CLASS SIZE.

ALTHOUGH ED-FLEX WAIVER AUTHORITY IS BROAD, CERTAIN FUNDAMENTAL REQUIREMENTS MAY NOT BE WAIVED, INCLUDING THOSE PERTAINING TO HEALTH, SAFETY, AND CIVIL RIGHTS, PROVISIONS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, AND REQUIREMENTS RELATING TO PARENTAL PARTICIPATION AND INVOLVEMENT.

ED-FLEX WILL PROVIDE STATES AND TERRITORIES WITH INCREASED INCENTIVE TO STRENGTHEN STATE EFFORTS TO ADOPT MEANINGFUL STANDARDS AND ASSESSMENTS WITH GREATER ACCOUNTABILITY.

* Based on policy HR-11, Governors' Role in Supporting Standards-Based Education Reform

Time limited (effective Winter Meeting 1999–Winter Meeting 2000).

REAFFIRM

EC-2. CONGRESSIONAL ACTION FOR POLITICAL SELF-DETERMINATION FOR PUERTO RICO

The people of Puerto Rico, as natural-born citizens of the United States, possess the same individual liberties as do all other American citizens, including the right to protect and nurture their local culture and linguistic heritage and the right to conduct their affairs in accordance with a local constitution compatible with and subordinate to the U.S. Constitution. Most Governors represent constituencies that include American citizens of Puerto Rican descent. Tens of thousands of Puerto Ricans have served our nation with distinction in every U.S. military conflict of this century, earning numerous decorations, including four posthumous medals of honor, and rising in several instances to the ranks of general and admiral. Without admission to the Union, the residents of Puerto Rico have sustained many combat casualties defending U.S. interests in World War I, World War II, Korea, Vietnam, and the Persian Gulf. Athletes, scholars, artists, entrepreneurs, professionals, and laborers of Puerto Rican origin have been contributing throughout this century to the spiritual and socioeconomic enrichment of the United States.

It is essential that the final, permanent political status of Puerto Rico be democratically selected by the American citizens who reside there. The National Governors' Association recognizes and endorses the right of the people of Puerto Rico to freely exercise political self-determination by majority vote on options ranging from U.S. statehood to sovereign independence.

An absolute majority of Puerto Rico's voters supported a platform seeking congressional sponsorship of a political status plebiscite for Puerto Rico. The responsibility for making "all needful rules and regulations respecting the territory or other property belonging to the United States" is vested in the U.S. Congress by Article IV, Section 3 of the U.S. Constitution.

Therefore, in harmony with its long-standing acknowledgement of the importance of self-determination by the people of Puerto Rico as to the status of Puerto Rico, the National Governors' Association urges the 106TH ~~105th~~ U.S. Congress to enact legislation that will, no later than the YEAR 2000, ~~1998 centennial of the U.S. sovereignty over Puerto Rico,~~ provide a mechanism for political self-determination by the American citizens who reside in Puerto Rico.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Annual Meeting 1978; revised Winter Meeting 1989; revised and reaffirmed Winter Meeting 1993; reaffirmed Winter Meeting 1995; revised Winter Meeting 1997 (formerly Policy A-6).

REAFFIRM

EC-10. POLITICAL STATUS FOR GUAM

In 1898, Guam became an unincorporated territory of the United States. At that time, Congress was also given a mandate to address Guam's political status. Today the people of Guam are seeking that political status, as Guam's standing as an unincorporated territory is no longer suitable or appropriate. Moreover, the people of Guam have voted to move forward in defining their political relationship with the United States.

The National Governors' Association, in keeping with the basic principle of American democracy that the sovereignty of a government be derived from a consensus of its citizens, urges the administration and Congress to work with the government of Guam to establish a relationship that recognizes Guam's unique needs and that is based on mutual consent.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Winter Meeting 1985; reaffirmed Annual Meeting 1991; revised Winter Meeting 1995; reaffirmed Winter Meeting 1997 (formerly Policy A-11).

REAFFIRM

EC-14. EQUAL RIGHTS

In 1976 the National Governors' Association expressed support for ratification and implementation of the Equal Rights Amendment, which would constitutionally guarantee full citizenship rights and opportunities for women. In 1982 the drive for ratification fell short, and efforts to initiate the amendatory process were taken.

The National Governors' Association reaffirms its support for the principles embodied in the Equal Rights Amendment, i.e., that equality of rights under the law shall not be denied or abridged by the United States or any state on the basis of gender.

Time limited (effective WINTER MEETING 1999–WINTER MEETING 2001 ~~Winter Meeting 1997–Winter Meeting 1999~~).
Adopted Annual Meeting 1982; revised Annual Meeting 1987; reaffirmed Winter Meeting 1992, Winter Meeting 1995, and Winter Meeting 1997 (formerly Policy A-5).