Table S–7. TOBACCO LEGISLATION

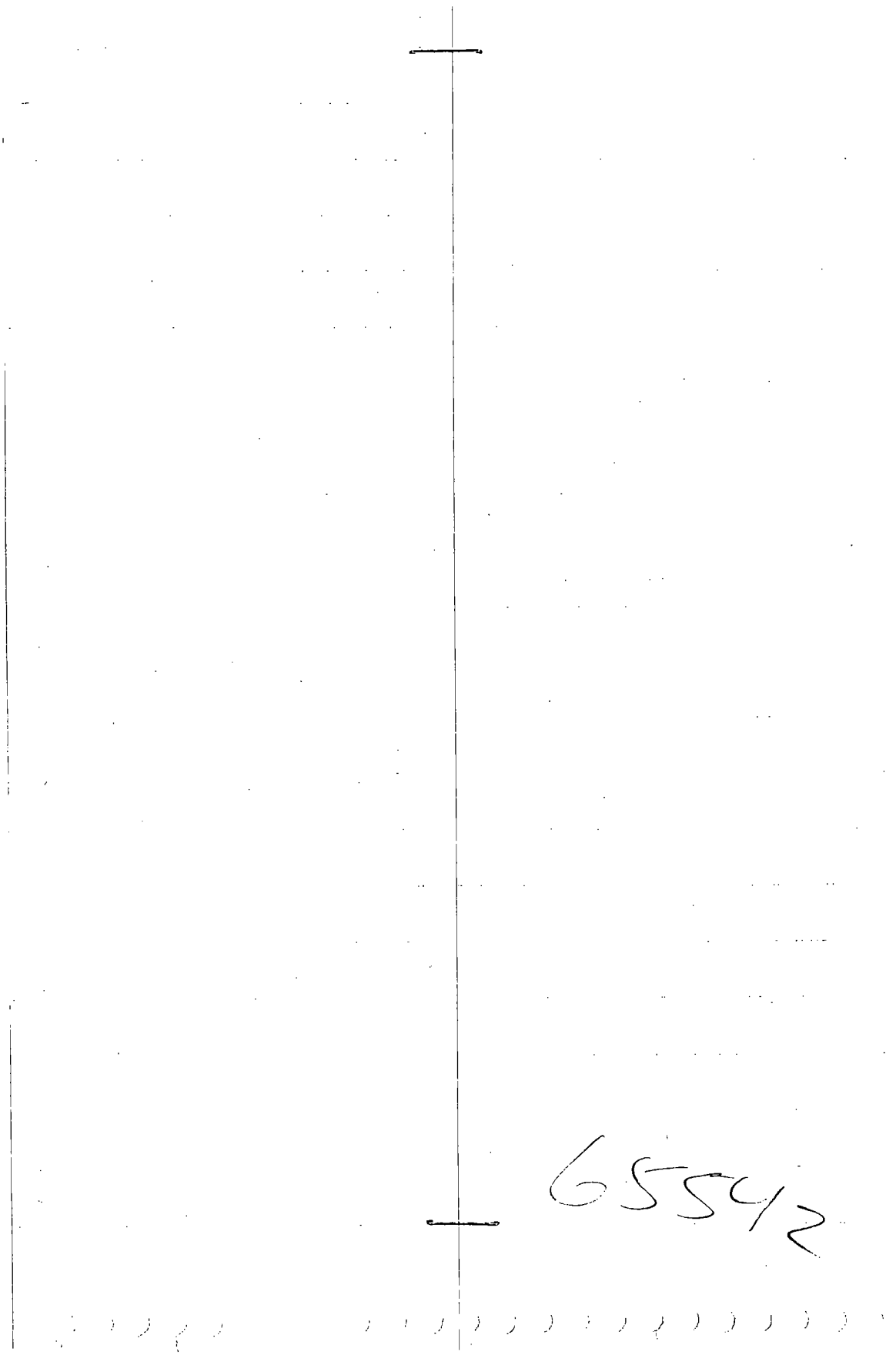
(In billions of dollars)

	Estimate					Total 1999–2003
	1999	2000	2001	2002	2003	
USES OF RECEIPTS FROM TOBACCO LEGISLATION						
Federally-operated Programs:						
Research Fund for America	3.6	4.6	5.0	5.7	6.3	25.8
Food and Drug Administration Enforcement Activities	0.1	0.2	0.3	0.3	0.3	1.2
Health and Human Services/Centers for Disease Control Smoking Prevention	0.1	0.1	0.1	0.1	0.1	0.4
Medicare Beneficiaries Cancer Clinical Trials Demonstration	0.2	0.2	0.3	.....	.....	0.8
Subtotal, Federally-operated programs	4.0	5.1	5.6	6.1	6.7	27.5
State-administered Programs:						
Child Care and Development Block Grant	1.2	1.3	1.4	1.6	2.1	7.5
Medicaid Child Outreach Reforms	0.1	0.2	0.2	0.2	0.2	0.9
Class Size Initiative	1.1	1.3	1.5	1.7	1.7	7.3
Subtotal, State-administered programs	2.4	2.7	3.1	3.5	4.0	15.7
Other Uses (Includes unrestricted funds for States, cessation programs, farmer assistance, etc.)	3.4	3.9	4.6	5.0	5.4	22.3
Total Uses	**9.8**	**11.8**	**13.3**	**14.5**	**16.1**	**65.5**
TOBACCO LEGISLATION RECEIPTS PROPOSED	**9.8**	**11.8**	**13.3**	**14.5**	**16.1**	**65.5**

Table S–7. TOBACCO LEGISLATION

(In billions of dollars)

	Estimate					Total 1999–2003
	1999	2000	2001	2002	2003	
USES OF RECEIPTS FROM TOBACCO LEGISLATION						
Federally-operated Programs:						
Research Fund for America	3.6	4.6	5.0	5.7	6.3	25.3
Food and Drug Administration Enforcement Activities	0.1	0.2	0.3	0.3	0.3	1.2
Health and Human Services/Centers for Disease Control Smoking Prevention	0.1	0.1	0.1	0.1	0.1	0.4
Medicare Beneficiaries Cancer Clinical Trials Demonstration	0.2	0.2	0.3	.....	.....	0.8
Subtotal, Federally-operated programs	4.0	5.1	5.6	6.1	6.7	27.5
State-administered Programs:						
Child Care and Development Block Grant	1.2	1.3	1.4	1.6	2.1	7.5
Medicaid Child Outreach Reforms	0.1	0.2	0.2	0.2	0.2	0.9
Class Size Initiative	1.1	1.3	1.5	1.7	1.7	7.3
Subtotal, State-administered programs	2.4	2.7	3.1	3.5	4.0	15.7
Other Uses (Includes unrestricted funds for States, cessation programs, farmer assistance, etc.)	3.4	3.9	4.6	5.0	5.4	22.3
Total Uses	**9.8**	**11.8**	**13.3**	**14.5**	**16.1**	**65.5**
TOBACCO LEGISLATION RECEIPTS PROPOSED	**9.8**	**11.8**	**13.3**	**14.5**	**16.1**	**65.5**


6554/2

Tobacco
Med. Lawsuits
EW

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

July 16, 1997

The Honorable Tom Harkin
United States Senate
Washington, DC 20510

Dear Senator Harkin:

Thank you for your letter suggesting that the Department of Justice file a legal action to recover certain tobacco-related health care costs. I apologize for the delay in responding.

I certainly agree that smoking is a major public health issue whose impact, in terms of lives lost, illnesses caused, and costs to our health care system, has been devastating. In addressing this issue, the Department of Justice has strongly defended the regulations issued by the Food and Drug Administration ("FDA") to keep tobacco products, and the advertising of these products, away from children. The recent district court decision upholding the FDA's authority to regulate tobacco was an important victory in this ongoing battle.

Your letter emphasizes that the Federal government has incurred health care costs related to tobacco use under Medicaid, Medicare and several other Federal health programs. As you know, pursuant to the Medicaid law, there are now 40 states that have sued tobacco companies to recoup health care costs incurred for tobacco-related diseases. The Department of Justice, along with the Department of Health and Human Services ("HHS"), which oversees the Medicaid program, has closely monitored this litigation. Under the Medicaid statute, the states are authorized to pursue recovery of health care expenses from third parties who are legally liable for these costs. We have been in contact with many of the State Attorneys General who have brought suits and have kept them updated about the status of our defense of the FDA regulations. We have also responded to their inquiries and requests for assistance.

Since the Medicaid program was designed to be primarily administered by the states, the Medicaid law does not include a provision which would allow the Federal government to pursue such recoveries directly. However, because the Federal government does pay a significant portion of the cost of the Medicaid program, Congress protected the Federal government's interest in

any third party suits the states bring by requiring the states to reimburse the Federal Government its portion of any recovery.

On June 20, 1997, the states announced that they had reached a proposed settlement of their pending Medicaid claims against tobacco companies. The terms of that proposed settlement would require Federal legislation to implement the compromise. The Administration is currently reviewing the proposed settlement. As part of that review, the impact of the proposed settlement on the Federal interests associated with the Medicaid program is being considered.

As referenced in your letter, the Federal government also incurs costs related to tobacco use under Medicare and through medical services provided directly by the federal government. Federal interests under these programs may be implicated by the recent proposed settlement of the states' Medicaid suits. You may be assured that the issues raised by your letter will be considered during the Administration's review of the proposed settlement.

As always, thank you for sharing your views about these important issues. We will certainly keep them in mind during the Administration's review of the options presented by the proposed settlement.

Sincerely,

Ann M. Harkins

Ann M. Harkins
Deputy Assistant Attorney General

393159

United States Senate

WASHINGTON, D.C. 20510

September 18, 1997

The Honorable Janet Reno
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Attorney General Reno:

Once again, we are writing to urge you to bring suit against the tobacco industry to recover the approximately $20 billion in tobacco-related health care costs borne by federal taxpayers each year.

As you know, we sent a similar letter to you in April of this year. We received a reply from your staff on July 15, but it did not answer an important question: Will the Federal government bring suit against the tobacco industry to recover tobacco-related Federal health costs? And if not, why not?

Since our initial letter was written in April, we would respectfully request a swift and timely response.

Sincerely,

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

THE WHITE HOUSE

WASHINGTON

December 5, 1997

The Honorable George Voinovich
and Colleagues
National Governors' Association
Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1512

Dear Friends:

Thank you for your recent letter about comprehensive tobacco legislation. I appreciate your concern that such legislation should fully compensate states for tobacco-related costs.

By working together, we have made extraordinary progress this year in our fight to reduce the death and illness caused by tobacco. In February, new Food and Drug Administration rules to reduce youth smoking took effect. In April, a federal judge in North Carolina affirmed FDA's authority to regulate tobacco products. In June, the state attorneys general announced a historic agreement with the tobacco industry to settle 40 state lawsuits against the tobacco companies. And in September, building upon the work of the FDA and the state attorneys general, I called on Congress to pass sweeping tobacco legislation that would dramatically reduce teen smoking. My overriding goal in seeking bipartisan national tobacco legislation is to make the most of this historic opportunity to reduce teen smoking.

As you know, current law requires the Health Care Financing Administration to seek recovery of the federal portion of reimbursements for Medicaid that may be part of any state tobacco settlements. I would prefer to see the allocation of tobacco funds between federal and state government resolved through legislation, and I look forward to working with the states and with Congress to find a mutually agreeable purpose for the funds generated by tobacco legislation.

Again, thank you for your leadership on this important issue.

Sincerely,

Bill Clinton

Q and A on Tobacco Taxes and Budget
January 5, 1998

Q. Will your upcoming proposed budget rely on revenues raised from a tax on tobacco products, and if so how much money do you believe can be raised in this manner?

A. I have said consistently that there needs to be comprehensive tobacco legislation with the primary goal of reducing teen smoking. We are making good progress in that direction. As part of that comprehensive approach, I have called for a combination of industry payments and penalties to increase the price of cigarettes by up to $1.50 over the next decade, as necessary to meet youth smoking reduction targets. These revenues need not be a tax, and reports that indicate that has been decided are wrong. I think it is fair to say that comprehensive tobacco legislation should raise some revenue and that we will assume some revenues from it in our upcoming budget.

Q. Are the revenue estimates reported in the Wall Street Journal today accurate, suggesting that a tobacco tax would raise $10 billion for your FY '99 budget and $40 to $60 billion over five years?

A. I won't comment on particular numbers that may still be in the drafting stage. The budget is not finalized and obviously hasn't been released. The projected revenues we use for the budget will be consistent with what I have called for in the past. I've said there should be a combination of industry payments and penalties to increase the price of cigarettes by up to $1.50 over the next decade, as necessary to meet youth smoking reduction targets of 30% in 5 years, 50% in 7 years, and 60% in 10 years.

LAWTON CHILES
GOVERNOR

STATE OF FLORIDA
Office of the Governor
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

TESTIMONY

OF

GOVERNOR LAWTON CHILES

BEFORE THE

HOUSE COMMERCE SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT

TOBACCO AND MEDICAID

December 8, 1997

Testimony
of
GOVERNOR LAWTON CHILES
before the
House Commerce Subcommittee on Health and the Environment
December 8, 1997

Mr. Chairman, distinguished members of this Committee; I want to thank you for holding this first in a series of hearings on tobacco.

As you consider the role of a national settlement in resolving this issue I think it is important to acknowledge the hard work of my fellow Governors and Attorneys General in bringing this issue to light.

And, through your efforts, Mr. Chairman and members of this committee, you continue to shine a light on this important issue. Similarly, the Administration has been extremely helpful in bringing public attention to this issue and held a Town Hall meeting in Florida last month to talk about the dangers of smoking, particularly among young people.

I also want to thank Nancy-Ann DeParle for her testimony and her work on behalf of the Administration. Gov. Ned Rae McWherter, of Tennessee, had a great ally in Nancy-Ann when she ran Tennessee's health program and started TennCare. We learned much in Florida from their experience and we look forward to working with Nancy-Ann in her new role.

FLORIDA'S FIGHT

I'd like to share with you some of the experiences we've had in Florida in our battle with Big Tobacco.

We fought a grueling, four-year fight against a well-financed, shrewd, and calculating industry. It was a long and lonely battle.

Our settlement is the largest ever made by the tobacco industry to date. We won $11.3 billion over 25 years. But, from the very beginning, we said our work against tobacco was about more than money, it was about protecting the health and welfare of our citizens -- especially our children.

We waged this war for three reasons:

-- First, to protect Florida's children from a life of addiction to a deadly product;

-- Second, to force cigarette makers to finally tell the truth about their dangerous and addictive product; AND

-- Third, to make tobacco pay for the damage it has cost state taxpayers.

It's important to remember, while we did sue to recover Medicaid costs, Medicaid recovery was only a small piece of our case. The bulk of the money we won in the settlement is paying the state back for the fraud, deception and racketeering that the tobacco companies perpetrated on the people of Florida.

OVERVIEW

We had to fight tobacco on two fronts, in the courts and in the Legislature.

Our fight began nearly four years ago, when the Florida Legislature passed legislation empowering the state to sue Big Tobacco for the harm its products caused to the people and the State of Florida.

Our Medicaid Third Party Liability Act leveled the playing field. The law was only aimed at tobacco -- the only product which, when used as directed, will cause sickness and death.

This law struck defenses that are normally available to a liable third party -- assumption of risk probably being the most important. This legislation didn't allow tobacco to use a "blame the smoker" defense. The state didn't smoke and didn't assume the risks. The law also created a cause of action allowing the state to sue a third party for Medicaid costs.

When this all began, people gave us no chance. We faced the longest odds. But, we took the risk. Over the next three years we fought back every possible challenge by Big Tobacco to that law and our lawsuit.

At first, tobacco was successful. They won a repeal of our law. I vetoed that repeal which set up our battle in the Legislature.

The cigarette makers sent down dozens of lobbyists to Tallahassee. Because the battle focused on the Florida Senate, tobacco hired more than one lobbyist for every state senator.

The cigarette makers also engaged in a multi-million dollar misinformation campaign. That campaign said our efforts were "bad for business" and misled small business people across the state into become allies with Big Tobacco.

Tobacco's friends also turned to the State Supreme Court for relief. They tried to get the law ruled unconstitutional. The court ruled against them.

This was a true David and Goliath fight. In the face of tobacco's "blitz" to kill our law, all we had on our side was the truth about tobacco -- and the support of thousands of people who had lost family and friends to smoking.

In the end, the truth prevailed. The people didn't buy tobacco's lies.

Only after jury selection in our trial began and they fully realized our resolve did they finally give in.

PUTTING FLORIDA'S SETTLEMENT TO WORK

While the settlement provides Florida with $11.3 billion over 25 years, the provisions relating to preventing smoking are what really makes this agreement important.

We knew that to stem the rising tide of addiction among our young people we would have to "de-glamorize" smoking.

Today, kids are bombarded with messages about smoking being "cool" and shown advertisements of healthy young people enjoying life with a cigarette. Tobacco ad campaigns target children -- the Joe Camel campaign is the clearest example of that.

So our first job in making this settlement agreement work was to change the way tobacco companies market in Florida. And, to give kids an alternative message about the risks of smoking.

FLORIDA KIDS CAMPAIGN AGAINST TOBACCO

The settlement establishes a $200 million pilot program for an intensive anti-smoking campaign. We're going to get kids the message in Florida: Smoking isn't cool; Smoking kills.

In three months since the settlement we've been working with other states' anti-tobacco campaigns. We've also included kids in the development of our campaign. They have direct input through our Internet site at TEAM.STATE.FL.US.

When you click on this site among the things you will find include:

-- how to join the campaign;

-- ks with other anti-tobacco sites like the Campaign for Tobacco-Free Kids, the C-D-C tobacco information and prevention source page and the recipe for a cigarette;
-- facts about smoking; and
-- an area for kids to e-mail me with questions.

Early next year we'll take the next step as we develop our campaign. We'll hold the first Kids Congress on Tobacco.

Children will be the ones driving our message, including designing and writing TV ads, billboards, our website, and developing strategies to prevent illegal sales of tobacco products to minors.

TOBACCO BILLBOARDS COMING DOWN

By February 9 -- sixty days from now -- all tobacco billboards in Florida will be removed, including tobacco advertising in sporting arenas and on public transit systems.

The settlement also provided for the immediate removal of tobacco billboards within 1,000 feet of all schools. We are replacing most of those billboards with new messages that encourage kids to be on our tobacco fighting team.

Two weeks ago we began replacing those tobacco billboards around Florida. In the place of the Marlboro Man and Joe Camel, we've put up new billboards asking children to join the Florida Kids Campaign Against Tobacco by calling a toll-free number 888-584-TEAM.

In Orlando, we replaced an old cigarette ad one block from an elementary school, with one of our new anti-smoking billboards. Now, kids in that area won't be seeing a deceptive ad about how smoking makes you attractive and cool. Instead, they'll have an opportunity to join our team and help educate their friends about the dangers of smoking.

OTHER SETTLEMENT PROVISIONS

We also wanted to ensure that kids did not have access to purchasing tobacco products. The settlement provides that tobacco companies support any legislative proposals that ban cigarette vending machines in any facility where children have access.

These concessions by Big Tobacco were extremely important. And for the first time, we were able to get them to admit that nicotine is addictive and cigarettes kill.

In testimony in August top tobacco executives from Philip Morris and R.J. Reynolds admitted that smoking "might have" killed 100,000 Americans.

As part of the settlement the tobacco industry released scores of documents -- providing us with the evidence of what we already knew to be true -- smoking kills and Big Tobacco knew it for a very long time.

KEEPING FLORIDA'S SETTLEMENT DOLLARS IN FLORIDA

The financial part of the settlement is significant -- $11.3 billion over 25 years. We want to use that money to prevent Florida's kids and adults from beginning smoking and improve their overall health.

I have heard much discussion lately about who is entitled to that money. Let me give you some facts about our case.

-- This case was not settled simply to reimburse the state for health costs related to the Medicaid program. In fact, the judge in our case limited most of our Medicaid claim early on in the proceedings.

-- This case was settled to compensate the state primarily for violations of the state's anti-racketeering statute, punitive damages, and fraud. Medicaid played a minor role in the settlement of this case. Yet, I continue to hear that the federal government wants the lion's share of this settlement.

The Health Care Financing Administration says it is only following the law as it exists on the books. We dispute that claim. Only the state has given up its right to sue the tobacco industry in the future. The federal government has given up nothing and is free to bring its own suit tomorrow for reimbursement for costs to Medicaid, Medicare, Veterans programs and on and on.

But, even if HCFA believes it is right, you have given them the tools, Mr. Chairman, to better understand that law.

Mr. Chairman, your bill, introduced with Senator Graham, makes it clear that money recovered by states suing tobacco companies cannot be "recouped" by the federal government. It is only fair.

The state expended considerable resources in bringing this suit. We fought our fight alone; without any federal assistance. If the federal government insists on taking a share of the dollars, they'll be taking it directly from programs to provide Florida's children with health care -- and that's just plain wrong.

For the federal government to now say that they deserve any portion of our settlement makes no sense.

My fellow governors from both parties support our position. The National Governors' Association recently adopted policy supporting state control over dollars recovered as a result of state lawsuits. Our policy was adopted unanimously.

PROTECTING CHILDREN'S HEALTH

I know we share the same goal for this money. We would like to spend it to improve health care in Florida:

-- to provide health insurance for uninsured children; and
-- to educate teens about the dangers of smoking and keep them from ever lighting up.

You can help us realize these goals. We should be looking for ways to ensure that states have the information and guidance they need to spend this money wisely. I look forward to working with this committee as we pursue our common goal.

Thank You.

# # #

DRAFT

STATEMENT OF

NANCY-ANN MIN DEPARLE
ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION

ON

"MEDICAID AND TOBACCO SETTLEMENTS"

HOUSE COMMITTEE ON COMMERCE
SUBCOMMITTEE ON HEALTH
AND ENVIRONMENT

DECEMBER 4, 1997

HCFA
MEDICARE • MEDICAID

Good morning, Chairman Bilirakis and Members of the Health and Environment Subcommittee. Thank you for the opportunity to testify today on behalf of the Health Care Financing Administration (HCFA), and to clarify the current statutory requirement that States reimburse the Federal Government's share of the settlements they obtain from tobacco companies for the costs of treating tobacco-related illnesses of Medicaid beneficiaries. We in the Administration applaud the States for what they have achieved in their litigation with the tobacco companies. These are historic events, not only for the health care community, but for the American people. It has been estimated that nationwide, tobacco-related illnesses claim close to half a million lives annually and incur health care costs in the billions of dollars.

At the outset, Mr. Chairman, I would like to remind the Subcommittee that current law requires HCFA to work with the States to recover the Federal portion of reimbursements for Medicaid costs that may be part of recent State tobacco settlements. We have no alternative, since the law requires the States to act to recover these costs from liable third parties and consequently, HCFA is not authorized to sue. We hope and expect that Congress will address the allocation of funds in the broad legislation that the President has called for, and we look forward to working with Congress and with the States, who are our partners in Medicaid, to reach a fair resolution.

As Secretary Shalala explained to the House Commerce Committee in a hearing on November 13, Section 1903(d) of the Social Security Act mandates that States allocate from the amount of any Medicaid-related recovery the pro-rata share to which the Federal Government is entitled. Specifically, this law states:

> *"(2)(A) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.*
>
> *(2)(B) Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1902(a)(25)...."*
>
> *"(2)(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection."*

These statutory requirements have been in existence for 30 years. Furthermore, 42 U.S.C. §§ 1396a(a)(25)(A). which became effective March 31, 1968, establishes that it is the State's responsibility 'to ascertain the legal liability of third parties...to pay for care and services available under the [State's Medicaid] plan.'" Regulations set forth in 42 CFR 433.136 define 'third party' as *"any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan."* Also, 42 CFR 433.140(c) describes the State's obligation clearly: *"If the State receives FFP [Federal financial participation] in Medicaid payments for which it receives third party reimbursement, the State must pay the Federal government a portion of the reimbursement determined in accordance with the FMAP [Federal medical assistance percentage] for the State."* It is important to recognize that unlike the States, the Federal Government is not authorized by the Medicaid statute to sue third parties directly. This does not mean, however, that Congress intended to abdicate its claim to such recoveries. Rather, the Medicaid statute protects the Federal Government's interests by explicitly making the States responsible for both pursuing these recoveries, reporting them to HCFA, and ensuring that the Federal Government receives its share.

While I certainly would not suggest that Congress enacted this provision with the multi-billion dollar tobacco settlements in mind, there is no basis in the law to suppose that Congress intended the current situation to be an exception to the statute. We have consulted with the lawyers at the Departments of Health and Human Services and Justice, and they have indicated that the law, as currently written, applies to this situation and that HCFA is obligated to seek recovery from the States of the Federal share of any recoveries or settlements relating to Medicaid expenditures, including tobacco-related settlements.

It should be also noted that only Medicaid-related expenditure recoveries are subject to the Federal share requirement. To the extent that some non-Medicaid expenditures and/or recoveries were also included in the underlying lawsuits, HCFA will accept a justifiable allocation reflecting the Medicaid portion of the recovery, as long as the State provides necessary documentation to support a proposed allocation. Moreover, it should be emphasized that State administrative costs incurred in pursuit of Medicaid cost recoveries from tobacco firms qualify for the normal 50 percent FFP.

In June 1996, HCFA contacted each of the five States (Florida, Louisiana, Massachusetts, Mississippi, and West Virginia) that had initially settled with the Liggett corporation and reminded them of their statutory obligation to report Medicaid recoveries in their quarterly statements to HCFA. Each of the five States has received two annual payments from Liggett. Two States, Massachusetts and Louisiana, have credited the Federal government with its share of both payments; Florida, to date, has credited the Federal government with one payment.

Given the prospect of all 50 States seeking entry to a national agreement with the tobacco industry, last month HCFA sent a letter to all Governors, State Medicaid Directors, and related organizations to explain and clarify HCFA's obligations and the financial obligations of the States in relation to any potential settlements. We have encouraged a dialogue with the States on this issue, and we expect to work closely with them to determine the appropriate share of any recoveries that should be

credited to the Federal Government.

As our letter to the States noted, we recognize that Congress will examine the issue of tobacco settlements as they relate to the Medicaid program in the context of any comprehensive tobacco legislation. We will look forward to working with the Members of this Committee at that time.

asked the board of the Journal of the American Medical Association (JAMA) to brief the Vice President, Secretary Shalala, and Secretary Herman on its upcoming issue, which is dedicated entirely to concerns about health care quality. JAMA representatives are previewing this issue at the National Press Club on Tuesday, and an event with the Vice President on the same day should take advantage of media interest and provide a good basis for your announcement later that week.

4. **Health -- Satcher Nomination:** The Senate adjourned before acting on the nomination of Dr. David Satcher, notwithstanding a 12-5 committee vote in favor of confirmation. Senator Ashcroft placed a hold on the vote on the ground that Dr. Satcher supports the Administration's position on late term abortion. Some have suggested that the Senator took this action solely to position himself for a 2000 Presidential run. Dr. Satcher has never played a prominent role in the abortion debate and has disavowed any intent to use the Office of the Surgeon General to forward any "abortion rights agenda." Dr. Satcher continues to enjoy the strong support of a number of Republican Senators (Frist, Nickles, Jeffords) and of virtually every credible health care group in the nation, including the AMA. Although we are optimistic that the Senate will vote to confirm Dr. Satcher soon after returning in January, we will work hard throughout the recess to ensure that this nomination does not become a referendum on partial birth abortion.

5. **Health -- HHS Study on Take-Up Rates for Health Insurance:** You recently asked about an HHS study showing a decline in take-up rates for health insurance. The study reported on 10-year trends in access to and participation in employer-sponsored health insurance. It found that between 1987 and 1996, the proportion of workers with access to employer-based insurance remained constant at about 82 percent. The proportion of workers accepting that coverage, however, declined from 93 to 89 percent. The decline was most pronounced for young and low-income people; only about 75 percent of the individuals in each of these groups with access to insurance decided to purchase it. The study noted that the decline in take-up rates occurred during a period when premiums increased three times as much as wages. These findings confirm what the Administration has long recognized -- that affordability of insurance is as important as access to insurance. We hope that we will have an opportunity to build next year upon our efforts in granting Medicaid waivers and enacting the Children's Health Insurance Program to provide premium assistance for uninsured Americans.

6. **Tobacco/Health -- Florida Tobacco Settlement and Children's Coverage:** You asked last week whether we could agree to Florida's proposal to keep all the money it will gain from settling with the tobacco industry on condition that it use that money to expand children's health coverage. Current law gives us little room to enter into this kind of arrangement. The statute explicitly requires us to collect a specified share of any Medicaid dollars that states have recaptured. If we do not, private plaintiffs are likely to bring *qui tam* suits on behalf of U.S. taxpayers against Florida and other settling states; recovery in such suits would be split between the federal treasury (70-85 percent) and the private plaintiffs (15-30 percent). Of course, the federal government would have no right to recover (and any *qui tam* suits would fail) if the monies gained from the settlement were not Medicaid-related. But the Department of Justice believes that the damages Florida claimed -- and the amount it received in the settlement -- derive

2: Can be creative in defining what has been "recaptured"

from costs to the Medicaid program. Given these circumstances, we think it most fruitful to pursue a legislative solution to the problem of allocating tobacco funds between the federal and state governments -- preferably through a comprehensive national settlement, but if necessary (in the event no comprehensive settlement is reached) through legislation authorizing states to retain all Medicaid funds recaptured in tobacco litigation provided they use these funds for agreed-upon purposes.

7. Tobacco -- Proposed Legislation: A number of Senators introduced tobacco legislation in the last two weeks. Sen. McCain introduced a bill precisely incorporating the terms of the settlement, except for the addition of provisions to protect tobacco farmers. Sen. Hatch introduced legislation increasing the cost of the settlement from $368 billion to $397.5 billion, raising (but not eliminating) the cap on penalties for failing to reduce youth smoking, and amending the FDA provisions, though not in a way that the public health groups will view as much of an improvement. Sen. Kennedy introduced a bill raising the cost of the settlement to more than $600 billion, primarily by increasing the tobacco excise tax by $1.50 over three years; the Kennedy bill does not provide tobacco producers with any relief from litigation. Sen. Lautenberg introduced a similar bill, costing $494 billion.

No one has introduced comprehensive legislation in the House, and last week the Speaker indicated interest in breaking the settlement into a number of separate bills and acting on each as a consensus emerges. Also last week, Rep. Bliley said that he would not move legislation until the tobacco companies release 864 documents currently at issue in Minnesota's lawsuit. (The trial court found that these documents fall within the crime/fraud exception to the attorney-client privilege, but the tobacco companies have appealed this ruling.) Gingrich's and Bliley's statements may suggest a strategy of delay, but could as well have some altogether different meaning.

We are continuing to seek a bipartisan process for enacting comprehensive tobacco legislation. Both the Speaker and Sen. Lott, however, are proceeding slowly -- in part because they have had to attend to more immediately pressing matters, in part because they have not yet settled on an overall tobacco strategy, and in part because so many Members wish to play a role in developing tobacco legislation. We and John Hilley are keeping in close touch with Congressional leadership so that we can take advantage of whatever opportunities emerge in the next few months.

8. Welfare -- Cessna Event: At an event in Wichita on Monday, you will dedicate a new state-of-the-art welfare-to-work facility at Cessna Aircraft Company, which is one of the founding members of Eli Segal's Welfare to Work Partnership. You will announce (1) that in six months 2,500 companies from all 50 states have joined the Welfare to Work Partnership -- far exceeding the goal of 1,000 set at the launch of the Partnership; (2) that the U.S. Chamber of Commerce has committed to enlist every local chamber of commerce in persuading their members to join the Welfare to Work Partnership; (3) that welfare caseloads fell 236,000 in July 1997, 1.9 million in the 11 months since you signed the welfare law, and 3.8 million since you took office; and (4) that the Departments of Labor and Health and Human Services are issuing new work-focused welfare regulations (see below).

THE PRESIDENT HAS SEEN
11-19-97

THE WHITE HOUSE

WASHINGTON

November 14, 1997

Copied
Reed
Kagan
Emanuel (p.5)

'97 NOV 17 AM8:2

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Family -- Adoption Legislation: You are scheduled to sign new adoption legislation on Wednesday, in an event giving a prominent role to the First Lady. The legislation is a huge step forward in promoting adoption and improving our nation's child welfare system. The final bill largely incorporates the Administration's proposals in this area. In particular, the bill (1) makes clear that children's health and safety are the paramount concerns of the public child welfare system; (2) clarifies the "reasonable efforts" standard; (3) speeds up court hearings for children in foster care and generally requires states to initiate proceedings to terminate parental rights after a child has been in foster care for 15 of the previous 22 months; (4) provides states with financial incentives to increase the number of children who are adopted; (5) reauthorizes the Family Preservation Program (staving off an expected battle next year) and increases its funding; (6) ensures health coverage for adopted children with special needs by requiring states to provide coverage through Medicaid or the new child health program; (7) expands HHS's authority to issue waivers to states for child welfare and foster care demonstration projects; and (8) breaks down barriers to adoptions across state lines by prohibiting states from denying a suitable out-of-state adoption when no in-state adoption is available.

2. Health -- FDA Reform Legislation: You are scheduled to sign FDA reform legislation on Friday. This legislation reauthorizes the very successful user fee program that has enabled the FDA to speed the approval of new drugs. The bill also codifies the REGO reforms, emphasizing agency performance and accountability, that the Vice President successfully implemented at the FDA in 1995 and 1996. In the course of considering the legislation, Congress deleted or amended the provisions (involving, for example, off-label uses of drugs and devices) to which consumer advocates most strongly objected. We worked closely with Senator Kennedy in the effort to ensure consumer protections, and he happily cast the 100th vote in the Senate's unanimous passage of this legislation.

3. Health -- Quality Commission: You are scheduled to accept the Quality Commission's Bill of Rights on Thursday. We plan to submit a memo to you early this week summarizing the Bill of Rights and recommending an appropriate response. We are also reviewing possible executive actions to improve the quality of health care in the federal government. We will discuss these proposals in the memo as well. As a lead-up to your announcement on Thursday, we have

9. Welfare -- New Regulations: The Administration will announce two sets of new regulations on Monday: (1) proposed regulations from HHS to states operating the TANF program (essentially, the regulations for the entire welfare law), and (2) interim final regulations from the Department of Labor to states and localities receiving grants from the $3 billion Welfare to Work fund you won in the balanced budget agreement. The welfare to work regulation should arouse little comment. The TANF regulation, by contrast, may provoke extensive reaction from both Governors and advocates. As we told you in a prior weekly report, we worked extensively with HHS on this regulation. In the end, we were able to resolve all issues in a way that we think reinforces the importance of the law's work requirements while giving states flexibility to design welfare reform programs and a fair opportunity to correct any failures.

Under the TANF regulations, states that fail the work rates will be levied a penalty based on performance -- how close they came to meeting the rates. States will have the opportunity to correct or eliminate violations through a corrective compliance plan, and states that make substantial progress during their corrective compliance period will be eligible for a reduced or eliminated penalty. To protect states from unreasonable risk, the penalty for failing to meet the two-parent participation rate will be proportional to the size of the two-parent caseload in the state.

The regulation creates a system of disincentives to prevent states from gaming the work requirements, either by placing hard-to-employ individuals in state maintenance-of-effort programs (where the work rates do not apply) or by reclassifying the benefits received by these individuals as child-only (so that the individuals do not figure in the state's calculation of work rates). If the Secretary finds that a state has diverted recipients into a state program or reclassified benefits as child-only to evade the work requirements, she will refuse to reduce or limit the size of any penalties levied for failing to meet the work rates or time limits. The same disincentives apply when a state places individuals receiving child support payments in its state maintenance-of-effort program so as to prevent the federal government from gaining a share of these payments.

The regulation, like the law, allows states to reduce the required work participation rate by the percent the caseload has declined since 1995, so long as the lower caseloads are not due to new eligibility restrictions. HHS initially proposed that states should not get a credit for caseload reductions attributable to enforcement measures like fingerprinting, but ultimately agreed to change this position.

The regulation also addresses Sen. Murray's concerns about victims of domestic violence without threatening the integrity of the work rules. Under the regulation, a state will not be penalized for failing to meet work rates or time limits if its failure to do so is attributable to granting waivers to victims of domestic violence -- provided that the waivers are temporary and that they are accompanied by services to help the individual prepare for work and self-sufficiency. Sen. Murray may think that the regulation does not go far enough, but we think it represents the best accommodation of the full range of interests.

10. **Immigration -- Central Americans/Haitians:** The D.C. appropriations bill, as finally enacted, includes provisions to (1) give amnesty to certain Nicaraguans and Cubans, (2) ensure application of the old immigration law's standards to certain Guatemalans, Salvadorans, and East Europeans, and (3) reduce the number of unskilled worker visas and diversity visas. Although the bill provides no relief to Haitians, we were able to secure commitments from the Republican leadership to consider legislation on this issue early next session. These commitments allowed the Attorney General to announce that the Department of Justice would suspend the deportation of any Haitians covered by the proposed legislation for approximately six months.

11. **Crime -- Crime Statistics:** The Justice Department released new crime data on Saturday from the annual National Crime Victimization Survey (NCVS). The highlights of the survey were included in this week's radio address. Crime victimization rates are today at their lowest level since the inception of the NCVS in 1973. The murder and violent crime rates fell 10 percent and property crime rates fell 8 percent in 1996. The decreases are even more significant when viewed over time: since 1993, violent and property crime rates dropped 16 percent and 17 percent respectively, and murder rates dropped a stunning 22 percent. Equally notable, these reductions were felt by all Americans -- by men and women alike, and by individuals from every racial group and income level.

12. **Crime -- Juvenile Crime:** The final Commerce/Justice/State appropriations bill contains significant new funding for ~~our key juvenile crime~~ priorities. The bill authorizes and funds a new $250 million Juvenile Accountability Incentive Block Grant, 45 percent ($113 million) of which must be spent on prosecutors, probation officers, and juvenile gun and drug court programs. Our budget contained $150 million in direct funding for the same purposes. In addition, the Labor-HHS appropriations bill provides substantial new funding ($40 million) for afterschool programs through the 21st Century Schools Program at the Department of Education. We proposed $63 million for afterschool programs in our budget.

13. **Race/Education -- Urban Education Initiatives:** DPC staff met this week with senior representatives of several national organizations interested in urban education, including the Council of Great City Schools, the U.S. Conference of Mayors, the National Urban League, the Rainbow Coalition, the AFT and NEA, and MALDEF. Our staff provided a broad overview of education proposals under consideration for FY 1999, including (1) the College-School Partnership initiative to increase college enrollment among low income and minority students by providing mentoring and other support services and (2) the Education Opportunity Zone initiative to provide increased educational assistance to high-poverty districts that agree to adopt a standards-based reform agenda involving the end of social promotions, the removal of bad teachers, and the reconstitution of failing schools. The groups generally liked these proposals, but expressed a wide range of views about student accountability provisions. The AFT felt strongly that even the mentoring initiative should include a requirement that students meet certain academic standards, while the civil rights groups expressed opposition to any performance requirements.

14. **Race/Education -- California Bilingual Education Ballot Initiative:** Opponents of bilingual education in California have collected enough signatures to place an initiative on the June

1998 ballot to require that Limited English Proficient (LEP) children be taught in English (specifically, in "sheltered English immersion" classes for one year and then in ordinary English-language classes) unless a parent requests bilingual instruction. A recent Los Angeles Times poll found that over 80 percent of Californians supported such an initiative, including 84 percent of Latino voters. Most Hispanic groups have come out against the initiative, as has the California Teachers Association and Sen. Boxer. Other education groups and most public officials (Gov. Wilson, Lt. Gov. Davis, Attorney General Lungren, and Sen. Feinstein) have not yet taken positions on the initiative. The DPC has convened a working group with representation from the Department of Education and other White House offices to review the educational, legal, and political issues this initiative raises and provide you with appropriate analysis and advice. At this early stage, everyone in the group agrees that you should refrain from taking a formal position on the initiative. — I agree

15. Race -- Service Initiatives: We are working with the Corporation for National Service and the PIR on several race-related service initiatives that you might want to take a part in announcing. The actions are designed to lead up to Martin Luther King Day, which Congress officially designated in 1994 as a day of service -- "a day on, not a day off" -- in recognition of Dr. King's belief in service activities. The CNS will award $225,000 in mini-grants to 70 communities to organize local days of service in observance of Martin Luther King Day. In addition, Harris Wofford wants to promote something called the "Kindness and Justice Curriculum," which is the brainchild of a youth service group involving Dexter King. The group is encouraging schools and students to do acts of "kindness and justice" in the two weeks leading up to Martin Luther King Day, to discuss them in class, and to post them on the Web. Finally, we are exploring ways to encourage interracial dialogue in the Corporation's service-learning programs, where children serve together and then reflect on that experience in school. These efforts can build on successful AmeriCorps service projects, like the CityYear program, that focus on diversity issues as part of the service experience.

yes — I should do some that day in connection with support for increasing AmeriCorps

OPTIONS

HEALTH COVERAGE

1. ***Phase In Medicaid for All Children Up to 133% of Poverty***

2. ***Medicaid Buy-In for Certain Groups (e.g., Welfare to Work extension, Families Changing Jobs, Young Adults)***

3. ***Assistance for Early Retirees / People Aged 55-67***

4. ***Extend Medicaid's Long-Term Care Coverage (e.g., add respite benefit; expand home and community-based care programs)***

5. ***Voluntary Purchasing Cooperatives***

GRANTS FOR ACTIVITIES RELATED TO COVERAGE

6. ***Transition Funds for Safety Net Providers***

7. ***National Children's Outreach Campaign***

RESEARCH

8. ***Clinical Research***

THE WHITE HOUSE

WASHINGTON

December 5, 1997

The Honorable James E. Doyle
and Colleagues
State Attorneys General
Washington, D.C.

Dear Friends:

Thank you for your recent letter about comprehensive tobacco legislation. I appreciate your concern that such legislation should fully compensate states for tobacco-related costs.

By working together, we have made extraordinary progress this year in our fight to reduce the death and illness caused by tobacco. In February, new Food and Drug Administration rules to reduce youth smoking took effect. In April, a federal judge in North Carolina affirmed FDA's authority to regulate tobacco products. In June, the state attorneys general announced a historic agreement with the tobacco industry to settle 40 state lawsuits against the tobacco companies. And in September, building upon the work of the FDA and the state attorneys general, I called on Congress to pass sweeping tobacco legislation that would dramatically reduce teen smoking. My overriding goal in seeking bipartisan national tobacco legislation is to make the most of this historic opportunity to reduce teen smoking.

As you know, current law requires the Health Care Financing Administration to seek recovery of the federal portion of reimbursements for Medicaid that may be part of any state tobacco settlements. I would prefer to see the allocation of tobacco funds between federal and state government resolved through legislation, and I look forward to working with the states and with Congress to find a mutually agreeable purpose for the funds generated by tobacco legislation.

Again, thank you for your leadership on this important issue.

Sincerely,

Bill Clinton