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DPC weekly report

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THE WHITE HOUSE
WASHINGTON

March 6, 1998

cc: Chris
Mike
Tom
Cynthia
Tore
Paul
Tulie

Protest
Street

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Health -- CBO Analysis of Medicare Buy-In: The Congressional Budget Office (CBO) released on Thursday a very positive analysis of your Medicare buy-in proposal. CBO confirmed our view that the proposal will have no notable impact on the Medicare Trust Fund. Even more strikingly, CBO projected both greater participation and lower costs than the Administration had estimated. According to CBO, your proposal will provide coverage for 410,000 people, rather than the 300,000 we had claimed. Also according to CBO, beneficiaries will have to pay only \$10 extra per month after they turn 65 to cover the costs of the buy-in, rather than the \$16 we had estimated. We are hopeful that these estimates will give a needed shot in the arm to your buy-in proposal, which Senator Moynihan will introduce as legislation sometime in March.

2. Health -- AMA Speech on Quality: You are scheduled to give a speech on Monday to the American Medical Association (AMA) highlighting our shared commitment to enhancing health care quality. (The speech will also note our shared goal of reducing tobacco use.) The speech -- which will lead off a week in which your Quality Commission will issue its final report and the Democratic leadership will introduce its quality bill (see below) -- will mark the first time you have addressed the AMA and the first time any President has spoken to the AMA since Ronald Reagan in 1983. You will release a new survey prepared by the DPC that documents how many states have enacted the consumer protections recommended by your Quality Commission. The survey will show that more than 43 states -- including 25 with Republican Governors -- have enacted one or more of the recommendations. As you know, the AMA supports strong federal legislation in this area, including a provision to ensure judicial enforcement which the business community vehemently opposes. This enforcement provision is contained in both the Norwood bill and the Democratic leadership bill. The Administration has yet to take a position on it, primarily because the resulting business opposition might cripple the effort to enact any quality legislation.

3. Health -- Democratic Patients' Bill of Rights Bill: The Democratic leadership is scheduled to unveil a patients' protection bill on Thursday. This legislative proposal will receive broad-based support among Democrats in the House and less diverse support in the Senate. The bill includes controversial enforcement provisions (see above), as well as new requirements that health plans cover all clinical trials and all services associated with mastectomies, including

What about colonoscopy
coverage?

OK. Let
Dennis
know about
let Dennis
turn ex
Kenny
August?
W. Bush

breast reconstructive surgery. The business community will argue that these provisions will lead to increased litigation, higher premiums, and more uninsured Americans. As you know, we believe that you should support this legislation without embracing it as your own. The bill stands little chance of passing, and too strong a signal of support may sharpen the business community's opposition to quality legislation and alienate important Republican members -- such as Reps. Hastert, Thomas, Bilirakis, and Bliley -- who have indicated a desire to work with us on this issue.

Can I receive it - to work?

4. Health -- Final Quality Commission Report: Your Quality Commission is scheduled to release its last report later this week. This report will focus not on patients' rights, but on the development and use of health care standards. Although this subject has not received as much attention as the patients' bill of rights, many health policy experts believe that this aspect of the Commission's work may have even greater potential to improve the health care system. Numerous quality problems now plague the health care system, including avoidable errors, variation in services, and overutilization of services. Each year, for example, 80,000 American women undergo unnecessary hysterectomies and more than one million Americans suffer harm as a result of avoidable errors. The Commission will propose the formation of a Quality Council to develop goals and strategies to improve health care quality. The Commission also will propose the establishment of a Quality Forum, comprised of private and public sector purchasers, that will develop a consistent set of health quality measures, to facilitate meaningful comparisons among plans and providers.

5. Health -- Kyl Private Contracting Issue: The Senate Finance Committee held a hearing last week on Senator Kyl's proposal to make it easier for doctors to enter into private contracts with Medicare eligible individuals. As you know, we have objected to this proposal on the grounds that it would reduce the access of non-wealthy Medicare beneficiaries to the best doctors -- or in some areas, to any doctors at all -- and create significant opportunities for fraud. All of the witnesses at last week's hearing, with the exception of Senator Kyl and a right-wing aging group called United Seniors, echoed these criticisms. Most policy and political analysts -- including the AMA, which is one of the Kyl amendment's most ardent supporters -- believe that this legislation is dead at least for this Congress.

I want to discuss this before the hearing

6. Education -- Meeting on TIMSS Results: You are currently scheduled to meet on March 16 with a group of business, education, and math and science leaders to discuss how the nation should improve math and science education in the wake of the recent TIMSS results. Among those planning to attend are: Mayor Daley, Rudy Crew, Diane Ravitch, Sandy Feldman, Bob Chase, Ed Rust (the CEO of State Farm, who chairs both the National Alliance of Businesses and the Business Roundtable's Education Task Force), Bill Schmidt (the director of the TIMSS study), and Bruce Alberts (the President of the National Academy of Sciences). This meeting will provide an opportunity to demonstrate the need for standards-based school reforms and to highlight your own education agenda. It is especially important because some in the education community responded to the TIMSS results by dismissing the significance of low test scores.

✓ **7. Education -- Opportunity Zones:** Rep. Clay, the ranking minority member on the House Education and Economic Opportunities Committee, has agreed to introduce your Education Opportunity Zones legislation in the House, and to try to recruit bipartisan sponsors. DPC and Education staff are working with Clay to finalize the legislation. We expect to have it ready for transmittal to Congress within the next few weeks.

*Good
Shaw, Rubin,
to announce?*

OK **8. Child Care -- Speech and Directive:** You are currently scheduled to go to Connecticut on Tuesday to give a speech on your child care proposal. You can announce a directive on that day to ensure that all federal child care centers (except those run by Congress or the judiciary) become accredited by the year 2000, and that all do proper background checks of child care workers. You also can announce a new HHS report showing that states are using Child Care and Development Block Grant funds wisely, but that they have far too little money to reach the entire population of eligible children. On the same day, the Children's Defense Fund will issue a report showing the need for increased investment in child care programs.

Good **9. Child Support -- Penalties Legislation:** The House passed 414-1 last week a bill introduced by Rep. Shaw to set realistic penalties for states' failure to put in place statewide computer systems to track parents who owe child support. The legislation, which we helped Shaw to develop, sets penalties at 4 percent of federal child support funds in the first year of noncompliance, going up to a high of 20 percent in the fifth year and thereafter. The legislation further provides for a state to get a rebate of a portion of the penalties once HHS certifies its computer system. Prospects for Senate passage of the legislation are extremely high.

*yes
for* **10. Crime -- Modified Assault Rifles:** The Treasury Department is almost ready to report back to you on whether it can permanently halt the importation of modified assault rifles under the Gun Control Act of 1968 for failure to comply with the "sporting purposes" test. (As you recall, you directed Secretary Rubin in November to suspend temporarily the importation of these weapons, while the Treasury Department conducted its review.) Treasury has studied the features and uses of the 5 basic kinds of modified assault rifles, and is now considering whether to recommend halting the importation of all five or only two (AK-47s and Uzis). We are carefully reviewing the evidence and legal arguments, so that we can determine whether a broader or narrower ban is appropriate. Treasury may be ready to make its recommendation in time for next week's radio address.

✓ **11. Crime -- COPS Grants:** The COPS Office awarded \$31 million on Thursday to 186 law enforcement agencies in small towns across the country. The grants will fund 467 full-time and 67 part-time officers.

✓ **12. Drugs -- NIJ Study on Drug Use:** The Justice Department's National Institute of Justice released a study this week on drug use and purchase patterns among individuals arrested for crack, powder cocaine, and heroin offenses in six cities. The report found that heroin users were the most likely to be daily users (a substantial majority in all cities), followed by crack users (40 to 50 percent), and cocaine users (10 to 40 percent). In addition, a greater percentage

... 39.98
of crack users than of heroin or powder cocaine users lived on the streets or in shelters prior to their arrest.

✓ **13. Campaign Finance Reform -- Free TV Petition:** With the defeat of McCain-Feingold, we are now focusing on your petition to the Federal Communications Commission (FCC) to establish a system of free or discounted broadcast time for candidates for federal office. The FCC has received letters of support for this petition from 83 Members of Congress, including a few notable Republicans such as Sen. Roth and Rep. Shays. Sen. McCain, however, has expressed strong opposition to such FCC action, and he intends to offer an amendment to the supplemental appropriations/IMF bill, as early as next week, to prohibit the FCC from imposing a free-time regime. In addition, all the Republicans on the House Commerce Committee have written the FCC in opposition to your request that the FCC begin a rulemaking procedure. David Broder intends to write a column tomorrow supporting our petition, and we are trying to round up additional editorial support.

✓ **14. Race -- EEOC Budget Request:** Newt Gingrich testified at an EEOC oversight hearing on Thursday that he would support your proposed increase in funding for the EEOC on the condition that the EEOC not use any FY99 funds on testing programs to uncover employment discrimination. Acting Chair Paul Igasaki responded at the hearing that although the EEOC is currently conducting a pilot program on the use of testing in the employment context, its FY99 budget request does not include any money for testers. This exchange would seem to commit Gingrich to supporting our EEOC budget request, but his testimony also contained criticism of class actions and he could try to link an increase in EEOC funding to restrictions on this litigation device. In addition, Gingrich's criticism of testing programs bodes ill for our proposal that HUD significantly expand its use of testing to uncover housing discrimination.

15. Tobacco: We are sending you a separate memo today on communications and legislative strategy on tobacco.

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN
11-9-97

November 8, 1997

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. **Immigration -- Central Americans/Haitians:** House and Senate Republicans have concluded their negotiations over the legislative package intended to provide relief to certain Central Americans. The final package (to be incorporated in the D.C. appropriations bill) provides amnesty to Nicaraguans and Cubans, while ensuring application of the old immigration law's standards to Guatemalans, Salvadorans, and nationals of former Soviet bloc countries. Notwithstanding our best efforts, the bill provides no relief to Haitians. The bill also cuts in half unskilled worker visas (from 10,000 to 5,000 annually), and reduces diversity visas by 5,000 as well (from 50,000 to 45,000 annually).

Because this package provides no relief to Haitians, Senator Moseley-Braun yesterday threatened to put a hold on the D.C. appropriations bill unless the Administration agrees to suspend the deportation of certain Haitians pending Congress's reconsideration of this issue next year. We quickly convened meetings involving the Departments of State and Justice, NSC, the Office of Legislative Affairs, the Office of Public Liaison, and others to discuss our options. We decided to ask Sen. Moseley-Braun and Rep. Conyers to seek commitments from the House and Senate leadership to consider Haitian legislation by a date certain. (In the Senate, Sens. Mack and Abraham appear to be on board this proposal.) With such commitments in place, the Attorney General could and would announce a decision to exercise prosecutorial discretion to suspend the deportations of individuals covered by the bill until Congress has had an opportunity to pass it.

If we cannot get commitments (or, at a minimum, informal assurances) from the Republican leadership to consider the Haitian issue next session, the Attorney General probably would not be able to exercise her prosecutorial discretion in this manner. In that event, you could decide to issue a Deferred Enforced Departure (DED) order to grant temporary relief to Haitians, as you said you would do to protect Central Americans in the absence of legislative action. The NSC might well recommend such an action on the basis of foreign policy considerations, though the Justice Department currently has some concerns about it. Everyone agrees, however, that we should not take this step without careful consideration and preparation -- i.e., we should not take it within 24 hours of a Senator's threat to hold an appropriations bill. Thus, if the AG cannot invoke her discretionary authority, we will attempt to convince Sen. Moseley-Braun that we share her objectives, that we are carefully considering ways of providing administrative relief to Haitians, and that she should drop her hold of the D.C. appropriations bill and allow this consideration to proceed.

2. **Immigration -- INS Reorganization:** The House Judiciary Subcommittee on Immigration held a hearing yesterday on the Commission on Immigration Reform's proposal to disband the INS and reallocate its functions among the Departments of Justice, State, and Labor. The subcommittee did not invite witnesses from the Administration, but Bruce sent a letter to the Chair and Ranking Member (Rep. Lamar Smith and Rep. Watt) informing them of the Administration's intent to review the Commission's recommendations and work with the subcommittee to improve the management and administration of the nation's immigration system.

3. **Education -- National Testing:** The House passed on Friday the Labor-HHS Appropriations Bill, which included a compromise on national testing that we worked out with Rep. Goodling. The compromise language allows test development to proceed under NAGB's control with the \$16 million we asked for in our FY 1998 budget, but delays pilot testing until October 1998. The final legislation also directs the National Academy of Science to study (1) the feasibility of linking existing state and commercially available tests to each other and NAEP; (2) the technical quality of the national test items now under development; and (3) a set of issues, of concern to the Black and Hispanic Caucuses, regarding the use and misuse of test results. We were able to ward off any requirement for future congressional authorization to proceed with implementation of the national tests. We will have a repeat of this battle a month before the 1998 elections. Assuming we prevail, pilot testing will begin in the fall of 1998, field testing will commence in the spring of 1999, and the tests will be ready for full implementation in the spring of 2000. The attached chart shows how the final compromise solution compares to both our original plan and the House-passed Goodling Amendment.

4. **Education -- Charter Schools:** The House also passed on Friday charter schools legislation that you previously had endorsed. The bill provides incentives to states to issue more charters, to give charter schools greater autonomy while ensuring that performance goals are met, and to allocate to charter schools their fair share of state funding. Earlier in the week, the Department of Education sponsored a national charter schools conference that drew over 800 participants, including charter schools operators and teachers. The conference gave participants the opportunity to become familiar with Education Department resources, to share lessons and strategies with each other, and to provide advice to the Education Department on the implementation of the charter schools program.

5. **Education -- Vouchers/Coverdell:** The House defeated a bill last week to permit local school districts to use Chapter 2 block grant funds for vouchers for low income students. The vote was 228 to 191, with 35 Republicans voting against the bill. In the Senate, proponents of the Coverdell proposal to permit tax-free IRA's for K-12 education again failed to end a filibuster. The vote was 56-44.

6. **Health -- Quality Commission Update:** We have tentatively scheduled an event on November 20 in which you will accept the Quality Commission's Consumer Bill of Rights and announce support for federal legislation (though not necessarily an Administration bill) to enforce certain consumer protections. We are also working with HHS on executive actions to apply the

Commission's recommendations to federal government programs. As you know, the consumer protection issue has received much attention recently because of statements from Republican leaders (Lott, Nickles, Arney) urging the business and insurance communities to oppose Federal legislation in this area. Sen. Lott supposedly has told businesses to "get off your butts and get out your wallets" and Rep. Arney has labeled any effort in this area "Clinton II." These statements are not playing well with the press or public. (Indeed, the 85 Republicans who have joined legislation by Rep Norwood (R-GA) going far beyond what the Quality Commission will recommend may have their doubts about these statements.) But the concern of the business community about premium increases is growing, and we will have to position ourselves carefully on this issue.

Children's Health Insurance Program

7. Health -- Children's Health Outreach Initiative: As you know, three million children are now eligible for but not enrolled in Medicaid. Many more children will be eligible for but not enrolled in the new children's health insurance program (CHIP). We have been meeting with HHS, NEC, and the First Lady's office to develop ideas for a major children's health outreach initiative. Policy options could include: simplifying Medicaid eligibility rules; distributing a model single application form for both programs; taking off restrictions on certain funds so that states can use them for outreach; and making it easier to enroll children in these programs at schools and child care referral centers. We are also considering other private sector outreach initiatives, such as having businesses that market health plans to parents promote enrollment. Finally, we hope to form a public/private steering committee that would continue to develop and encourage innovative outreach efforts. This committee could include representatives from HHS, NGA, Americorps, America's Promise, prominent non-profit foundations, provider groups, and children's advocacy groups. If you and/or the First Lady are interested, we could design an event to announce this initiative.

8. Crime -- Brady Bill: The Department of Justice expects to sign a memorandum of understanding (MOU) next week between the Attorney General, the Ohio Attorney General, and the Franklin County Sheriff (OH) to ensure that all handgun purchasers in Ohio are subject to background checks. Since the Supreme Court's decision in Prinze, the Ohio Bureau of Criminal Identification and Investigation (BCI&I) has conducted background checks only on consenting purchasers. Under the proposed MOU, the Franklin County Sheriff will conduct background checks on any non-consenting purchasers. Arkansas is now the only state in the country not conducting background checks on all purchasers.

9. Crime -- Stalking Report: The Attorney General may release a report next week showing that an estimated 1.4 million women are the victims of stalkers each year, and that as many as 1 out of 12 women will be stalked during the course of their lives. The Justice Department simultaneously will release a manual of "best practices" for prosecutors to address the stalking problem.

10. Race -- Equal Employment Opportunity Commission Reforms: You recently asked about how to improve the performance of the EEOC and obtain additional resources for it. As you know, the EEOC has come under attack from all sides for inefficiency and delay in resolving cases. At the same time, Congress has denied the Administration's requests for additional funding to cope

11-9-97

with expanded case filings (from 62,135 in FY 1990 to a projected 80,000 in FY 1997), choosing to provide marginal or no increases in resources.

For the last several months the DPC has led a review (also involving OMB, PIR, NEC, OPL, and the Counsel's office) of the primary federal offices involved in civil rights enforcement. Our goal is to propose a coordinated package of reforms for the EEOC and the civil rights offices at DOL, HUD, HHS, Education, and DOL. With respect to the EEOC in particular, our review has suggested several ways to improve the performance of the agency. The most important, favored by employers and civil rights advocates alike, is a swift expansion of the EEOC's mediation program. Along with other changes at the Commission, including the improved use of technology and additional staffing, this reform could substantially increase the average speed of resolving complaints and reduce the EEOC's current backlog. We are working closely with OMB to determine the most appropriate level of resources to devote to this effort.

→ This is
a significant
part of it!

KEY ELEMENTS OF THE PRESIDENT'S PLAN FOR NATIONAL TESTS

CLINTON PLAN	HOUSE BILL	FINAL AGREEMENT
Authorizes development of first-ever voluntary national tests in 4th-grade reading and 8th-grade math	NO -- total ban on development of national tests	YES -- authorizes immediate development of national tests
Puts independent, bipartisan NAGB in charge of tests	NO	YES
Provides \$16 million in FY98 for test development	NO -- no money for national tests	YES -- \$16 million for tests in FY98
Can proceed with pilot testing, field testing, and test administration without further authorization from Congress	NO -- would have required Congressional authorization before proceeding	YES -- does not impose requirement for future authorization from Congress
Begin pilot testing in 1998 (scheduled for March)	NO -- prohibits pilot testing	YES -- begin pilot testing in October 1998 instead of March

THE WHITE HOUSE

WASHINGTON

February 12, 1999

2-16-99

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

Copied:
Reed
Kagan
Podesta

SUBJECT: DPC Weekly Report

1. Tobacco -- Record Verdict: A jury in San Francisco awarded a former smoker \$1.5 million in compensatory damages and \$50 million in punitive damages in her lawsuit against Philip Morris Co., the largest award ever in a suit filed by an individual smoker. The verdict sent tobacco stocks reeling, and stunned tobacco analysts who considered this a relatively weak case. This award could open the floodgates to similar claims against tobacco companies and may increase the pressure on the tobacco industry to settle the federal claims being brought by the Justice Department.

2. Crime -- NY Gun Verdict: On Thursday, a jury in the Federal District Court in Brooklyn found 9 gun manufacturers collectively liable for shootings with illegally obtained handguns due to their negligent marketing and distribution practices. The case, Hamilton v. Accu-Tek, represents the first time a jury has found gun makers liable on a theory of negligent distribution. The suit was brought on behalf of 6 homicide victims and a severely wounded teenager, all of whom were shot with illegally obtained handguns. The plaintiffs argued that gun manufacturers oversupply the market in southern states with weak gun laws, enabling traffickers to move guns up the "iron pipeline" to New York. Even though the plaintiffs could not prove which manufacturers' guns were used in any of the specific incidents, they argued that the defendants marketed and distributed handguns so negligently that they contributed to the illegal gun trafficking that ultimately resulted in the shootings. Of the more than 25 gun manufacturers named as defendants, the jury found 15 negligent but only 9 liable for any of the shootings. However, the jury awarded damages only to one plaintiff -- the surviving teen -- in the amount of \$3.95 million, of which he is expected to collect about \$500,000. The Justice Department is currently reviewing the details of this decision, and we intend to meet with them soon to discuss its implications on similar lawsuits recently filed by New Orleans, Chicago, and other cities.

3. Health Care -- Ganske HMO Bill: On Wednesday, Rep. Ganske and 10 other Republicans introduced a new version of the Patients Bill of Rights, which denies access to punitive damages for individuals suing plans for actions that result in harm. Although there were other modest changes to the underlying bill, the legislation effectively retains the core protections that Rep. Dingell has been advocating. Ganske and Dingell are contemplating a

joint press conference after the recess to highlight the similarities of the two bills and to underscore their belief that a compromise is easily within reach that can attract far more than the 218 votes necessary in the House. In the Senate, however, any bill will have a much lower threshold of protections. Our strategy should be to expedite House action in order to influence the Senate bill.

4. Health Care -- Medicare Prescription Drug Benefit: Chris Jennings reports that an internal committee of the Pharmaceutical Research and Manufacturers Association (PhRMA) will recommend that the association endorse the development of a Medicare prescription drug benefit that would be administered privately. This recommendation apparently will be forwarded to PhRMA's Board of Directors this week, and they may endorse the proposal as early as Thursday of next week. If true, such an endorsement will increase momentum for the inclusion of a prescription drug benefit in any Medicare Commission recommendation. On Wednesday, Rep. Allen and 65 Democratic cosponsors introduced legislation that allows pharmacists to provide prescription drugs to Medicare beneficiaries at Federal supply schedule prices, creating a system similar to the one used by the Veterans Administration. Chris believes that despite the fact that the drug industry can defensibly label this as something very close to price controls, the bill will provide pressure to move forward with a more realistic Medicare drug benefit. Chris is also hearing that some Republicans, like Senator Roth, are also interested in a Medicare drug benefit for all beneficiaries.

5. Children and Families -- FMLA Verdict: Kevin Knussman, a Maryland state trooper who was denied the right to take 12 weeks of paternity leave, won a \$375,000 jury verdict against the state of Maryland. You met Knussman in August 1995, and the First Lady wrote about his story in *It Takes A Village*. A state trooper for 18 years, Mr. Knussman needed to take 12 weeks of family leave when his first daughter was born in 1994, but his employer allowed him only 2 weeks because he was a man. The jury found that this conduct violated the FMLA and constituted unlawful sex discrimination under Title VII. Maryland is expected to appeal.

6. Welfare Reform -- Elaine Kinslow: You recently asked about a news story noting that Elaine Kinslow, the welfare-to-work success story from Indianapolis you saluted in last year's State of the Union, had to change jobs when her employer lost its government transportation grant. We have been in communication with that company, Pathfinder Transportation Service, many times over the past year. As you may recall, Pathfinder ran a van service for welfare recipients going to work, but lost its contract when the state decided not to use state funds for this purpose and wrongly contended that federal rules prevented the use of TANF funds. To correct this misunderstanding, we worked with HHS, Labor, and DOT to issue official joint guidance last spring explaining how TANF and other federal resources can be used to address transportation challenges for people moving from welfare to work, and made sure Pathfinder as well as the right Indiana state officials received copies. You sent a letter to every governor stressing the importance of investing TANF savings in transportation, child care, and other services. Despite this information, Indiana decided not to

continue the contract with Pathfinder. However, Pathfinder does receive funds from local employers and job placement agencies, and is part of an Indianapolis consortium applying for a federal Access to Jobs grant that DOT will consider this spring.

7. Welfare Reform -- Washington State: A recent survey of individuals leaving welfare in Washington shows high rates of employment and earnings, even as caseloads continue to decline. Most people left welfare for employment (67%), with the next most common reasons being increased income through child support or SSI (9%), and conflict with program requirements (8%). Seventy-one percent of those who left the rolls between April and August 1998 were still working when they were surveyed in the Fall of 1998, at an average wage of over \$8 an hour. Washington systematically contacts people once they've gone to work to help them find opportunities to increase their skills through short-term community college courses or other training and to find better jobs. The state also is investing TANF savings in extensive supports for working families, and recently reallocated TANF funds to increase reimbursement for child care providers who accept infants or provide care during non-standard hours.

*try to keep
them*

3-2-99

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THE WHITE HOUSE

WASHINGTON

February 20, 1999

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Education -- Ed-Flex Bill: Senator Lott intends to bring the Ed-Flex bill to the floor within the next two weeks to secure a quick victory on education for the Republicans. (You will hear a lot about this bill from the governors when you meet with them on Monday; your briefing materials for the NGA roundtable include talking points on Ed-Flex, as well as on education accountability and tobacco recoupment.) Hill Democrats are generally unenthusiastic about Ed-Flex, although most -- especially in the Senate -- have resigned themselves to voting for it. Their -- and our -- goals for the Ed-Flex debate are (1) to strengthen the bill's accountability provisions, and (2) to put the Republicans to a tough vote on class size reduction. We are working with Senator Kennedy on an accountability provision that will require states to assess the impact of education waivers and to change or discontinue those that are not working; we hope to get bipartisan support, including from the bill's sponsors, for this provision. At the same time, we are working with Kennedy and other Senate Democrats on an amendment to authorize our class size reduction initiative for seven years. If we can attract enough Republican votes to pass this amendment, we can convert an intended Republican victory into a huge win for our own education agenda. And even if we fail in this objective, we can use the amendment to emphasize the difference between the two parties when it comes to supporting needed school improvements.

2. Health -- Children's Health Insurance Outreach Event: You and the First Lady are currently scheduled to participate in an event on Tuesday to highlight new initiatives designed to identify and enroll the over 5 million children who are eligible for but not yet enrolled in CHIP or Medicaid. You will unveil a new national toll-free number (1-877 KIDS NOW) for children's health outreach; a major media campaign, which includes the airing of PSA's on NBC, Univision, and Black Entertainment Television and radio advertisements in the 47 states with CHIP programs; a number of private sector commitments, such as Safeway's agreement to print the new 1-800 number on all its grocery bags; and the next generation of efforts by your Federal Interagency Task Force on Children's Health Outreach. Governors Carper and Leavitt, the chair and vice chair of the NGA, will join you at this event.

3. Health -- Jeffords-Kennedy Bill: The Jeffords-Kennedy-Roth-Moynihan Work Incentives Improvement Act continues to gain bipartisan support in the Senate, and the Labor

and Human Resources Committee plans to mark up the bill on March 4. The bill is also attracting bipartisan interest in the House, although it is still unclear who will emerge there as the lead sponsors. Given the broad support for this legislation, your advisors agree that you should urge prompt passage of the bill when you meet with the Congressional leadership this week.

4. Health -- Stem Cell Research: Secretary Shalala will testify next week about her Department's legal ruling that the ban on federal funding of human embryo research does not apply to stem cell research. The Secretary has received two harsh letters on this subject from pro-life members of Congress -- the first from 70 House members and the second from seven Senators (Ashcroft, Brownback, Enzi, Helms, Kyl, Nickles, and Smith). The House letter characterizes the HHS legal opinion as "a carefully worded effort to justify transgressing th[e] law" and charges that the definition of an "embryo" used by HHS (cells that can develop into a human being if implanted in the womb) is encouraging researchers to engineer lethal defects in embryos to avoid the congressional ban. The disease and patient advocacy community strongly supports our interpretation of the law. Senator Spector and Congressman Porter support the result -- federal funding of stem cell research -- but have doubts as to whether current law allows it. They have expressed interest in developing new legislation that would explicitly authorize federal funding of stem cell research subject to certain safeguards. Secretary Shalala will testify that no new legislation is necessary, but we are drafting appropriate statutory language in case we later need it.

5. Health -- Medicare Commission: Senator Breaux released on Thursday a preliminary CBO analysis of his proposal to adopt a premium support model for Medicare. Although the CBO admitted that it lacked "specifics on many aspects of [the] proposal," it praised Breaux's general approach, saying it would foster competition, increase choice, and reduce costs. Breaux will trumpet this analysis in the coming week, as the Democrats on the Commission meet on Tuesday and the full Commission meets on Wednesday. The other Democrats (except for Senator Kerrey) will continue to raise concerns about the Breaux proposal and to insist on a plan that uses surplus funds, guarantees a defined benefit package, and provides a good prescription drug benefit. As you know, the Commission is scheduled to report on March 1, but Senator Breaux raised the possibility last week of extending the deadline.

6. Crime -- Gun Tracing Initiative: The Treasury Department will release on Sunday its second report on the Youth Crime Gun Interdiction Initiative (YCGII) now underway in 27 cities, as well as announce the extension of this initiative to ten more cities. As you know, this initiative is designed to fight gun trafficking by collecting and analyzing information about guns used in crimes ("crime guns") and then recovered by law enforcement officers. (In addition to using this information for law enforcement purposes, some of the cities filing lawsuits against gun manufacturers and dealers have relied on ATF's gun tracing data.) The new report finds that: (1) about eight of ten crime guns recovered and submitted to ATF for tracing were handguns; (2) over 11 percent were recovered from juveniles, and almost a third (32.4 percent) were recovered from 18-24 year olds; and (3) between 25 and 36 percent of the firearms

recovered from juveniles and between 32 and 49 percent of the guns recovered from 18-24 year olds were bought legally less than three years before their recovery, indicating a significant and rapid diversion of legally purchased guns to an illegal market involving children and youth. Your new budget will enable Treasury to extend its gun tracing program to New Orleans, LA; Oakland, CA; San Francisco, CA; Dallas, TX; Tampa, FL; Charlotte-Mecklenberg, NC; Louisville, KY; Portland, OR; Omaha, NE; and Denver, CO.

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Money going
we need
to work
on this.

7. Welfare Reform – Urban Caseload Trends: A Brookings study released last week on welfare trends in the nation's 30 largest cities shows that caseloads are declining rapidly in these cities, although the rate of decline in some cities lags behind the overall rate of decline in their states. Welfare rolls in the 30 largest cities declined by 35 percent between 1994 and 1998, while caseloads declined by 44 percent in their respective states. As a result of these different rates of decline, the share of state caseloads attributable to these 30 cities grew from 45 to 53 percent. Not all the states involved in the study, however, experienced this greater concentration of welfare recipients: nearly one-third saw no change in concentration and one-quarter saw declining concentration. Cities with the fastest caseload decline (over 50 percent) included Milwaukee, Jacksonville, Denver, and Portland, while cities with the slowest caseload decline (between 18 and 26 percent) included Los Angeles, El Paso, Philadelphia, and New York. Not surprisingly, slower rates of caseload decline were closely correlated with higher levels of poverty. The Brookings report recommends additional welfare-to-work funding for the cities and highlights our Welfare-to-Work program as an important source of these funds.

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8. Children and Families – Foster Care: Congressman Cardin, the ranking Democrat on the House Ways and Means Subcommittee on Human Resources, introduced legislation last week to provide additional support to the nearly 20,000 young people each year who "age out" of the foster care system. As you know, your FY 2000 budget provides nearly \$300 million over five years in enhanced support for these young people. The Cardin legislation differs somewhat from our proposal and will likely cost more, but our goals are similar and we will work closely with Cardin over the coming months. The Chair of the Subcommittee, Nancy Johnson, shares an interest in this issue and plans to hold a hearing on March 9.

9. Consumer Protection – Child Car Seats: You are tentatively scheduled to use next week's radio address to announce a final rule on child safety seats in cars and light trucks. (You announced the proposed rule in February 1997.) The rule will ensure that by 2002, all new child safety seats will be equipped with three standard attachments -- one on top and two at the base -- and all new cars and light trucks will be equipped with standard anchors in the back seat linking to these attachments. The Department of Transportation estimates that this rule will prevent as many as fifty child deaths and 18,000 child injuries each year.

THE WHITE HOUSE
WASHINGTON

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January 9, 1999

THE PRESIDENT HAS SEEN

1-11-99

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena KaganSUBJECT: DPC Weekly ReportCopied
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1. **Health Care -- Disability Package:** You are scheduled to participate in a bipartisan event on Wednesday to unveil the Administration's new work incentives initiative for individuals with disabilities. Your package, which costs \$1.7 billion over five years, includes funds for: (1) the Jeffords-Kennedy Work Incentives Improvement Act, which would allow working people with disabilities to buy into Medicaid (at the states' option) and Medicare; (2) a new tax credit for work-related expenses of disability, such as transportation and personal assistance services; and (3) a program to help fund the development and dissemination of new assistive technologies for people with disabilities. Your proposal will receive strong support from the disability community. The package also should attract strong bipartisan interest in Congress, giving us an excellent chance of enacting Jeffords-Kennedy and the other components of the initiative this year.

2. **Health Care -- Medicare Managed Care:** As required by the Balanced Budget Act, HCFA will announce by Friday a plan to implement a risk adjustment payment mechanism for Medicare managed care plans. This payment mechanism is meant to ensure accurate reimbursement by increasing compensation for plans serving disproportionately sick patients and lowering compensation for plans serving disproportionately healthy beneficiaries. Because current data indicate that HMOs are attracting fairly healthy patients, the implementation of this new system would reduce payment rates to most Medicare managed care plans, in many cases by as much as 15 percent in 2000. Managed care providers are now warning that the system would drive many participating plans out of the Medicare program, adding to the problems caused by last year's HMO withdrawals. In light of this danger, we have decided to use our administrative authority to phase in the risk adjustment payment mechanism over a five- to six-year period; we are also in the process of developing additional policies (in the nature of both carrots and sticks) to minimize the likelihood of plan withdrawals. The delay in full implementation of the risk adjustment system will save the industry hundreds of millions, if not billions, of dollars. We expect, however, that the industry will petition Congress for further redress, up to and including repeal of the system.

1-11-96

3. Health Care -- Medicare Commission: As the Medicare Commission nears its March 1 deadline, members are intensifying their efforts to come up with reform proposals and the press is paying greater attention to their progress. Most of the attention at last week's meeting focused on a "premium support" approach that Senator Breaux is pushing, but that most other Democrats on the Commission are now reluctant to embrace. "Premium support" is a term coined by Reischauer and Aaron to refer to models that have both a defined contribution and defined benefits. These models essentially guarantee a set of benefits, but limit government payment for those benefits in some way. The Commission's discussion of the premium support approach left many critical issues unresolved, and neither HCFA nor the CBO has yet scored these proposals. (HCFA hopes to complete its estimates within two weeks, while the CBO has declined to do any work for the Commission.) We took no position on the premium support ideas coming out of the meeting, noting that "the devil is in the details" and that we will be analyzing the ideas closely as the Commission gives them greater content. On a related issue, most Commission members now appear to agree that Medicare should include a prescription drug benefit, but have reached no consensus on its scope, design, management, or financing. (As you know, one critical question is whether all beneficiaries or only those in managed care should receive this benefit.) Finally, virtually all members now privately acknowledge (and Bruce Vladeck said publicly last week) that significant new revenues will be needed to extend the life of the Trust Fund.

4. Education -- Education Week Report: In its annual "Quality Counts" report, released last week, Education Week focused on how states are (or aren't) holding schools, educators, and students accountable for results -- and in so doing, provided strong support for our ESEA proposals. The report demonstrates that although states are beginning to adopt accountability measures, relatively few are using the full set of measures needed to ensure high-quality performance. According to the report, 36 states issue report cards for each school, but only 26 place them on the internet and only 13 send them directly to parents. Perhaps even worse, only 19 states publicly identify and provide assistance to low performing schools; of these, 18 have the ultimate power to take over, reconstitute, or close down failing public schools, but only three (New York, Oklahoma and Texas) actually have applied this sanction (to a total of 55 schools). Only 19 states provide rewards to successful schools, with only fourteen giving such schools additional money. And only five states have what the report considers a comprehensive system for holding schools accountable for results -- school report cards and ratings, monetary rewards for success, and graduated sanctions for failure, up to and including reconstitution or closure. Significantly, other studies have shown that two of these five states -- North Carolina and Texas -- can boast the largest overall gains in student achievement and the greatest success in closing the achievement gap between minority and majority students. As you know, our ESEA proposal essentially would require states to adopt and carry out this set of accountability measures, as well as a number of others focusing on ending social promotion and ensuring teacher quality.

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✓ 5. **Crime – 21st Century Policing Initiative:** You are scheduled to participate in an event on Thursday to unveil the 21st Century Policing Initiative contained in the FY 2000 budget. This \$1.275 initiative includes (1) \$600 million to continue to hire and redeploy police officers; (2) \$300 million for new crime-fighting technology, such as crime mapping systems; (3) \$200 million to hire community prosecutors; and (4) \$125 million for innovative community crime prevention programs. In addition, you can release new data from the National Crime Victimization Survey showing continued declines in crime in the first six months of 1998.

6. **Crime – Victims Assistance:** The Vice President will announce next week the release of over \$300 million from the Crime Victims Fund to provide assistance for victims. These funds help to support nearly 3,000 victims' service agencies nationwide, including domestic violence shelters, child abuse and sexual assault programs, and programs to assist survivors of homicide. Money in the Crime Victims Fund comes exclusively from fines paid by criminal offenders, collected by U.S. Attorneys, federal courts, and the Bureau of Prisons. All 50 states will receive funding, including: \$43 million for California; \$17 million for New York; \$23 million for Texas; \$15 million for Florida, \$12 million for Illinois, and \$3 million for Arkansas.

7. **Crime -- Prisoners Report:** The Justice Department will release a report on Sunday indicating that prisoners, and particularly violent offenders, are serving out more of their sentences. The Bureau of Justice Statistics report, *Truth in Sentencing in State Prisons*, indicates that by the end of 1998, 27 states and the District of Columbia required violent offenders to serve at least 85 percent of their prison sentences -- up from five states in 1993. An additional 13 states have adopted truth-in-sentencing laws requiring violent offenders to serve some substantial portion of their sentences before becoming eligible for release. As you know, the 1994 Crime Act provides additional prison construction funds to states that adopt the 85 percent standard, and the Justice Department has awarded over \$1.3 billion to states through this incentive grants program. The average time served by released violent offenders (those convicted of murder, rape, robbery, or aggravated assault) increased from 43 months in 1993 to 49 months in 1997. In addition, the release rate among murderers was cut in half between 1990 and 1996 -- from 10 percent to five percent of all murderers.

8. **Welfare – Work Participation Data:** We released two weeks ago the first work participation data under the welfare reform law, which was better than anyone had expected. All 36 states (plus the District of Columbia) subject to participation rates in FY 1997 met their target. The data showed that 28 percent of all adults on welfare participated in a direct work activity (employment, work experience, or community service) or another welfare-to-work activity (job search or vocational education). The data also showed that the percentage of welfare recipients in a direct work activity tripled since 1992.

THE PRESIDENT HAS SEEN

3-7-99

THE WHITE HOUSE
WASHINGTON

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March 6, 1999

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Tobacco – Medicaid Recoupment: The Senate Appropriations Committee decided Thursday to amend the supplemental appropriations bill by adding Senator Hutchison's legislation to waive all federal claims to tobacco settlement funds received by the states. Before the markup, Senator Roth objected to the Appropriations Committee taking up the Hutchison bill, noting that this action would "bypass the jurisdiction of the Finance Committee" and that the bill "has enormous ramifications for the Medicaid program and should be thoughtfully considered through the committee process." He noted that the amendment was not paid for and urged the committee, if it felt compelled to act, to prevent recoupment only in 1999 or 2000 to give the Finance Committee time to act. Senator Stevens apparently asked Hutchison to withdraw her amendment in deference to Roth's objection, but she refused to do so. In the event, the amendment passed by voice vote, with only Senators Harkin, Durbin, and Specter speaking against it. The committee rejected an alternative amendment proposed by Harkin to waive federal claims in exchange for a commitment by the states to dedicate 25 percent of the settlement funds to tobacco control programs.

For some time now, we have been working with Senator Daschle and others to develop an alternative to the Hutchison bill -- essentially a menu of permissible state uses -- that could attract significant support; we have found, however, that many Senators, including a fair number of Democrats, are under great pressure from state officials to resist any restrictions on use of the money. As a freestanding piece of legislation, the Hutchison bill now has 40 co-sponsors, including nine Democrats (although some of the Democrats say they would be willing to accept an alternative along the lines we have suggested if it gave the states sufficient flexibility over spending). One possible approach to the current situation is to urge the NGA to negotiate an alternative bill with us right now for inclusion on the supplemental; although the NGA believes it has a very strong hand in Congress, it might accept this offer both because it wants immediate use of the money and because it fears a presidential veto. This approach, however, could anger some anti-tobacco Democrats (especially in the House), who still hold out the hope that we can use the recoupment issue as a vehicle for broader tobacco legislation. We are continuing to discuss options with John, Larry, and Jack and diverse people on the Hill (of course, all this is complicated by the other issues raised by the supplemental) and hope to have a recommendation for you shortly.

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2. Tobacco -- New Evidence on Tobacco Use: Two new studies show that cigarette sales declined sharply in Alaska and Oregon after the states increased tobacco taxes. Alaska tripled its tax from \$.29 to \$1.00 a pack in October 1997, raising the retail price of cigarettes by 39 percent. A study conducted by the state found that tobacco sales declined 17 percent the next year, without any apparent upsurge in smuggling or crime. Oregon raised its tax by \$.30 per pack in February 1997, increasing cigarette prices by 16 percent; it also devoted 10 percent of the proceeds to tobacco prevention programs. A study conducted by the CDC and Oregon Health Division found that tobacco sales fell 11.3 percent as a result. The study noted that this decline was far larger than expected given the size of the price increase, and attributed the additional drop to expanded prevention activities. Most studies have found that every 10 percent increase in price reduces overall smoking by about 4 percent (while reducing youth smoking by about 7 percent) -- essentially the effect found in Alaska. According to this model, the 16 percent price increase in Oregon should have resulted in a 6.3 percent decline in consumption -- far less than the 11.3 percent decline actually achieved. The difference, according to the study, resulted from the state's expenditure of \$8.5 million a year to fund community-based tobacco-use prevention coalitions in every county, a statewide public awareness and education campaign, comprehensive school-based programs, tribal tobacco-use prevention programs, multicultural outreach and education, and a quitters' help line providing smoking cessation support. These findings bolster the rationale for ensuring that states use at least part of their settlement money on tobacco prevention.

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3. Education -- Ed-Flex Legislation: As you know, the Senate will vote Monday afternoon on a cloture petition filed by Senator Lott to bring the Ed-Flex debate to an end and cut off consideration of the Kennedy-Murray class size amendment. Before the class size issue came to the fore, Democrats succeeded in strengthening the accountability provisions of the bill and providing additional protections for very high-poverty schools. The last (and most) significant issue is class size. (Although Democrats have offered other amendments, including some on dropout prevention and afterschool programs, Senator Daschle is trying hard to focus the message and debate on class size, lest Democrats appear simply obstructionist.) Secretary Riley and Senators Daschle, Kennedy, and Murray held a press conference Friday to urge the Republican Leadership to allow an up-or-down vote on a class size amendment; we released a statement from you at that event, and your radio address this weekend will serve to amplify this message. Secretary Riley and Bruce have met several times with the major education groups, which are now working hard to put pressure on Republicans. The Vice President probably will make a statement prior to the cloture vote on Monday, either at the White House or in a meeting on the Hill that Daschle, Kennedy, and Murray are holding with education groups.

4. Education -- Individuals with Disabilities Education Act (IDEA): We and Secretary Riley agreed to postpone issuance of the Education Department's new IDEA regulation until this coming Friday to give us more time to conduct outreach to Governors and other state officials. Bruce and the Secretary will participate in a conference call with Governors Carper, Leavitt, and Dean (and possibly others) this Tuesday. The postponement also should prevent any dovetailing of the regulation with the current Ed-Flex debate. Even without the regulation as a

catalyst, Republicans may second-degree Democratic amendments (including on class size) with proposals to increase support to the states for special education programs.

In a decision that may further exacerbate the simmering IDEA controversy, the Supreme court held 7-2 last week that the statute requires school districts to provide children with any health services necessary for the children to attend school, as long as the services need not be administered by a doctor. The case involved a quadriplegic student who needs assistance during the day to clear his tracheotomy tube and maintain his ventilator. The Justice Department filed an amicus brief on the side of the student, setting out the Education Department's longstanding interpretation of the statute. The costs of this decision to local school districts may not be exorbitant: only a couple of thousand students across the country need the kind of "high-end" health services involved in this case; fewer than 20,000 need any kind of health services covered by this decision; and Medicaid appropriately covers many of these students and services. The decision, however, may fuel growing public concerns about the costs of complying with IDEA. At the same time, it may intensify worries among Congressional authorizers that states are inappropriately tapping into Medicaid (e.g., for non-health services) to pay for special education programs. At a meeting at the White House yesterday, HHS and the Education Department agreed to release a joint letter explaining the scope of the decision and noting the potential for -- but also the limits of -- Medicaid funding.

Good!
5. Health Care -- Regulation on Over-the-Counter Drugs: The Vice President will join Secretary Shalala and FDA Commissioner Henney on Thursday to unveil a new FDA regulation requiring that labels on over-the-counter drug products have a standardized format and large print, which will assist consumers to understand product warnings and comply with dosage guidance. Both consumer advocates and physician and other provider groups will praise this regulation, and even product manufacturers will acknowledge its usefulness. Studies indicate that people often have difficulty determining the correct dosage of over-the-counter medications, and that many of the elderly, who use significantly more over-the-counter drugs than others, have trouble reading the small type on product labels. This regulation will be an effective step toward preventing the thousands of hospitalizations each year caused by misuse of over-the-counter medications.

6. Health Care -- Medicare Commission: Senators Kennedy and Rockefeller and Congressmen Dingell and McDermott were pleased with the meeting on the Medicare Commission that you had with them on Thursday -- particularly with your understanding of the shortcomings of the Breaux plan and your commitment to inform them of any alternative Administration proposal. As you no doubt could tell from the meeting, base Democrats will express strong opposition to virtually anything that comes out of the Commission.

Laura Tyson and Stuart Altman held another meeting on Friday with Senator Breaux, Congressman Thomas, and a number of other Republicans to discuss compromise options. Because it now seems impossible to reach agreement on any detailed plan, Breaux and Thomas tried to convince Stuart and Laura to vote for a report that suggests agreement on a set of general

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propositions. Laura and Stuart rejected this approach for fear that Republicans would draft flawed legislation, ostensibly based on the report, and portray Laura and Stuart as having endorsed it. But Laura and Stuart are considering two other options. The first option is to vote for the Commission report (thus giving the Commission the 11 votes necessary to issue it), but insist on detailing in the report their objections to the Commission's proposal and their recommendations for making it acceptable. The second option is to vote against the Commission report, but issue a public statement (because Commission rules do not allow for minority views) that explains why they chose to vote against the proposal and outlines the approach to Medicare reform that they believe is desirable. Laura (and to some extent Stuart) are leaning toward the first option; they believe this option is more likely to provide momentum for Medicare reform, which they see as their first priority. Both Laura and Stuart understand, however, that the press will focus on the Commission's ability to report out premium support and other controversial reforms, and will overlook or minimize their detailed objections. For this reason, they have made no final decisions and wish to discuss these options further next week.

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7. Crime – Community Prosecutors: Deputy Attorney General Holder plans to use his morning press availability on Thursday to highlight the community prosecutors portion of your 21st Century crime bill, which we plan to send up to the Hill later this month. As you know, your FY 2000 budget includes \$1 billion over the next five years for this proposed new program to hire and train community prosecutors. As the former U.S. Attorney for the District of Columbia, Holder helped to launch one of the first successful community prosecution programs, and he is personally committed to building public and congressional support for this initiative. On a related note, in testimony before the House Committee on Government Reform on Wednesday, Mayor Giuliani expressed support for community prosecution programs.

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8. Crime – Police Brutality: We and Chuck Ruff are sending you a separate memo this weekend detailing a proposed course of action and set of policy initiatives to address the issue of police misconduct. As you may have seen in Saturday's newspapers, the U.S. Commission on Civil Rights voted 3-2 to investigate police practices and police-community relations in New York and other, as yet unspecified cities.

9. Crime – VAWA Decision: As you may also have seen in the paper today, the en banc Court of Appeals for the Fourth Circuit invalidated the part of the Violence Against Women Act that permits victims of rape and domestic violence to sue their attackers for violating their civil rights. The Court held that neither the Commerce Clause nor the Fourteenth Amendment gave Congress the authority to pass the law: in the Court's view, "such a statute . . . simply cannot be reconciled with the principles of limited Federal Government upon which this nation is founded." The ruling means that in Virginia, Maryland, West Virginia, and the Carolinas, victims of rape and domestic violence will be able to sue their attackers only under state tort laws and in state courts. We and Chuck will talk with the Justice Department about filing a cert petition to seek Supreme Court review.

10. Welfare Reform -- Cuts in TANF Block Grant: As you know, the Senate Appropriations Committee last week proposed paying for part of the emergency supplemental by cutting \$350 million in TANF block grant funding in FY 1999. (Of course, there are also numerous other objectionable offsets in the bill.) Although the bill would restore the cut in later years, this provision would establish a precedent of raiding TANF to pay for other measures. The governors will oppose the cut strongly, claiming it breaks Congress's commitment in 1996 to provide five years of full block grant funding. Some in Congress will defend the cut by pointing to unobligated balances in the TANF program. State data compiled by HHS (but not yet released) show that in FY 1998, states spent or obligated 84 percent of the \$16.5 billion TANF block grant, leaving \$2.7 billion or 16 percent unobligated. There is considerable state variation -- 19 states have obligated all their FY 98 funds, while 12 states account for three-quarters of the unobligated balances. We will provide you with a more complete report on these trends in a separate memo. For now, we note only that unobligated balances may result from sensible decisions by states to put off allocation of some TANF funds until they fully implement their welfare reform programs and/or they begin to experience an economic downturn. We are fearful that agreeing to cuts in TANF will undercut welfare-to-work efforts just as work requirements increase and the caseloads become more concentrated with the hardest-to-employ recipients.

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11. Immigration -- Report on Declining Use of Public Benefits: The Urban Institute will issue a report on Monday showing that between 1994 and 1997, use of public benefits by noncitizen families declined more than use of such benefits by citizen families. The study found that receipt of cash benefits (AFDC/TANF, SSI, and state-funded general assistance) by noncitizens declined 35 percent, while use by citizens declined only 15 percent. Similarly, the study found that use of Medicaid and Food Stamps declined 22 and 30 percent, respectively, among noncitizens, but only 7 and 21 percent among citizens. The report concludes that because most legal immigrants were still eligible for federal and/or state benefits through 1997, the difference in take-up rates was due to the welfare law's "chilling effect" -- i.e., misunderstandings about new eligibility rules and/or fear that receipt of benefits would adversely affect immigration status. We have been working closely with the Department of Justice and HHS on these issues, and we expect to issue guidance this month on the use by noncitizens of public benefits. The guidance will include a resolution of the "public charge" issue -- i.e., the question of when the receipt of public benefits renders a noncitizen a "public charge," so as to affect his or her ability to reenter the country -- that we expect immigrant advocates to greet warmly. In addition, of course, we will continue to press for our budget proposals to restore additional health, nutrition, and disability benefits to vulnerable legal immigrants.

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12. Civil Rights -- Report on Paired Testing: The Urban Institute also issued a report last week on the usefulness of paired testing to combat discriminatory practices. As you know, "paired testing" programs use two individuals similar in all relevant characteristics except racial or ethnic background to check for discrimination. Paired testing is now used primarily in the housing area, and your budget includes \$7.5 million to expand HUD's current testing program. The Urban Institute report recommends extending the use of paired testing in other settings, such as the workplace. The EEOC conducted a pilot project two years ago on paired testing in the

employment context, but is still in the process of evaluating the data. When Republicans objected to the pilot project during last year's appropriations battles, the EEOC agreed not to do any testing this year -- which it was not planning to do anyway, given the unfinished evaluation -- in exchange for significantly increased funding for its general activities. We expect to face this issue again in this year's appropriations bill.

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THE WHITE HOUSE
WASHINGTON

March 1, 1999

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

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1. Health Care -- Prescription Drug Benefit: Senator Breaux is talking with Laura Tyson and Stuart Altman about incorporating a prescription drug benefit into his Medicare proposal, but they remain far from reaching any agreement. Laura and Stuart are demanding that the benefit be available to all Medicare beneficiaries, whereas Senator Breaux is limiting the benefit to beneficiaries in private health plans plus (perhaps) low-income beneficiaries in the fee-for-service program. Laura and Stuart have pointed out that Breaux's approach would fail to provide millions of beneficiaries in rural and other areas that will not attract private health plans with any access to a drug benefit; the two also believe that effective price competition between the fee-for-service program and private plans can occur only if they offer the same benefits. In response to Breaux's request, Laura and Stuart are developing their own drug benefit proposal; we expect the plan to offer an optional benefit with a 50 percent subsidy of the premium (as compared to the normal 75 percent subsidy), a \$300-500 deductible, and a 25 percent copayment. You should be aware that your comments last week about prescription drug benefits made many Democrats fearful that you would endorse the Breaux approach to this issue. (You seemed to indicate that not all beneficiaries needed to have access to this benefit.) In response to questions, we construed your remarks as meaning only that the benefit should be optional, so that beneficiaries who already have good drug coverage could decline it.

2. Crime -- Assault Weapons Report: The Justice Department released on Monday a report from the National Institute of Justice on the impact of the 1994 assault weapons ban. The report's findings are limited because of a short study period, but are generally quite encouraging. The study estimates that murder rates declined by 6.7 to 10 percent in the year following the ban's enactment after controlling for other factors, such as pre-existing state assault weapons bans, juvenile handgun bans, California's three-strikes law, and New York's quality-of-life policing. The study also indicates that criminal use of assault weapons decreased by 20 percent in the first year after the ban (as compared with 11 percent for all guns), as reflected in declining law enforcement requests for ATF traces. Finally, the report notes that no police officers died as a result of assault weapons in the year after the ban, while such weapons were involved in 16 percent of all killings of police the year before. The report notes, however, that such police killings are extremely rare to begin with and that it is difficult to draw firm conclusions about this data.

Ref 3. **Crime – Diallo Shooting:** You asked last week about the recent shooting of Amadou Diallo. Four white officers of the New York City Police Department shot Diallo, an immigrant from Guinea, in front of his apartment building in Harlem. A total of 41 shots were fired, and Diallo died at the scene. The officers did not find a weapon on or near Diallo. The four officers were part of a specialized street crime unit reportedly searching for a serial rapist. The Department of Justice's Civil Rights and Criminal Divisions, the FBI, and the U.S. Attorney for the Southern District of New York are all working closely with the Bronx District Attorney's Office on the investigation; in addition, the Community Relations Service has conducted conciliation services in the neighborhood. The Department is also now considering whether to expand an ongoing investigation of whether the New York Police Department has engaged in a "pattern or practice" of police misconduct; the U.S. Attorney for the Eastern District of New York is leading this inquiry, and the City is cooperating with it. Finally, we are working with the Justice Department to develop a set of policy initiatives addressing this issue, mostly involving police recruiting and training, for inclusion in the crime bill we will unveil later this month. We are attaching an op-ed by Bill Bratton, which appeared in the New York Times this weekend, offering a similar set of proposals.

4. **Education – NAEP Reading Scores:** The National Center for Education Statistics will release on Thursday a report showing state-by-state reading scores on NAEP between 1994 and 1998. As you recall, the Vice President and Secretary Riley recently announced the national scores from this report, which showed small but statistically significant gains in reading among 4th, 8th, and 12th graders. The state-by-state data is still being compiled, but the Education Department expects that most states will show improvements during this four-year period. Secretary Riley will hold a press conference in Washington, D.C. to highlight the results, and the Vice President will highlight New York and Connecticut scores in an event in New York City.

5. **Education – Report on Title I:** The Department of Education released on Monday a Congressionally mandated report on the Title I program. The report found that academic achievement in high-poverty schools has improved, largely as a result of reforms made in the 1994 ESEA reauthorization: for example, math scores for fourth graders in the highest-poverty schools have improved by almost one grade level, and reading scores for those students have also improved significantly. The report found, however, that a substantial gap between high-poverty schools and other schools remains: the percentage of high-poverty 4th grade students who met the basic performance level was only about half the national rate on NAEP reading tests and two-thirds the national rate on NAEP math tests. We released a statement from you welcoming the positive results, but urging stepped-up efforts to improve these schools, in particular by passing your Education Accountability Act and class size initiative.

6. **Welfare – Working Families in Poverty:** The research group Child Trends issued a report on Thursday on working poor families. The report, based on 1996 census data, found that children of working parents were seven times less likely to be poor than children of non-working parents. Only 9 percent of children whose parents work were poor, compared to 63 percent of children with non-working parents. The report also found, however, that work does

not guarantee an escape from poverty: the study found that fully 35 percent of poor children have working parents. In making this calculation, the report used the official measure of poverty, which does not include as income the Earned Income Tax Credit or non-cash supports such as Food Stamps. Many analysts have pointed out how EITC and Food Stamps provide families with resources to move above the poverty line. The CEA has reported that the EITC lifted 4.3 million people out of poverty in 1997 and that over half the decline in child poverty between 1993 and 1997 resulted from changes in the EITC and other taxes. The Center on Budget and Policy Priorities has calculated that a family of four can reach the \$17,100 poverty line through a full-time minimum wage job (\$9,800), the EITC (\$3,700), and Food Stamps (\$3,600).

7. Community Empowerment – Yankee Stadium: As you requested, we contacted Congressman Rangel about his interest in preserving Yankee Stadium and keeping the Yankees in the Bronx. Rangel appears to want help in identifying funds to improve transportation access (both highway and rail links) to the stadium and promote commercial development in the surrounding area. He is not asking for funds to help rehabilitate the stadium. We will discuss with OMB, NEC, and HUD how we can best address this request.

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THE WHITE HOUSE
WASHINGTON

March 13, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Education – Ed-Flex/Class Size/Special Education: Both the Senate and the House approved Ed-Flex legislation last week, the former by a 98-1 vote (with Senator Wellstone the lone dissenter) and the latter by a 330-90 vote. The House bill is clean, because the Rules Committee held all amendments on class size, special education, and other issues to be non-germane. The Senate bill, however, includes a provision to permit school districts to fund special education services out of the funds appropriated last year (and any future funds) to hire teachers and reduce class size. This provision, which attracted the votes of every Republican and six Democrats (all from rural states without class size problems), essentially trumped the Murray-Kennedy amendment to provide a six-year authorization for our class size program, which went down on a party-line vote. Because we saw the special education provision as a politically clever way to gut your class size initiative, we counseled the Democrats against entering into a time agreement that would allow it to come to a vote. Senator Kennedy, however, insisted on making a deal with the Republicans in order to get a vote on his amendment, and Senator Daschle went along for fear of appearing to obstruct the Ed-Flex legislation.

After the Senate vote, we issued a statement from you reiterating your support for ed-flex, but sharply criticizing the Republican measure to undermine class size reduction. In addition, Secretary Riley urged Senators Jeffords, Frist, and Wyden to remove this provision from the bill lest it kill Ed-Flex legislation. (Bruce repeated this message to Governor Carper, although it is not clear how much influence the governors will have in the conference committee discussions.) Meanwhile, Senators Daschle, Kennedy, and Murray are trying to get at least 34 Senators to sign a letter calling for a veto if the conference fails to remove the Republican special ed/class size provision. We will talk with John and Larry again on Monday about whether and when to issue a veto statement on the Senate bill in its current form.

The debate in the Senate made clear that we and the Hill Democrats are vulnerable on the special education issue. With more and more local and state officials demanding that the federal government live up to its "commitment" to fund 40 percent of mandated special education services -- a commitment which is really no more than a statutory *cap* on federal funding -- we will face over and over again the argument that we should fully fund special education before beginning any new education initiatives, such as class size or school construction. We are exploring whether we can persuade members of Congress to set aside state tobacco settlement

*Approved
Strategic Initiatives*

*Carper
Reed
Kagan
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funds for special education in exchange for waiving the federal claim to this money. (Of course, Governors would respond to this proposal by saying that we are using *their* money to make good on *our* promise to provide special education funding.) We are also discussing with OMB whether we have other ways to pay for more special education spending, but as you know our options with respect to any non-defense discretionary spending increases are unpleasant and limited.

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THE PRESIDENT HAS SEEN

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THE WHITE HOUSE
WASHINGTON

March 13, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Education – Ed-Flex/Class Size/Special Education: Both the Senate and the House approved Ed-Flex legislation last week, the former by a 98-1 vote (with Senator Wellstone the lone dissenter) and the latter by a 330-90 vote. The House bill is clean, because the Rules Committee held all amendments on class size, special education, and other issues to be non-germane. The Senate bill, however, includes a provision to permit school districts to fund special education services out of the funds appropriated last year (and any future funds) to hire teachers and reduce class size. This provision, which attracted the votes of every Republican and six Democrats (all from rural states without class size problems), essentially trumped the Murray-Kennedy amendment to provide a six-year authorization for our class size program, which went down on a party-line vote. Because we saw the special education provision as a politically clever way to gut your class size initiative, we counseled the Democrats against entering into a time agreement that would allow it to come to a vote. Senator Kennedy, however, insisted on making a deal with the Republicans in order to get a vote on his amendment, and Senator Daschle went along for fear of appearing to obstruct the Ed-Flex legislation.

After the Senate vote, we issued a statement from you reiterating your support for ed-flex, but sharply criticizing the Republican measure to undermine class size reduction. In addition, Secretary Riley urged Senators Jeffords, Frist, and Wyden to remove this provision from the bill lest it kill Ed-Flex legislation. (Bruce repeated this message to Governor Carper, although it is not clear how much influence the governors will have in the conference committee discussions.) Meanwhile, Senators Daschle, Kennedy, and Murray are trying to get at least 34 Senators to sign a letter calling for a veto if the conference fails to remove the Republican special ed/class size provision. We will talk with John and Larry again on Monday about whether and when to issue a veto statement on the Senate bill in its current form.

The debate in the Senate made clear that we and the Hill Democrats are vulnerable on the special education issue. With more and more local and state officials demanding that the federal government live up to its "commitment" to fund 40 percent of mandated special education services – a commitment which is really no more than a statutory *cap* on federal funding – we will face over and over again the argument that we should fully fund special education before beginning any new education initiatives, such as class size or school construction. We are exploring whether we can persuade members of Congress to set aside state tobacco settlement

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funds for special education in exchange for waiving the federal claim to this money. (Of course, Governors would respond to this proposal by saying that we are using *their* money to make good on *our* promise to provide special education funding.) We are also discussing with OMB whether we have other ways to pay for more special education spending, but as you know our options with respect to any non-defense discretionary spending increases are unpleasant and limited.

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THE WHITE HOUSE

WASHINGTON

March 20, 1999

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Tobacco – Recoupment Issue: The Senate rejected, by a vote of 71-29, a Specter-Harkin amendment to the supplemental appropriations bill that would have allowed the states to retain all tobacco settlement funds in exchange for a commitment to use 20 percent of the funds to combat teen smoking and 30 percent to expand public health programs and/or assist tobacco farmers. The vote leaves intact a provision in the supplemental (offered by Senator Hutchison in committee) that would give up the federal share of the tobacco settlement without any commitment by the states. Those opposing the Specter-Harkin amendment included a number of normally anti-tobacco Democrats (such as Conrad, Leahy, and Kerry) who decided not to buck their governors on this issue. Senator Daschle is attempting to determine whether a watered-down version of the amendment (either requiring only the 20 percent set-aside for tobacco prevention programs or providing simply that the states spend 50 percent of the funds on some combination of tobacco prevention, farmer assistance, education, public health, or children) would garner greater Democratic support. (Note that seven Republicans voted for Specter-Harkin, so the amendment would have passed had all Democrats supported it.) Neither Daschle nor we, however, are very hopeful that he can find a formula to bring Democrats back on board. Our best hope now is that our demand for a clean bill will convince the conference committee to strip the recoupment provision from the supplemental, and that the governors, having lost this opportunity to resolve the issue, will decide to negotiate with us rather than await the next potential vehicle.

2. Health Care – Patients' Bill of Rights: The Senate Labor Committee reported out patients' rights legislation on Thursday by a party-line vote. The legislation applies only to patients in self-insured plans, thus relegating the 80 million Americans in insured plans to state law protections; it omits crucial patient protections, such as access to specialists; it essentially allows HMOs to define what services count as medically necessary in the independent appeals process; and it lacks any adequate enforcement mechanism. Although some Republican Senators (particularly Chafee and Specter) may support some strengthening amendments on the floor, the odds of significantly improving the bill in the Senate are slight. (There is also a question about whether Senator Lott will bring the bill to the floor in the absence of a very constraining time agreement.) The House should pass a stronger bill (though probably not as strong as the Dingell version), setting up the possibility of some middle-ground compromise in conference if the legislation gets that far.

3. Health Care -- Medicare: We are currently preparing options for your consideration on Medicare reform, so that you can put out your own plan as soon as possible. We will not be able to evaluate some questions fully until after March 30, when the Social Security/ Medicare trustees are scheduled to issue their annual report. We expect this report to push out the exhaustion date of the Medicare trust fund by a number of years (perhaps to 2012 or even later). Because these new numbers will make it easier to reach the goal of ensuring solvency until 2020 -- enabling the Republicans to claim the excess funds for tax cuts -- all your advisors agree that you should stop making reference to the year 2020 in articulating the goals of Medicare reform. But because we may want to tap into some of these excess funds ourselves -- in our case, for a more generous prescription drug benefit -- we also do not advise that you insist on adding 10 or 12 years to whatever the trustees announce as the new exhaustion date. For now, we all agree that you should simply demand that we dedicate 15 percent of the surplus (\$686 billion over 15 years) to Medicare. This formulation will allow us some latitude on the question whether all this money should go toward extending solvency or some could go to a drug benefit.

4. Health Care -- Nursing Home Quality: The Senate Aging Committee, chaired by Senator Grassley, released a GAO report last week -- and will release another next week -- criticizing HCFA's enforcement of nursing home quality standards. The reports state that HCFA often declines to investigate serious complaints and takes insufficient corrective action when it does find violations. The reports especially castigate HCFA for failing to enforce quality standards against repeat offenders. Although a nursing home quality initiative you unveiled last year is addressing some of these problems, we believe additional steps are necessary. We instructed HCFA last week to ensure investigations of serious complaints (i.e., those alleging harm to residents) within 10 working days, increase the minimum fine for facilities violating quality standards, and make it easier to impose larger fines. We are also working on a set of more far-reaching changes for inclusion in the new crime bill you will announce on April 1. The most important part of this package is a provision to give the Department of Justice new authority to impose criminal and civil penalties on individuals, facilities, chains, or management companies that engage in a pattern of conduct resulting in physical or mental harm to nursing home residents. Enactment of this provision will ensure that HCFA is not the sole federal entity with specific authority to bring enforcement actions against irresponsible nursing home operators.

5. Health Care -- Nursing Home Resident Protection Act: You are tentatively scheduled to have a signing ceremony next week for a bill to protect Medicaid patients in nursing homes that decide to withdraw from the Medicaid program. Under the legislation, these nursing homes can refuse additional Medicaid patients, but cannot evict current Medicaid patients.

6. Health Care -- Medicaid Guidance: At our request, HCFA will release on

Monday new guidance to states to ensure that individuals eligible for Medicaid -- especially children -- are enrolled as soon as they ask to apply. As you know, some state or local governments appear to be imposing waiting periods before issuing applications for Medicaid or determining eligibility for the program. This guidance makes clear that these delays violate the law and that welfare reform efforts (including diversion programs) cannot reduce access to the Medicaid program. We believe that advocates will applaud the guidance, while states will not seriously object to it.

7. Health Care -- Antibiotics in Animal Feed: You recently asked about a report indicating that feeding antibiotics to livestock may increase the prevalence of antibiotic-resistant bacteria and thereby decrease our ability to cure infections in people. The FDA has become concerned about this problem and is planning to issue a draft regulation requiring manufacturers to test their antibiotic feed additives at regular intervals to see if they foster the growth of resistant bacteria. If the products are found to do so, the FDA will curtail their distribution or remove them from the market. The drug and agriculture industries will object to the draft regulation, arguing that antibiotic feed additives are necessary to produce affordable meat and poultry and are not dangerous to the people who consume these products. Public health advocates probably will say that the regulation does not go far enough, because it does not immediately eliminate or severely restrict the use of antibiotics in animal feed. The FDA should issue the draft regulation within a few weeks, with a formal NPRM several months away.

8. Health Care -- Stem Cell Research: The next issue of *Science* will include a letter from 73 prominent scientists, including 67 Nobel Prize winners, supporting NIH's plans to fund stem cell research. This letter, which makes clear the scientific and medical potential of stem cell research, should help us to defeat legislation proposed by pro-life members of Congress to prohibit NIH from funding such experiments.

9. Education -- Ed-Flex/Class Size/Special Education: The conference committee on the Ed-Flex bill is expected to get under way after the two-week congressional recess. When the House appoints conferees next week, Congressman Clay will offer a motion instructing House conferees to "insist that funds appropriated . . . for class size reduction" be used only for that purpose and that "additional funding should be appropriated" for special education. We have heard from several sources that Lott, Frist, Hastert, and Goodling all have said that they intend to take the class size/special ed provision out of the Ed-Flex bill in conference. We are not taking this outcome for granted, however, and we are continuing to work with the education groups to maintain pressure for deleting this provision.

10. Education -- University of California Admissions Policy: The University of California Board of Regents yesterday approved, by a vote of 13 to 1, a plan to guarantee a place in one of the university system's eight undergraduate campuses for the top four percent of the students in each of the state's high schools. Although Governor Davis proposed this action as a way to increase diversity in the wake of the state's affirmative action prohibition,

it is not expected to have a dramatic effect on the racial composition of the university system. The plan will add about 3,600 students of all racial backgrounds to the current pool of eligible applicants, increasing the eligibility rate for African-Americans from 2.8 to 3.6 percent, for Hispanics from 3.8 to 4.7 percent, for whites from 12.7 to 14.4 percent, and for Asian Americans from 30 to 31.5 percent. The plan was based on a policy adopted in Texas that guarantees admission to the top 10 percent of every graduating class.

11. **Welfare Reform – TANF Rule:** HHS, OMB, and we have reached consensus on the major issues in the final welfare regulation and expect to be able to release it in mid-April. While continuing to hold states generally accountable for work requirements, time limits, and maintenance of effort provisions, we have responded to their (and the advocates') pleas for additional flexibility. In particular, the final rule will allow states to use TANF funds to ~~provide child care, transportation, job retention services, and other supports to non-welfare working families without triggering time limits or other TANF requirements.~~ While many states have wanted to use TANF funds for these purposes to ensure that families coming off the rolls do not go back on, they have hesitated to do so for fear that such assistance would count toward the federal five-year time limit. The rule alleviates this fear by defining such supports for working families as "non-assistance," which is not subject to TANF requirements. The rule also treats work subsidies given to employers as "non-assistance," which we think will encourage more states to use them. (In 1997, only 1 percent of working welfare recipients were in subsidized jobs.) We expect a generally positive reaction to the regulation and are exploring appropriate announcement opportunities.

12. **Welfare Reform – Cuts in TANF Funds Restored:** The Senate passed an amendment offered by Senator Stevens on Thursday to eliminate from the supplemental appropriations bill the \$350 million cut in TANF funds. As you know, our SAP opposed the TANF cut and Governors lobbied hard against it. Stevens substituted a change to HUD's Section 8 housing program which OMB assures us has no adverse programmatic impact: although the provision defers spending from FY 1999 to FY 2000, so many housing contracts straddle both years that this provision is little more than a change in accounting.

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THE WHITE HOUSE
WASHINGTON

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April 3, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Health Care -- Democratic Patients' Bill of Rights Event: You are scheduled to join Democratic members of Congress in Philadelphia on Friday to highlight the need for strong, enforceable patients' bill of rights legislation -- and to contrast the proposal we favor with the weak version of the bill reported out of the Senate Labor Committee just before recess. At the event, you can announce an Internet-based petition, which is intended to attract over one million signatories, in support of a strong, enforceable patients' rights bill. You also can announce the OPM "call letter" that takes the final step in requiring all participating FEHBP insurers to come into full compliance with the patients' bill of rights.

2. Health Care -- Medicare Annual Cap on Rehabilitative Services: You recently asked about the \$1500 annual cap on Medicare payments for outpatient physical therapy and other rehabilitative services. This cap was included in the Balanced Budget Act at Congressman Thomas's insistence; we had opposed it for fear that it would have an adverse impact on chronically ill beneficiaries. Providers and advocates are now arguing that the cap has had just such an impact, pointing to a recent study showing that almost 13 percent of Medicare beneficiaries incur significant out-of-pocket expenditures as a result of the cap. Senator Grassley has proposed legislation that would allow Medicare beneficiaries to exceed the cap if they have an illness that clearly requires additional services. This proposal, however, may prove very costly; we are scoring it now as well as reviewing alternatives.

3. Health Care -- Medicare Toll-Free Line: HHS instituted on Thursday a new nationwide toll-free telephone line, 1-800 MEDICARE, to help Medicare beneficiaries learn about the new health care options available to them under Medicare+Choice. Callers can talk to a customer service representative in English or Spanish to get information about the Medicare program generally and/or about particular Medicare health plans in a community.

4. Tobacco -- Medicaid Recoupment: We met this week with the major public health groups to discuss ways to build support for our proposal to ensure that a portion of the tobacco settlement funds goes to prevent youth smoking. We urged them to develop a political and communications plan focused on the effectiveness of such programs and the refusal of many states to use settlement money for this purpose. To use just a few examples: the Oklahoma legislature is considering using the money to eliminate highway tolls; Louisiana's governor has

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proposed paying off state debt and funding gene therapy research with the funds; and Rhode Island's governor has proposed using the first installment to balance the budget (which has set off a fierce debate in the legislature). In addition, many states purporting to spend the tobacco funds on public health or tobacco use prevention are merely supplanting current spending, effectively freeing these funds for other uses. The public health community so far has been utterly ineffectual on this issue, but we hope participants in the meeting emerged with a better understanding of the political situation we face and some more effective strategies for dealing with it.

5. Tobacco -- Oregon Verdict: A jury in Oregon last week ordered Philip Morris to pay \$81 million in damages (including \$79.5 million in punitives) to the family of a man who died of lung cancer after smoking for 40 years. The verdict was the largest ever against a tobacco company, exceeding the \$51.5 million verdict awarded by a California jury against Philip Morris earlier this year. Shares of tobacco companies fell sharply this week as a result of the verdict.

6. Welfare -- Child Support Computer Systems: You recently asked about an HHS policy denying federal reimbursement to states that entered into contracts for child support and child welfare computer systems without first receiving federal approval. HHS has applied this policy strictly, refusing federal payments even when the federal government clearly would have approved the contracts. In the past, HHS has denied federal funds to California, Hawaii, Kansas, Nevada, and Pennsylvania on these grounds. In recently reviewing this policy, however, HHS officials discovered that it is in conflict with the department's current policy on Medicaid computer systems -- even though the two policies are interpretations of the same regulation. When it comes to Medicaid computer contracts, HHS provides reimbursement even in the absence of prior approval if the contract meets departmental requirements and the state institutes controls to ensure that it will seek advance approval in the future. HHS officials are now trying to reconcile the two policies; they probably will decide to adopt an agency-wide policy similar to the policy that now is applied in the Medicaid program.

7. Welfare -- Food Assistance: You recently asked what we could do to ensure that families obtain needed food assistance, in light of some reports that more working families are seeking help from private food banks. We are working to address these issues on two fronts: first, to ensure that states follow the current food stamp law by providing assistance to all eligible individuals who seek assistance; and second, to develop and implement new initiatives to make the food stamp program more accessible to working families.

We have taken numerous steps in recent months to ensure that states follow the food stamp law. USDA has launched a number of investigations of state and local practices, including an inquiry in New York City which found that local welfare offices were not allowing individuals to apply for food stamps on their first visit to the office. (USDA issued a formal warning to New York that it would impose penalties if the city were to continue these practices; around the same time, a federal district court judge issued an injunction prohibiting the practices and requiring the

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city to submit a corrective action plan to the court.) USDA also has issued formal guidelines to all states reminding them of their obligations under the law.

In addition to these enforcement actions, we are working with USDA and others to develop and implement efforts to make food stamps more available to eligible families. Historically, individuals with earned income who are eligible for food stamps have been only about half as likely to seek them as individuals receiving cash assistance. In part, this is because individuals with earnings are eligible for far less in food stamps and may decide the amount is not worth it. In part, it is because individuals need to report earnings to the food stamp office, and working people often find it hard to get to the office during open hours.

We are currently working with USDA and OMB to devise administrative proposals to help address these and other potential barriers, and we hope to provide you with a set of recommendations soon. Our biggest problem will be cost: the most effective administrative proposals are likely to cost several hundred million dollars, and OMB's policy is to insist on equivalent offsets from the relevant department. In addition, we will be working to enact the proposals in this year's budget to increase funds for food stamp outreach (the budget proposes a 50 percent federal match for media campaigns and other outreach activities) and to expand the class of legal immigrants entitled to receive this benefit.

8. Education – Workforce Investment Act Rule: OMB and DPC have almost completed work on the Department of Labor’s interim final rule to implement the Workforce Investment Act, which you signed last August to reform the nation’s job training system. The rule will assist states and communities to develop a network of One-Stop Career Centers (at least 2,500 upon full implementation) to provide a wide range of employment services to both job seekers and employers. The rule also will implement the Act’s provisions on Individual Training Accounts, which will give individuals access to quality job training programs of their choice. Consistent with the goal of consolidating and streamlining job training programs, the new regulation is approximately half the length of the rule it replaces. The department consulted broadly with state and local governments, key Congressional committees, and other stakeholders in developing the rule, and we expect it to get a good reception.

9. Drunk Driving – .08 BAC Studies: The Department of Transportation released two independent studies last week on the effect of lowering the illegal blood alcohol concentration (BAC) from .10 percent to .08 percent. One study estimated that .08 BAC laws resulted in 275 fewer fatalities in the 16 states that had these laws in 1997 and that an additional 590 lives could have been saved if all 50 states had .08 laws. A second, 11-state study found that .08 BAC laws were associated with significant reductions in alcohol-related fatalities in five of the states studied (VT, KS, NC, FL, NM), with two other states (VA and CA) registering reductions following the adoption of both a .08 BAC law and an administrative license revocation (ALR) law (under which police immediately suspend the license of a drunk driver) and the remaining four states (UT, OR, ME, NH) showing no statistically significant changes. The GAO is planning to release in June a review of these and other existing studies on .08 BAC laws, as required by the transportation

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bill you signed last year. We expect that the GAO will criticize earlier NHTSA studies, but confirm the soundness of the new studies and conclude that .08 BAC laws can be effective in reducing alcohol-related deaths, especially in combination with ALR laws.

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THE WHITE HOUSE

WASHINGTON

April 17, 1999

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. **Education -- Ed-Flex:** In response to your veto threat, House and Senate conferees agreed Thursday to drop the Senate amendment that would have gutted the class size program, and will report out an Ed-Flex bill that you can happily sign. The conferees also agreed to strong accountability provisions to help make sure states that make use of this new flexibility get results. On Monday, Secretary Riley had sent conferees a letter threatening a veto over the Senate Republican provisions to weaken class size. Thirty-six Senate Democrats signed a letter in support of the veto. The final bill should reach your desk in the next few weeks.

2. **Education -- ESEA:** On Monday, we will meet with civil rights leaders and Sen. Kennedy's staff in our continuing effort to reach agreement on the social promotion provisions of ESEA. Bill Taylor is reviewing our language and drafting a counterproposal for the civil rights community. Once we see it, we will send you a separate memo on whether we can get the community -- or at least Sen. Kennedy -- to accept a compromise consistent with what you said in the State of the Union.

3. **Education -- National Teacher of the Year:** On Monday, you are scheduled to announce the National Teacher of the Year in a ceremony in Presidential Hall. Your remarks will focus on the importance of high-quality teachers and challenging young Americans to become teachers. After your remarks, you will present Andrew Baumgartner with the 1999 National Teacher of the Year award. Baumgartner, an ex-Marine, has taught for 22 years and is currently teaching kindergarten in Augusta, Georgia.

4. **Education -- Class-Size study:** On April 29, Senator Patty Murray plans to announce the most recent findings of Project STAR -- the Tennessee study that has tracked the performance of students who were in smaller classes in grades K-3 in the mid-1980's. So far, the findings show that: students who were in smaller classes go on to take college entrance exams slightly more frequently than their peers in larger classes, and the gap in college entrance test-taking between poor and minority children and other children was substantially reduced. Researchers found no difference in ACT and SAT scores for students in smaller classes, although that could be due to the fact that a greater percentage of them were taking the tests. Senator Murray has suggested a White House event to release of the study, but we are waiting to see if stronger

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additional data becomes available from the researchers comparing the performance of students in smaller vs. larger classes on high school graduation rates, completion rates of advanced placement and other challenging courses, and grade-point averages.

 **5. Children and Families -- Child Care:** The final budget resolution passed by Congress this week includes \$6 billion for child care -- \$3 billion over 10 years in new subsidy funding and \$3 billion over 10 years in enhanced child care tax relief. Although half the original amount sought by Senators Dodd and Jeffords, this action provides a real opening to achieve important pieces of your child care initiative this year. The Senate voted 66-33 in support of a Dodd-Jeffords motion to instruct conferees to include the funding increase. We will now turn our attention to working with the Senate Finance Committee, which has jurisdiction over child care subsidy and tax issues; four Republicans on the Committee voted for the Dodd-Jeffords measure (Jeffords, Hatch, Chafee, and Grassley).

6. Crime -- Prison Drug Treatment: As you know, as a result of the Administration's efforts, the FY 99 omnibus spending bill contained a provision to allow states to use up to 10 percent of their prison construction funds for drug testing, intervention, and treatment for prisoners and parolees. We were recently informed that half of the states have requested to use the full 10 percent of their construction grants to fund such activities. The Justice Department plans to issue a report on this soon.

 **7. Health Care -- Medicare Update:** Starting next week, the Senate Finance Committee will hold a series of Medicare hearings. Senator Breaux and Rep. Thomas want you to unveil your legislative proposal first before they produce their own bill. In our meetings with Congressional offices over the last week, we are hearing (1) growing discomfort with the Breaux-Thomas recommendations; (2) the desire to develop a meaningful prescription drug benefit; (3) a great interest in the status of your Medicare reform package; and (4) increasing concerns about the imposition of additional provider payment reductions as we implement the 1997 BBA. Base Democrats are very concerned about the type of structural changes and programmatic savings we are developing for your consideration. While most are quite interested in a drug benefit, they are concerned about our possible approaches to modernize the program, make it more competitive, and achieve savings to help offset the cost of the drug benefit. In the wake of the good news by the Medicare Trustees about the new 2015 trust fund exhaustion date, members of Congress are more receptive than ever to provider concerns about reimbursement rates. To the extent that providers are successful in convincing the Congress to moderate these savings, it will become more difficult to find significant offsets that credibly go very far towards defraying the cost of the drug benefit.

8. Health Care -- Shortcomings of HCFA Oversight of HMOs: You recently asked our response to a recent GAO report that criticized HCFA for not assuring that HMOs are distributing accurate information about benefits, cost sharing, and appeals rights to Medicare beneficiaries. The report suggested that the lack of such information made it impossible for beneficiaries to challenge HMOs that have not provided contractually obligated benefits. In

response to this report and our inquiries, HCFA has acknowledged shortcomings in this area. At our urging, HCFA has agreed to ensure that HMOs participating in the next Medicare open enrollment period will be required to provide information about their benefits and cost sharing requirements in a standardized format. This will ensure that HCFA can quickly and accurately evaluate the content of brochures and other marketing material. In addition, Medicare HMOs will be required to provide information about appeal rights and disenrollment in a standardized format in order to ensure that Medicare beneficiaries are informed about their right to appeal decisions denying care or payment for services. We have informed HHS (along with OPM and other affected agencies) that implementation of the Patients Bill of Rights must be carried out as smoothly and aggressively as possible and serve as a model for the private sector. The New York Times editorial criticizing HCFA on this matter did acknowledge that, even with its implementation problems, Medicare provides much greater protections to beneficiaries than the private sector.

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9/ Health Care -- Jeffords-Kennedy Update: Senator Helms added his name as a cosponsor to the Jeffords-Kennedy-Roth-Moynihan Work Incentives Improvement Act this week. This leaves Senator Nickles as the primary barrier to bringing this measure to the full Senate for a vote. Although Senator Nickles is pressuring Senator Lott not to bring this bill to the floor, there is a bipartisan movement in the Senate to permit a vote in the upcoming weeks. There is similar momentum on the House side as the Commerce Committee is hoping to finalize a full committee markup later this month or early in May. This legislation represents the highest legislative priority of the disability community and they hope to help us deliver you a bill for signature by June.

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10. Health Care -- Patients Bill of Rights Update: In the wake of your event promoting the Patients Bill of Rights last Friday and the positive New York Times editorial that the event inspired, moderate Republicans such as Senator Chafee have indicated interest in developing a strategy to pass a compromise proposal. These Republicans want to see this issue resolved prior to the 2000 elections. Unfortunately, the Senate Leadership, particularly Senator Nickles, have been able to seriously delay any progress on this issue within the Senate Finance Committee. In the House, Republicans such as Reps. Ganske and Norwood are reaching out to Rep. Dingell to determine if they can agree on a compromise measure that can attract well over 218 votes. Because these members are concerned about the lack of progress in the House on this issue, they may well be open to pursuing a discharge petition strategy in order to bypass a prolonged and unproductive committee process.

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11. Health Care -- CHIP Update: This week, the Washington Post reported that the CHIP program had enrolled 850,000 children to date, which they portrayed as a disappointing start to the program. On Tuesday, the First Lady will announce that in the first full year of program operation, the CHIP program has actually enrolled one million children. Your recent launching of the national toll-free number and a major public awareness campaign should help accelerate enrollment.

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12. Tobacco -- Billboards: As part of the state tobacco settlement, tobacco companies agreed to remove their outdoor and transit advertising by next Friday -- although the settlement does not prohibit smaller signs that are placed inside or outside retail establishments or billboards at adult-only events. The companies also agreed to keep paying for the space after taking down their billboards until their leases expire so that states and tobacco-prevention groups can display anti-tobacco ads. Preliminary estimates from HHS conclude that the value of this anti-tobacco advertising could be as high as \$100 million. To support efforts to replace tobacco industry billboards with tobacco-prevention messages, CDC, FDA, and the National Cancer Institute (NCI) have been working together to provide technical assistance and the bulk printing of a select set of billboards. Thirty-nine states are expected to put up tobacco-prevention billboards, with 26 using the CDC/FDA selected ads and the remaining 13 states choosing to do their own. April 23rd coincides with the NATO summit, which may prohibit White House involvement, but we are hoping Secretary Shalala can do an event, perhaps in Boston.

13. Welfare -- Illegitimacy Bonus Rule: This week HHS published a final regulation defining how it will distribute \$100 million a year in bonuses to states that reduce the percentage of children born out of wedlock. Up to five states and three territories may qualify for bonuses of up to \$25 million each. This bonus was included in the 1996 welfare reform law. The statute makes clear that bonuses will go only to states that simultaneously reduce both out of wedlock births and abortions. Nationwide trends are moving in the right direction -- preliminary 1997 data show that the out-of-wedlock birth rate has declined for three years in a row after rising for 20 years, although the percentage of births to unmarried women, on which the bonus will be based, has remained at just over 32 percent in recent years after decades of increases.

14. Welfare -- Legal Immigrants Benefits: This week, Sen. Moynihan and Rep. Levin introduced a bill to restore health, disability and nutrition benefits to certain legal immigrants. The bill includes our \$1.3 billion proposal to restore SSI and Medicaid to immigrants arriving after 1996 who become disabled, furnish food stamps to those in the U.S. by 1996 once they become elderly, and provide states the option to provide Medicaid or CHIP to children and pregnant women who arrive after 1996. The Moynihan-Levin bill's food stamp and SSI restorations are more expansive than ours (the bill does not contain any offsets), but its Medicaid/CHIP proposals are identical. We are currently completing the legislative language for our proposal and will begin seeking bipartisan sponsors shortly.