

THE PRESIDENT HAS SEEN

3-7-99

THE WHITE HOUSE

WASHINGTON

99 MAR 6 PM 2:53

March 6, 1999

copied  
Reed  
Kagan  
Podesta

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

N

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.

Should offer Calkins

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.

*Then  
could be  
the value  
of  
the  
allocation  
legislation*

**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.

*X*

**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

3-7-99

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.

Podesta  
let Stuart  
try to  
make  
the call

**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.

all  
must  
get  
done  
the  
story

**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.

3-7-99

**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.

not  
sum  
exp.  
as  
higher

**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.

\*

**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.

## DEPARTMENT UPDATES

April 6, 1997

X

### PBOR event 4/9

The event will take place at Memorial Hall, which can seat 400-500 people. 85 members are confirmed to attend. PA & DC

2.

### VP Kick Butts Day 4/14

X

### Medicare Update

walk thru document from everyone  
NEC & OMB

4.

### Update on Oregon Assisted Suicide

They sent the letter to Oregon asking for a refund and threatening disallowance. Can you ask for an update?

5.

### Phoenix CPAC demonstration

Heard that this is not going that well. Can you ask for an update?

OPM call letter  
bringing us into full compliance  
new website drive

Labor  
Sec Herman to  
do Friday event  
LA;  
from

Medicare

• Hearing on Tuesday  
GAO report making  
of health plan  
materials;

Grassley

lack of standardization  
in appeals  
we're moving in this direction  
already

Q did we  
contract out?  
HSA: no.

Finance Cmt

4/21:

Wed

hearings

markup towards end of May  
we haven't been asked to testify

Shalala }  
Ruskin }

FRIST Bill

Congressional medal for Organ  
Donors? His proposal

OCASIS

AIDS Action Council  
outreach to groups

disability  
mental health  
AIDS

next wk release of trustees report -

tonight or tomorrow

for chains

DEPARTMENT UPDATES  
March 23, 1999

Medicare Commission Update

Patients Bill of Rights Update

Hill activity?

April 9 event in Philadelphia

Senate having budget amendments & having discussion on Medicare briefings & consultations on will

Nursing Homes

Bill signing scheduled for Thursday

Article -

Task Force briefing tomorrow.

We should stress our interest in the Nursing Home Consumer Advisory Board -- HCFA staff is beginning to work on a plan for setting one up -- it would be time limited and limited to nursing homes only.

Clearing gba for the Hill mtgs.

VP Fraud Event

Scheduled for Thursday

Chains reinforcement

Everyone signed off and we now have the cleared package of fraud proposals from OMB.

They have recieved the draft press release for clearance and should have comments in by COB.

VP Older Americans Act on Friday

HCFA OASIS

Update on NAMD's meeting with Markey this morning?

meet w/ his staff again - agreement to mtg w/ Georgetown people - Jane Horvath

ANYTHING ELSE FROM HCFA?

genetic discrimination EO

briefing the authorizing comts about the trustees report.

setting it up hearing bill

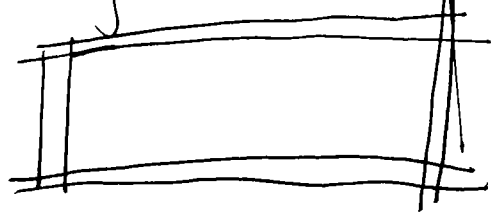
PRIVACY Discussion

Sally Katzen

OTHER FOR CHRIS

- Vencor
- grassley
- Bonaie
- edits?

mtg w/ Richetti



Lieberman & others  
press conference on restraints  
issues — 60 minutes  
Fox News.

---

---

F/U

nursing home proposal  
Bonnie Lieberman proposal  
Privacy discussion  
trustees mtg on report

---

---

NURSE ANESTHETISTS

## DEPARTMENT UPDATES

March 16, 1999

- ☒ **Medicare Commission Update** President likely to make statement on Medicare Commission this afternoon
- ☒ **Patients Bill of Rights Update** Markup. Chris to call Senator Kennedy re: thematic approaches rather than all amendments.
3. **Nursing Homes**

NAMD and Mike briefed print reporters on the nursing home initiative this morning and sent out the letter to state survey agencies today; she will meet with representatives of state survey agencies tomorrow afternoon to encourage them to be more proactive in enforcement. She also announced that HCFA is planning requesting that \$4 million be reprogrammed for the nursing home initiative -- unsure as to inside or outside HCFA.

*Signing event around nursing homes Pico says yes.*  
Dateline is calling; QAOs sample sent representative. Reports are scheduled to be released on the 18th and the 22nd; HHS thinks that Robert Pear is writing this story.

*Mike doing dateline; NAMD doing dateline.*  
NAMD is scheduled to testify on this on Monday; unsure about other witnesses.

\*\*Mike has requested that we postpone our Wed meeting on this -- I will explain to you\*\*

- ☒ **Privacy**  
We want to have a meeting to discuss our Administration policy on this soon. *early next week*

- ☒ **Fraud**  
They are tying up loose ends on the kickback provision. HHS has not yet signed off.

- ☒ **TANF Letter**  
HHS does not think that this will get any press if it goes this week, and would like to postpone its release until next week; they also want to time its release with the release of a welfare diversion study by GW. *set up mtg Monday next week*

- ☒ **Update on Hearings**  
• BBA implementation tomorrow  
• Medicare Fraud 3/19

### 8. ANYTHING ELSE FROM HCFA?

#### THINGS FOR CHRIS

- OUMSTEAD
- ~~MIKE H. / NURSING HOMES~~
- NAMD / KY CHIP

*Kennedy Jeffords hearing next Tuesday  
Amy Goldstein speech  
What can POTUS do in the last 2 years?*

10 vote margin in Commission; nothing to vote out; highlight shortcomings & concerns as well as Commission's good work.

Rich wants to schedule a call w/ the Dems to get briefed on what POTUS will say.

possibility of 2<sup>30</sup>  
HHS to set up — conference call.  
Treasury  
Dan M.  
Leg Affairs here  
Kenney (?)  
(not BreauX)  
Katie Horton  
Bill Vaughn  
Andie, Jane

HHS internal before

HHS got sent paper to vet

Paper → Dan  
Bonnie  
Gary  
Rich  
NAMD

Lieberman bill prohibits the  
use of restraints in hospitals

# THE WHITE HOUSE

DOMESTIC POLICY COUNCIL  
FAX: (202) 456-2878

**To:** Chris Jennings  
Jose Cerda  
Cynthia Rice  
Paul Weinstein  
Nicole Rabner  
John Schnur  
Tanya Martin  
Tom Freedman  
Irene Bueno

**Date:** March 15, 1999

**Fax #:**

**Pages:** 6, including this cover sheet.

**From:** Elena Kagan

**Subject:** DPC Weekly Report

**COMMENTS:**

652 0072

564  
0164

3-15-99

99 MAR 14 PM 5:40

THE WHITE HOUSE  
WASHINGTON

March 13, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

*See memo on  
Strategy in the  
↑*

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.

*Copied  
Reed  
Kagan  
Dodge*

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

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.

**2. Education – Charter School Conference:** The Education Department will hold its second national charter school conference next week. Secretary Riley will address the conference, and you will make remarks by videotape. The Department will release guidance at the conference regarding the eligibility of schools for federal start-up funds. The guidance notes that funds cannot go to for-profit organizations directly holding charters, but can go to non-profit charter school boards that contract out management services to for-profit firms. Similarly, the guidance states that although private schools converted directly into charter schools are not eligible for funds, private schools may become eligible if they shut down and then reopen as public charter schools open to all students, without any preference for those previously enrolled in the private school. Finally, the guidance states that to receive funding, any charter school that has more applicants than spaces must use a lottery, except that (1) the school can impose minimum eligibility requirements for the lottery so long as they are consistent with the federal charter school law and all civil rights laws and are "reasonably necessary" to achieve the educational mission of the school, and (2) the school can exempt from the lottery students attending the school at the time it became a charter (assuming the school was public, not private), siblings of students already attending the school, and a limited number of children of the charter school's founders. The Department is now working on additional guidance that will address issues relating to civil rights and religion; we will work closely with the department on this next round of guidance.

**3. Health Care – Medicare Commission:** The Medicare Commission is expected to take a final vote Tuesday, although Senator Breaux has not yet distributed paper so no one knows exactly what the members will be voting on. The report probably will include a general endorsement of a premium support policy, an increase in the eligibility age to 67 (without any policy to ensure that this step does not increase the number of uninsured), a limited prescription drug benefit, and vague language about the need for additional revenues for the Medicare program. Laura Tyson and Stuart Altman are still struggling over whether to support the report while commenting on the aspects they believe to be flawed. Laura sent a draft document to Breaux on Thursday that she implied she could accept; the document essentially adopted the perspective of Breaux and the Republicans, but framed their proposals in very broad terms and outlined her own and Altman's criticisms. Breaux apparently liked this draft, but Congressman Thomas rejected it on the ground that it had too few specifics. The base Democrats remain opposed to a reform proposal along the lines the Commission is considering.

**4. Health Care – Patients' Bill of Rights:** The Senate Labor Committee has scheduled a markup next week of the Republican Leadership version of the Patients' Bill of Rights. This bill is flawed in several respects: it includes no adequate mechanism to enforce the patient

protections; it fails to set out the standards and criteria that reviewers in the independent appeals process should use to judge the appropriateness of an HMO's medical decision; and it applies only to self-insured plans, thus relegating the 80 million Americans enrolled in insured plans to state law protections. We will meet with Senator Kennedy's staff on Monday to discuss an amendment strategy.

*Be  
causing*

**5. Health Care -- HCFA Proposal on Medicare Home Health Surveys:** The Washington Post reported last week on a proposal by HCFA to require home health providers to collect data from patients about their physical and mental health and other characteristics, such as their living arrangements. HCFA argues that this data is necessary to (1) develop performance reports for each provider in an effort to improve home health quality, and (2) make the risk adjustment calculations contemplated by the new prospective payment system for home health agencies. HCFA also states that they have numerous safeguards in place to prevent dissemination or use of this data for nonauthorized purposes. We are now reviewing the HCFA proposal to determine if it is consistent with our broader policy on the privacy of medical records.

**6. Health Care -- Amicus Brief in Disabilities Case:** The Department of Justice will file an amicus brief in the Supreme Court Monday that supports the position of disability advocates in a case involving the right to receive care in "integrated" (i.e., community-based) settings. Two mentally retarded Medicaid enrollees brought suit against the State of Georgia, arguing that their placement in an institution violated the ADA requirement to provide services in the "most integrated setting." The State argued that its placement decision was appropriate under a provision of the statute that allows states to disregard this requirement in cases where compliance would cause excessive expense or fundamentally alter the state program. The Justice Department's brief adopts a relatively narrow interpretation of this provision, although not so narrow as that urged by the disabilities community. We believe this filing puts us in approximately the right position. The number of states signing on to Georgia's brief has dropped from 20 to 12 in the last few weeks, as a result of growing pressure from the disabilities community.

**7. Health Care -- Address to Firefighters on Bioterrorism:** In an address to the International Association of Firefighters on Monday, you will announce actions to involve firefighters and other emergency response personnel in the Administration's plans to combat bioterrorism and chemical weapons attacks. These actions include: investing an additional \$11 million in FY99 to establish rapid medical response teams trained to respond to a biological or chemical weapons emergency; awarding \$21 million in grants to help communities train emergency personnel, including firefighters, to respond to bioterrorist attacks; and providing \$73.5 million in grants to communities to purchase communications and protective equipment for emergency response personnel handling biological and chemical attacks.

**8. Health Care -- Nursing Homes Announcement:** The Vice President is tentatively scheduled to meet on Tuesday with advocates for the elderly and representatives of the nursing

home industry to discuss the challenges of improving the quality of patient care. At this meeting, the Vice President will unveil new efforts to improve nursing home quality including: new authority for the Department of Justice to impose criminal penalties on nursing homes that have committed repeated and egregious violations of law; new civil monetary penalties of up to \$10,000 for other serious violations; and a new \$2.5 million educational campaign to prevent elder abuse and neglect in nursing homes. The Vice President also will highlight the proposals in your FY 2000 budget to implement and enforce standards for nursing homes, including a new investment of over \$100 million dollars dedicated to monitoring and improving nursing home quality. This event is designed to preempt the release of reports by the GAO and HHS Inspector General criticizing the Administration's enforcement record, which the Senate Aging Committee intends to release next week.

**9. Crime -- Directive on Firearms Enforcement:** We are preparing a directive for you to sign, possibly before your press conference on Friday, instructing Secretary Rubin and Attorney General Reno to develop a national strategy to strengthen the enforcement and prosecution of federal firearms laws. As you know, the NRA repeatedly has called for the extension of Richmond, Virginia's Project Exile, under which the U.S. Attorney prosecutes all firearms offenses in federal court. Senator Hatch may also propose a Project Exile-type initiative in his crime bill (see below). Your proposed directive will incorporate aspects of Project Exile, but will be broader in scope. It will provide for the timely prosecution of gun criminals at both the federal and the state level; increased efforts to trace crime guns, identify illegal gun markets, and target gun "hot spots"; and coordinated law enforcement efforts to ensure that gun dealers comply with applicable city, state, and federal laws. We could release this directive in conjunction with a new Justice Department report, *Promising Strategies to Reduce Gun Violence*, which details more than 50 examples of local strategies and partnerships that are reducing gun violence across the country. These include: comprehensive violence reduction programs that focus on guns; efforts to deter illegal gun possession through consensual searches and the aggressive seizure of firearms; targeted enforcement in gun "hot spots"; increased surveillance of probationers; school-based prevention programs; and special youth gun courts.

*we need redaction*

**10. Crime -- Prison and Jail Population:** The Justice Department will release on Sunday its mid-1998 report on prison and jail inmates. The report shows that a total of 1.8 million persons -- or one out of every 150 U.S. residents -- were incarcerated in the nation's prisons and jails. The prison population (totaling 1.27 million) increased 4.8 percent from the previous year, a fair bit less than the average annual increase of 6.9 percent since 1990. States with the largest increases in prison population were: ND (19.5 percent), MT (18.3 percent), and HI (13.6 percent). States with the largest decreases were: the District of Columbia (10.9 percent), ID (3.6 percent), and WY (3 percent). The jail population (totaling 592,000) increased 4.5 percent from the previous year, slightly less than the average annual growth rate of 4.9 percent since 1990. Local jails were filled to 97 percent of capacity, the same as last year and lower than in 1990, when they operated at 4 percent over capacity.

**11. Crime -- Hatch Crime Bill:** We learned last week that Senator Hatch may introduce a crime bill as early as next week. Reports on the bill are sketchy, but it may include: (1) a version of the COPS program, but with stricter accountability provisions; (2) an authorization for the Local Law Enforcement Block Grant; (3) an expansion of the DeWine/Leahy law enforcement technology grants program; (4) the juvenile crime bill Hatch pushed last year; (5) an expansion of Project Exile to prosecute more gun crimes in federal courts; (6) a ban on the sale of alcohol over the Internet; (7) a reauthorization of the Violence Against Women Act; and (8) a sense of the Senate resolution on the rights of crime victims. You are tentatively scheduled to unveil your 21st Century Crime Bill on March 31.

*Do we need to pick up?*

**Drugs -- Medical Marijuana:** At ONDCP's request, the Institute of Medicine (IOM) will release a study Wednesday on the medicinal use of marijuana. The study finds that although cannabinoid drugs (primarily THC) have potential therapeutic value for controlling pain and nausea and stimulating appetite, smoked marijuana is a crude THC delivery system that also delivers harmful substances. In particular, the report notes that marijuana smoke is an important risk factor in respiratory disease. (The report does *not* say marijuana acts as a gateway drug or that its medicinal use would increase use among the general population.) Because of the health risks associated with smoking, the report concludes that smoked marijuana generally should not be recommended for medicinal use. The report, however, makes two important exceptions. First, the report approves the use of limited clinical trials of smoked medical marijuana in order to develop a nonsmoked cannabinoid delivery system. Second, the report approves the short-term use (less than six months) of smoked marijuana under medical supervision for patients with debilitating symptoms (chronic pain, vomiting) who have documentation that all other approved medications have failed to provide relief.

**Children and Families -- Child Care:** The House Ways and Means Subcommittee on Human Resources will hold a hearing on child care next week -- the first hearing on the issue since we introduced our child care initiative last year. Administration officials will lead off the hearing testimony. Prior to the hearing, Congressman Cardin, the Subcommittee's ranking Democrat, will introduce a child care bill based largely on the Administration's proposals. In the Senate, a group of mostly moderate Republicans, including Senators Chafee, Snowe, and Hatch, will reintroduce their child care bill from last year, which overlaps with ours to a significant extent.

3-22-99

## THE WHITE HOUSE

WASHINGTON

March 20, 1999

Copied  
Reed  
Kagan  
Podesta

## 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.

3-22-99

## THE WHITE HOUSE

WASHINGTON

March 20, 1999

Copied  
Reed  
Kagan  
Podesta

## 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.

4-12-99

THE WHITE HOUSE  
WASHINGTON

April 9, 1999

'99 APR 9 PM 5:24

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

*copied  
Reed  
Kagan  
Podesta*

**1. Education -- Ed-Flex:** Hill staff met during the recess to hammer out differences between the Senate and House bills. On Monday, Secretary Riley will send conferees a letter threatening a veto over the Senate Republican provision to weaken class size. On Tuesday, Senate Democrats will release a letter with at least 35 signatures supporting that veto threat. We expect a quick conference and rapid action in both houses if the bill is acceptable.

**2. Education -- ESEA:** Despite extensive consultation with us, civil rights groups continue to oppose an ESEA bill that includes the Administration's position on social promotions. We and the Education Department have held a series of meetings with civil rights advocates including Hugh Price, Wade Henderson, Bill Taylor, and others in an unsuccessful effort to find a compromise. Education has suggested that we consider making one of several possible concessions, such as phasing in the requirement to end social promotions over a longer period -- but even that will not be enough to win the groups' support. Another option would be to split off the social promotion provisions in a separate bill. Senator Kennedy sympathizes with our predicament but would like to avoid a war with the civil rights community. We have asked his staff to take part in our continuing meetings with the groups, in the hope that we can at least secure Senator Kennedy's support, even if we fail to win over the civil rights community. You are tentatively scheduled to announce the ESEA bill on April 28.

**3. Education -- 1994 ESEA Report:** On Friday, the Department of Education released a congressionally mandated report evaluating the effectiveness of programs included in the 1994 ESEA reauthorization. The report submits that states have made progress in the development of academic standards, but that more accountability in federal education programs is needed -- along the lines of what you have called for in ESEA.

**4. Education -- California Class Size Waiver:** Last week Vice President Gore announced approval of a waiver sought by Gov. Davis to permit California school districts to use federal class size funding to reduce class size and improve teacher quality in any grade. The decision was based on California's progress in reducing class size in the early grades to 20 and the lack of additional school facilities and qualified teachers needed to accommodate smaller classes in those grades. Governor Davis will encourage California districts to use this funding

to reduce class size in 10th grade reading and math classes to help prepare students for a new high school exit exam that he signed into law.

**5. Health Care -- Update on Aetna's Affordable Choice:** On May 5, the Aetna Insurance Company is scheduled to hold an event to unveil a low-cost health plan option targeted to small businesses and their employees who cannot afford traditional health insurance. The plan is much less expensive than traditional insurance options because it limits its health coverage to capped, front-end benefits that provide front loaded coverage for hospital stays -- \$750 a day for the first three days, \$350 for days four through 10, and declining to \$100 a day after 10 days -- and up to eight physician's visits with a \$50 copayment. The plan allows enrollees to access a price discount on prescription drugs, which Aetna has extracted from the pharmaceutical industry in its negotiations on behalf of its other health plans. Past attempts to provide affordable, bare-bones coverage for this population have proven unsuccessful, primarily because employers and employees have not been attracted to coverage designed only to protect against catastrophic expenses. The Aetna plan takes the opposite approach. Even though these plans would not qualify as traditional insurance and are designed to avoid state mandated benefits, the Aetna plan will be endorsed by the NFIB and possibly the Chamber of Commerce. We are informed that a number of members of Congress (e.g. Representative Thomas and Senators Frist and Breaux) will endorse this offering and participate in the event. Eli Segal is also very supportive. Although the plan might help expand coverage somewhat, our traditional base Democrats, many provider groups, and consumer advocates are unlikely to be impressed with this coverage option. They will argue that the coverage provided is virtually meaningless, provides a false sense of security (since the average hospital cost per day is over \$1000 and the average length of stay is 7 days) and that the Kennedy-Kassenbaum insurance reforms you signed into law would not apply to this product.

**6. Health Care -- Medicare Prescription Drug Update:** Next week, Senator Kennedy and Senator Rockefeller are tentatively scheduled to introduce legislation to provide for a Medicare prescription drug benefit. As currently designed, in return for a \$10 to \$20 premium -- which would be added to the Medicare Part B premiums that provides for physician and other services -- beneficiaries would be reimbursed for 80 percent of drug costs after they paid a \$100 deductible. As currently designed, this benefit would be capped at \$1200 -- meaning that beneficiaries would not get any coverage after they had received \$1200 worth of prescription drugs -- and is projected to cost between \$50 and \$75 billion over 5 years (\$110 billion to \$140 billion over 10 years). The proposal, which is at the low end of the more modestly, front loaded benefits that we have been developing for your consideration, would require beneficiaries to pay catastrophic expenses out of pocket. Most health policy experts would be critical of the capped, front-loaded benefit because it leaves the sickest patients most vulnerable to excessive drug costs. However, this benefit is somewhat more generous than currently available in Medigap plans (particularly when one takes into account the lower premium) and the front-loaded nature of the program might be more popular than a back-end coverage policy. Because Senator Kennedy is introducing this legislation, it is more likely to be accepted as a substantial benefit than if we had produced the same package. Interestingly, Senators Moynihan, Gramm, and Bryant are in the process of developing a similar plan. While it clearly might be better strategically for Senator Moynihan to unveil his plan first, it is unlikely that he will be ready to

do so within the next two weeks. It is even less likely that Senator Kennedy can be convinced to delay the introduction of his bill until after Senator Moynihan introduces his. Notably, the Senate advocates of a drug benefit are unwilling -- if not completely unable -- to propose traditional Medicare provider and/or beneficiary savings that are significant enough to pay for the benefit. As a consequence, both Senator Kennedy and Senator Moynihan are likely to highlight the desirability of tobacco taxes and/or some use of the surplus to help finance their proposal. We are in the process of developing a number of options for your consideration, which we hope to review with you in short order.

**7. Tobacco -- Medicare Lawsuit:** This week the Justice Department entered into an agreement with the law firm of Robins, Kaplan, Miller & Ciresi, from Minneapolis to serve as consultants on the federal tobacco litigation. This firm represented the State of Minnesota and Blue Cross-Blue Shield in their lawsuit against the tobacco industry. The agreement is for the firm to advise and assist the Department's litigation team on a reduced-rate billing basis of \$75 per hour through June 30, 1999. The contract does not contemplate payment of any contingency fee related to potential recoveries. Jim Cramer, a leading Wall Street analyst, wrote that the hire shows "Justice means business."

**8. Tobacco -- Kick Butts Day:** The fourth annual Kick Butts Day is scheduled for April 14. The Vice President will participate in an event in Akron, Ohio where he will release a new HHS report on kids and tobacco. The report indicates that Marlboro (Philip Morris), Newport (Lorillard), and Camel (RJR/Nabisco) are the cigarette brands used most among teens who are current smokers. The dominant brand is Marlboro, which is preferred by about 60 percent of youth smokers and is as popular among girls as among boys.

**9. Community Empowerment -- Low Income Housing Tax Credit:** Shortly after coming back from recess, Senators Graham and Mack of Florida plan to introduce legislation to expand the Low Income Housing Tax Credit (LIHTC). Their bill will be very closely modeled on your proposal. In the House, Representative Nancy Johnson's bipartisan LIHTC bill has amassed 70 cosponsors.

**10. Welfare -- GW Study on Diversion Policies:** We expect George Washington University will issue the second of its reports funded by HHS which provides an inventory of state approaches and examines practices in five cities -- Atlanta, Annapolis, Kansas City, Missoula, and Cincinnati. The study finds that the most common form of diversion requires applicants for welfare to participate in a job search before they can receive cash assistance, and that the diversion payments offered by nearly half the states to help families meet short-term needs in lieu of welfare are being used on a limited basis. The study also notes that diversion has the potential to reduce initial access to Medicaid, especially as families bypass welfare entirely or go to work so quickly that they may not qualify for Medicaid under most states' current eligibility criteria. The study highlights the importance of our Medicaid outreach efforts and our initiatives to encourage states to take advantage of the flexibility they have under current law to expand Medicaid eligibility for low-income working families. HHS plans to award research

funds to several states or large counties to track what happens to families who are diverted from the caseload, including the extent to which they continue to participate in Medicaid and other programs to support working families.

**11. Crime -- 1996 Correctional Population:** On Friday, the Justice Department's Bureau of Justice Statistics released a report showing that an estimated 5.5 million adults were under some form of criminal justice supervision in 1996 -- comprising about 2.5 percent of all adults, up from 1.6 percent in 1985. Of the total 5.5 million adults: 510,000 were in jail; 3.2 million were on probation; 1.1 million were in state or federal prison; 704,700 adults were on parole; and 2,747 adults were held in military confinement. Between 1986 and 1996, the average annual rate increase for the jail population was 6.5 percent; for prisons, 8.4 percent; parolees, 8 percent; and for the probation population, 4.2 percent. Of the 1.6 million adults in local jail or prison, 821,900 were white, and 773,900 were black. Of the 3.9 million adults on probation or parole, 2.5 million were white and 1.3 million were black.

**12. Crime -- Police Misconduct:** Next week, the Attorney General is planning to give a speech at the National Press Club to discuss issues of police misconduct. As you know, she has convened meetings with leaders from the civil rights and law enforcement communities in response to your radio address last month. In addition, the Customs Service this week announced an independent commission to review its passenger processing policies and procedures. In recent months, there have been an increasing number of passenger complaints regarding the treatment they received during a Customs search, and there have been several lawsuits filed by passengers alleging personal searches based on racial profiling.

## DEPARTMENT UPDATES

March 30, 1999

1. **Trustees' Report Event**

They will want a quick update

2. **Patients Bill of Rights Event**

scheduled for 4/9 DeLauro, Palone, Kennedy, Daschle,  
no real news on this front

3. **Crime Bill**

HHS provisions; we have consensus on FDA only.

4. **OASIS**

Newspaper story is going to run tomorrow, but HHS thinks we're in good shape.

5. **Oregon Assisted Suicide Issue**

Bliley is accusing HCFA of paying for assisted suicide in Oregon; ask Bonnie for an update.

flw mtg on assisted suicide  
counselors etc. — ?

CHRS  
NAMD process  
paper for you

Organ donation  
event

Kick Butts Day?  
4/14 or 4/16

therapy cap issue —

we opposed the cap & doesn't  
have anything to do

w/ nursing homes

hottest provider issues —  
how much cost

sense of the S.  
home h  
SNF  
therapy  
cap.

THE PRESIDENT HAS SEEN

11-13-99

NOV 12 4:41

THE WHITE HOUSE

WASHINGTON

November 12, 1999

copied  
Reed  
Liu  
Podesta

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Eric Liu

SUBJECT: DPC Weekly Report

**1. Education – Teachers and Class Size Agreement.** We wanted to provide details on the teacher quality provisions of Wednesday's agreement to dedicate \$1.3 billion for class size reduction. Under the deal, teachers hired through the program must be certified in their state or have completed an alternative route to certification, must have a baccalaureate degree, and must know the subjects they are teaching and demonstrate the skills to teach them. Districts may spend up to 25 percent of the funds (up from 15 percent last year) on training existing teachers, testing new teachers, or providing high-quality professional development. Districts with high levels of uncertified elementary school teachers also may seek a state waiver in some circumstances to use additional funds to help those teachers meet certification standards in time for the 2001-02 school year. The deal preserves existing provisions to target spending on high-poverty communities.

**2. Health Care – Medicare Provider Reimbursement.** As you know, we reached tentative agreement with Congress Wednesday on provider "give-back" legislation. The agreement includes about \$11 billion over five years for hospitals, nursing homes, home health agencies, community health centers and other providers. Two key improvements are worth noting: an out-of-pocket limit on hospital outpatient cost-sharing, equal to the current inpatient limit of \$780; and, for beneficiaries needing immunosuppressive drugs after an organ transplant, an extension of coverage for six months beyond the current three-year provision. The agreement is contingent upon our approval of final statutory and administrative language.

**3. Health Care – Jeffords-Kennedy Update.** The funding impasse over this bill continues. Some Republicans, fearing that they may be blamed if the bill fails, are attacking the Administration for not providing additional offsets. In fact, we have proposed numerous offsets that Republicans have rejected. We have been constrained too by a unanimous consent agreement in the Senate prohibiting tax offsets, as well as by a message from Republican leaders that Medicare and Medicaid offsets are unacceptable. There is such frustration with the GOP stance that some members of the disability community, with Sen. Kennedy's blessing, have called for a veto. We will make one last push over the next week to finance and fix this bill.

**4. Health Care – Organ Allocation.** On Wednesday, we reached agreement with Congress permitting the release of the long-awaited regulation requiring organs to be distributed

My -  
other leaders  
+ help

11-13-99

on a "sickest first" basis. The regulation, which has been stalled for over two years, could save hundreds of lives a year. It will be implemented 42 days after enactment of the Labor-HHS bill.

**5. Education – Kiryas Joel Village.** You asked about efforts to help the Hasidic Jewish community of Kiryas Joel, New York establish a special public school district for disabled students. Because this case centers on the Establishment Clause rather than the Individuals With Disabilities in Education Act, it would be difficult for us to assist the village. The New York high court in recent years has struck down a number of state laws authorizing the village to form a special district; with each rebuff, the legislature has passed a new law re-crafted to pass constitutional muster. Under the latest such law, the village has already established a special school. Although another round of appeals is likely, there is bipartisan determination among state political leaders to find a solution satisfactory to the village.

**6. Education/Crime – Bankruptcy Bill Amendment.** This week, the Senate passed an amendment to the Senate bankruptcy bill that contains objectionable language on both education and drugs. The Hatch amendment, which passed 50-49, would establish vouchers for students in Title I schools who are victims of violent or drug-related crimes. In addition, it would narrow the disparity in penalties for crack and powder cocaine trafficking by sharply raising penalties for the latter. The amendment changes the threshold for mandatory cocaine penalties from 500 grams to 50 grams (5 year penalty) and from 5 kilograms to 500 grams (10 years). Our proposal, by contrast, would both increase powder cocaine penalties and modestly lower crack penalties. It is unclear whether there will be further action on the bankruptcy bill this session.

**7. Crime – COPS Funding.** As you know, this week we reached with Congress to provide over \$900 million of the Administration's \$1.27 billion request for the 21st Century Policing Initiative. Of the \$900 million provided, \$300 million is an unspent carry-over balance from FY 1999. The agreement will fully fund the first installment of our plan to hire and redeploy up to 50,000 more police officers over the next five years. In addition, the agreement provides \$230 million for law enforcement technology and \$10 million for community prosecutors (our budget requested \$350 million and \$200 million, respectively).

**8. Welfare – Fathers and Welfare-to-Work.** On Wednesday, the House passed the Fathers Count Act by a broad bipartisan margin. The bill, co-sponsored by Reps. Johnson and Cardin, establishes new grants to promote responsible fatherhood, makes Welfare-to-Work eligibility changes that we had proposed to help states and communities better serve low-income fathers and long-term welfare recipients with existing funds, and revises penalties for states that have not yet complied with certain child support requirements. It does not contain additional funding for Welfare-to-Work for FY 2000. While the Senate will not act on the broader fatherhood issues this year, we are pushing for enactment of the Welfare-to-Work eligibility changes and the child support provisions before Congress adjourns.

**9. Welfare – Research on People Leaving Welfare.** Eight of the 13 states and counties that received HHS funding to study the impact of welfare reform have released interim reports on families who left welfare in late 1996 or early 1997. The employment, earnings, and recidivism findings from these varied sites are generally consistent with other "leavers studies." Between 50 and 65 percent of former welfare recipients were found to be working immediately

## THE PRESIDENT HAS SEEN

11-13-99

after leaving welfare. Between 65 and 75 percent were employed at some point during the year after exit, with average earnings in the quarter after exit ranging from \$2,185 to \$3,868 (the equivalent of \$5.65-\$10.00 an hour assuming a 30-hour work week throughout the period). In all sites, earnings for these former recipients steadily rose throughout the year following exit. However, between 5 and 20 percent of leavers were receiving welfare again within three months, with 24 to 35 percent receiving welfare at some point during the year after exit.

Six of the HHS-funded studies also tracked Medicaid and food stamps enrollment of families leaving welfare. Medicaid participation varied greatly, ranging from 25 percent to 76 percent in the first quarter after exit, with a substantially higher percentage of leavers enrolled in Medicaid at some point during the year after exit. Enrollment generally declined over the year and was slightly higher for children than for adults. Food stamps enrollment in the first quarter after exit ranged from 9 percent to 57 percent, again with a much higher percentage receiving food stamps at some point during the year. The low-end outlier was San Mateo County, which may reflect higher welfare grant levels in California, where families are earning more when they leave welfare and are therefore less likely to be eligible for food stamps and Medicaid.

**10. Child Support – Medical Support Orders.** On Monday, HHS will announce a proposed regulation to make it easier for children to get health insurance coverage through their non-custodial parents. The regulation creates a standard medical support form to enforce child support agreements that require non-custodial parents to provide for their children's health care needs. The regulation will be released with a statement from you stressing the Administration's commitment to child support enforcement and better health insurance coverage for children.



Lab 1 HHS

[Baird Teller and Newby] L:

Handwritten note in a box: "Handwritten note"

Grandeur - Don't put much

DEPARTMENT UPDATES

April 13, 1999

Federal preemption

1. Medicare Update

Lab 1 HHS

2. VP Long Term Care Event 4/19

Handwritten notes: "D.O.D", "Baltman", "OPM + mental security"

3. VP Kick Butts Day 4/14

PL in 24h PENSER (DOD) pilot

4. CHIP data

We are supposed to meet with them at the end of the day to review the enrollment data that they have collected. Can you please ask them to send us paper on this by COB?

(I have already talked to HCFA about this and they say that the paper will be ready -- they are worried that they will not be able to get it past ASPA's clearance process today unless you make a special point of asking for it.)

5. Outstanding provisions in the Crime Bill

Handwritten note: "OMB - Bioterrorism"

Please ask them where we are in terms of a process for resolving the emergency scheduling issue (since HHS and DOJ has decided there is no possibility for consensus) and if they are engaged in the process for settling the bioterrorism proposal on an agency level (OMB is brokering this compromise). They will also want to know about the status of the nursing home proposal.

Handwritten note: "Tom / Don't Breathe"

6. Taxes and Donations

They are briefing the Secretary on Thursday and plan to send out letters next week.

Handwritten note: "Grubbs"

Handwritten list: "HHS: Mike, New, in, Chas, Usher, L"

Handwritten list: "Liz, Betsy, Anne"

Handwritten note: "Helen Baker"



Handwritten note: "Bonnie"

Handwritten text: "can you fill me in on this"

Handwritten list: "Lab 1: Gaudin, OPM, Troncy, OMB"

Handwritten notes in a box: "Pick on these GPs", "Post-Active", "Adding to multiplier"

# Dept Updates

NAMD

Mike

Liz

Betsy

Rich

Leslie, etc.

Ed

## PROR Update

SENATE Finance is working on a bill but nothing is really moving forward  
hearing on 4/20 on internal, external review on privacy  
Genetic Discrimination mtg →  
Kennedy spoke to HHS about being available to unveil the bill next week (DOL as well.)

HOUSE Commerce is scheduling field hearings. Chris wants to work w/ Norwood & Ganske to file a discharge petition. He will talk to Larry about it.

## PRIVACY

Leahy hearing on 2<sup>th</sup> hearing on this in late May moving to research & presumption next wk  
testimony on law enforcement

HHS has not been invited. Lehey  
he wants Fed preemption of state law  
w/ some carve outs (CJ says they  
are ambiguous.) 18 months?  
CJ says bad provider rxn  
no self insured / insured distinction  
in privacy bill — different  
framework for PBR, where he  
makes distinction.

RICH to dig on privacy issue / Daschee  
action?

LTC

what happened @ hearing —  
no new issues came out. TDD  
was neutral as to whether they  
would like to be included —  
late this month early May  
markup is not  
until latter part of May  
Morella & our stuff.  
hearing in Florida on 4/24

DOJ CRIME BILL

Janet Reno & Harriet Raab to  
talk today @ 4 pm.

EDITORIAL BOARD ARTICLE ON  
GAO report

(2)

## HFA Hearings

Appeals in process next week  
Senate Budget on Medicare

4/22  
Kennedy's on to talk  
about academic  
health centers on  
Thursday.

lobbyists →  
more \$ into SHF

therapy caps  
non therapy ancillaries  
arbitrary \$5 →

4-12-99

THE WHITE HOUSE

WASHINGTON

April 9, 1999

99 APR 9 PM 5:24  
99 APR 9 PM 5:24

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

copied  
Reed  
Kagan  
Podesta

SUBJECT: DPC Weekly Report

**1. Education -- Ed-Flex:** Hill staff met during the recess to hammer out differences between the Senate and House bills. On Monday, Secretary Riley will send conferees a letter threatening a veto over the Senate Republican provision to weaken class size. On Tuesday, Senate Democrats will release a letter with at least 35 signatures supporting that veto threat. We expect a quick conference and rapid action in both houses if the bill is acceptable.

**2. Education -- ESEA:** Despite extensive consultation with us, civil rights groups continue to oppose an ESEA bill that includes the Administration's position on social promotions. We and the Education Department have held a series of meetings with civil rights advocates including Hugh Price, Wade Henderson, Bill Taylor, and others in an unsuccessful effort to find a compromise. Education has suggested that we consider making one of several possible concessions, such as phasing in the requirement to end social promotions over a longer period -- but even that will not be enough to win the groups' support. Another option would be to split off the social promotion provisions in a separate bill. Senator Kennedy sympathizes with our predicament but would like to avoid a war with the civil rights community. We have asked his staff to take part in our continuing meetings with the groups, in the hope that we can at least secure Senator Kennedy's support, even if we fail to win over the civil rights community. You are tentatively scheduled to announce the ESEA bill on April 28.

**3. Education -- 1994 ESEA Report:** On Friday, the Department of Education released a congressionally mandated report evaluating the effectiveness of programs included in the 1994 ESEA reauthorization. The report submits that states have made progress in the development of academic standards, but that more accountability in federal education programs is needed -- along the lines of what you have called for in ESEA.

**4. Education -- California Class Size Waiver:** Last week Vice President Gore announced approval of a waiver sought by Gov. Davis to permit California school districts to use federal class size funding to reduce class size and improve teacher quality in any grade. The decision was based on California's progress in reducing class size in the early grades to 20 and the lack of additional school facilities and qualified teachers needed to accommodate smaller classes in those grades. Governor Davis will encourage California districts to use this funding

to reduce class size in 10th grade reading and math classes to help prepare students for a new high school exit exam that he signed into law.

**5. Health Care -- Update on Aetna's Affordable Choice:** On May 5, the Aetna Insurance Company is scheduled to hold an event to unveil a low-cost health plan option targeted to small businesses and their employees who cannot afford traditional health insurance. The plan is much less expensive than traditional insurance options because it limits its health coverage to capped, front-end benefits that provide front loaded coverage for hospital stays -- \$750 a day for the first three days, \$350 for days four through 10, and declining to \$100 a day after 10 days -- and up to eight physician's visits with a \$50 copayment. The plan allows enrollees to access a price discount on prescription drugs, which Aetna has extracted from the pharmaceutical industry in its negotiations on behalf of its other health plans. Past attempts to provide affordable, bare-bones coverage for this population have proven unsuccessful, primarily because employers and employees have not been attracted to coverage designed only to protect against catastrophic expenses. The Aetna plan takes the opposite approach. Even though these plans would not qualify as traditional insurance and are designed to avoid state mandated benefits, the Aetna plan will be endorsed by the NFIB and possibly the Chamber of Commerce. We are informed that a number of members of Congress (e.g. Representative Thomas and Senators Frist and Breaux) will endorse this offering and participate in the event. Eli Segal is also very supportive. Although the plan might help expand coverage somewhat, our traditional base Democrats, many provider groups, and consumer advocates are unlikely to be impressed with this coverage option. They will argue that the coverage provided is virtually meaningless, provides a false sense of security (since the average hospital cost per day is over \$1000 and the average length of stay is 7 days) and that the Kennedy-Kassenbaum insurance reforms you signed into law would not apply to this product.

**6. Health Care -- Medicare Prescription Drug Update:** ~~Next week, Senator Kennedy and Senator Rockefeller are tentatively scheduled to introduce legislation to provide~~ for a Medicare prescription drug benefit. As currently designed, in return for a \$10 to \$20 premium -- which would be added to the Medicare Part B premiums that provides for physician and other services -- beneficiaries would be reimbursed for 80 percent of drug costs after they paid a \$100 deductible. As currently designed, this benefit would be capped at \$1200 -- meaning that beneficiaries would not get any coverage after they had received \$1200 worth of prescription drugs -- and is projected to cost between \$50 and \$75 billion over 5 years (\$110 billion to \$140 billion over 10 years). ~~The proposal, which is at the low end of the more modestly, front loaded benefits that we have been developing for your consideration,~~ would require beneficiaries to pay catastrophic expenses out of pocket. Most health policy experts would be critical of the capped, front-loaded benefit because it leaves the sickest patients most vulnerable to excessive drug costs. However, this benefit is somewhat more generous than currently available in Medigap plans (particularly when one takes into account the lower premium) and the front-loaded nature of the program might be more popular than a back-end coverage policy. Because Senator Kennedy is introducing this legislation, it is more likely to be accepted as a substantial benefit than if we had produced the same package. Interestingly, Senators Moynihan, Gramm, and Bryant are in the process of developing a similar plan. While it clearly might be better strategically for Senator Moynihan to unveil his plan first, it is unlikely that he will be ready to

do so within the next two weeks. It is even less likely that Senator Kennedy can be convinced to delay the introduction of his bill until after Senator Moynihan introduces his. Notably, the Senate advocates of a drug benefit are unwilling -- if not completely unable -- to propose traditional Medicare provider and/or beneficiary savings that are significant enough to pay for the benefit. As a consequence, both Senator Kennedy and Senator Moynihan are likely to highlight the desirability of tobacco taxes and/or some use of the surplus to help finance their proposal. We are in the process of developing a number of options for your consideration, which we hope to review with you in short order.

**7. Tobacco -- Medicare Lawsuit:** This week the Justice Department entered into an agreement with the law firm of Robins, Kaplan, Miller & Ciresi, from Minneapolis to serve as consultants on the federal tobacco litigation. This firm represented the State of Minnesota and Blue Cross-Blue Shield in their lawsuit against the tobacco industry. The agreement is for the firm to advise and assist the Department's litigation team on a reduced-rate billing basis of \$75 per hour through June 30, 1999. The contract does not contemplate payment of any contingency fee related to potential recoveries. Jim Cramer, a leading Wall Street analyst, wrote that the hire shows "Justice means business."

**8. Tobacco -- Kick Butts Day:** The fourth annual Kick Butts Day is scheduled for April 14. The Vice President will participate in an event in Akron, Ohio where he will release a new HHS report on kids and tobacco. The report indicates that Marlboro (Philip Morris), Newport (Lorillard), and Camel (RJR/Nabisco) are the cigarette brands used most among teens who are current smokers. The dominant brand is Marlboro, which is preferred by about 60 percent of youth smokers and is as popular among girls as among boys.

**9. Community Empowerment -- Low Income Housing Tax Credit:** Shortly after coming back from recess, Senators Graham and Mack of Florida plan to introduce legislation to expand the Low Income Housing Tax Credit (LIHTC). Their bill will be very closely modeled on your proposal. In the House, Representative Nancy Johnson's bipartisan LIHTC bill has amassed 70 cosponsors.

**10. Welfare -- GW Study on Diversion Policies:** We expect George Washington University will issue the second of its reports funded by HHS which provides an inventory of state approaches and examines practices in five cities -- Atlanta, Annapolis, Kansas City, Missoula, and Cincinnati. The study finds that the most common form of diversion requires applicants for welfare to participate in a job search before they can receive cash assistance, and that the diversion payments offered by nearly half the states to help families meet short-term needs in lieu of welfare are being used on a limited basis. The study also notes that diversion has the potential to reduce initial access to Medicaid, especially as families bypass welfare entirely or go to work so quickly that they may not qualify for Medicaid under most states' current eligibility criteria. The study highlights the importance of our Medicaid outreach efforts and our initiatives to encourage states to take advantage of the flexibility they have under current law to expand Medicaid eligibility for low-income working families. HHS plans to award research

funds to several states or large counties to track what happens to families who are diverted from the caseload, including the extent to which they continue to participate in Medicaid and other programs to support working families.

**11. Crime -- 1996 Correctional Population:** On Friday, the Justice Department's Bureau of Justice Statistics released a report showing that an estimated 5.5 million adults were under some form of criminal justice supervision in 1996 -- comprising about 2.5 percent of all adults, up from 1.6 percent in 1985. Of the total 5.5 million adults: 510,000 were in jail; 3.2 million were on probation; 1.1 million were in state or federal prison; 704,700 adults were on parole; and 2,747 adults were held in military confinement. Between 1986 and 1996, the average annual rate increase for the jail population was 6.5 percent; for prisons, 8.4 percent; parolees, 8 percent; and for the probation population, 4.2 percent. Of the 1.6 million adults in local jail or prison, 821,900 were white, and 773,900 were black. Of the 3.9 million adults on probation or parole, 2.5 million were white and 1.3 million were black.

**12. Crime -- Police Misconduct:** Next week, the Attorney General is planning to give a speech at the National Press Club to discuss issues of police misconduct. As you know, she has convened meetings with leaders from the civil rights and law enforcement communities in response to your radio address last month. In addition, the Customs Service this week announced an independent commission to review its passenger processing policies and procedures. In recent months, there have been an increasing number of passenger complaints regarding the treatment they received during a Customs search, and there have been several lawsuits filed by passengers alleging personal searches based on racial profiling.

7-12-99

BUSINESS, CONSUMER, AND REGIONAL ROUNDUP

**BadgerCare Begins in Wisconsin.** On July 1, Wisconsin began a statewide program of no- or low-cost health insurance designed to fill the gap between Medicaid and private insurance and to help families make the transition from welfare to work. The program, called BadgerCare, provides health insurance for children and parents in uninsured families with income below 185 percent of the poverty line. Once enrolled, families may remain in the program until family income exceeds 200 percent of poverty. Families with income above 150 percent of poverty pay a monthly premium of 3.5 percent of family income. BadgerCare provides identical benefits to Medicaid and was implemented through waivers of Medicaid law and by using flexibility under the Child Health Insurance Program (CHIP). The State's current Medicaid entitlement will be maintained. Wisconsin is among a few states with health insurance programs designed to cover all the members of low-income families.

*BadgerCare  
can we do more  
of this?*

**Quantifying the Benefits of Reduced Gun Violence.** A new study estimates that the public would be willing to pay \$23.8 billion to reduce gun violence by 30 percent, or \$750,000 per injury. The value of a statistical life implied by the studies' results—between \$4 and \$6.25 million—is consistent with estimates derived using other methods. The new study is based on data from a national survey in which respondents were asked directly how much they would be willing to pay in extra taxes for a program that reduced gun injuries by 30 percent. This methodology differs from most previous studies of the benefits of reducing gun violence that multiplied the annual number of gunshot injuries by some estimate of the cost per injury or that used differences in housing prices (across neighborhoods with different crime rates) to impute the costs of crime.

*copied  
Reed  
Spierling  
Podesta*

**Estimating the Impact of the Social Security Earnings Test.** Eliminating the Social Security earnings test would substantially boost the labor supply of older male workers, according to a recent study. The study uses the "natural experiment" created by three changes in the earnings test rules between 1978 and 1990 to estimate its results. The study finds that working older males bunch in substantial numbers at and just below the earnings exempt amount, and that this bunching reacts directly to the changes in the earnings test rules. Eliminating the test, it estimates, would raise average hours worked by about 5 percent for those currently at or above the exempt amount. Moreover, the short-run fiscal cost associated with workers' taking benefits earlier will be offset in the future because their annual benefits will be lower than if they had waited. The labor supply effects on older men who have withdrawn from the labor force are not addressed in the study.

THE WHITE HOUSE  
WASHINGTON

13-01 1-12-00

8-10-99

August 6, 1999

copied  
Reed  
Liu  
Podesta

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Eric Liu

SUBJECT: DPC Weekly Report

**1. Health Care – Patients Bill of Rights:** On Thursday, Reps. Norwood, Ganske, and Dingell reached agreement on a strong, bipartisan bill that you could happily sign. The bill covers all Americans in all plans; provides real patient protections which the Senate bill does not (including access to specialists, continuity of care, and access to emergency care where and when the need arises); and provides a meaningful appeals process and the right to sue in state court. (The bill severely limits punitive damage awards to prevent frivolous lawsuits.) Democrats are united behind the bill, and 21 Republicans have already signed on as cosponsors. In a panicked attempt to win back some of those Republicans, Speaker Hastert agreed Friday to bring a compromise Republican version, sponsored by Rep. Coburn, to the floor this fall. The Republican leadership has asked the managed care lobby to advertise heavily over the recess. But unless the industry can change the dynamic, many Republicans are likely to put even more pressure on the leadership to produce a bill this session – especially if no deal is reached on tax cuts and they face the prospect of going home with no major achievements for the year.

**2. Health Care – Medicare Update:** After months of opposing a universal prescription drug benefit, some key Republicans are trying to develop their own alternative version. Senator Roth and Rep. Thomas (along with Senator Breaux) are attempting to design a catastrophic coverage benefit that is likely to have a deductible and to require higher income beneficiaries to pay more. Senators Snowe and Wyden just introduced a prescription drug benefit bill that would provide larger subsidies for lower income populations and smaller subsidies for higher income beneficiaries to purchase private Medigap-type drug coverage. We are reviewing the policy but believe that it would fall short of providing coverage to all in need of the benefit and would likely be administratively and structurally flawed. This week, we distributed background information on your Medicare plan to every Democratic member for the August recess.

**3. Health Care – Medical Records Privacy:** Last week, the House passed a Democratic motion to instruct conferees on the financial modernization bill to drop an extremely weak medical privacy protection provision that had sneaked into the House version. The provision would have undermined our current efforts to protect medical records privacy by preempting stronger state medical privacy laws, allowing personal medical data to be used by outside marketers as part of "marketing research," and permitting companies that receive sensitive medical data from insurers to use and sell the data without any Federal restrictions. Several members of Congress are still working on competing approaches to protect the privacy of medical records, but no consensus is in sight. We are pressing HHS to have its privacy regulation, which covers electronic records, ready for you to release later this fall.

**4. Education – ESEA Update:** On Tuesday, nine Senators led by Judd Gregg introduced a teacher quality bill similar to the one the House passed last month. The bill has a few similarities to our teacher quality plan in ESEA, including a focus on sustained, high-quality professional development and an effort to improve alternative routes to teacher certification. However, like the House bill, the Senate bill does not provide a separate funding stream for class size reduction, does not target the early grades, and makes it easy for districts to opt out of class size reduction altogether. The Senate is unlikely to take up the bill, because Senator Jeffords continues to insist on reauthorizing ESEA in an omnibus bill. Several Democrats have agreed to push for most of our ESEA package, although we are still looking for someone to champion our approach in two areas: (1) ending social promotion and (2) limiting the use of paraprofessionals in the classroom. Senators Kennedy, Feinstein, and Schumer are the best prospects.

**5. Immigration – Parity Legislation:** This week, we sent Congress legislation on Central American and Haitian parity relief. The bill was introduced with solid bipartisan support by Representatives Gutierrez, Chris Smith, and 26 cosponsors.

**6. Livability – Better America Bonds:** This week, Senators Baucus and Hatch introduced your Better America Bonds legislation. The proposal was also included in both the House and the Senate Democratic tax proposals.

**7. Welfare – Faith-Based Policies:** You asked for an analysis of recent faith-based proposals, and for ideas of what more we could do. We are working on a variety of new ideas (tax and non-tax), and will send you more detailed options shortly. In the meantime, you might be interested in the attached summary of how recent proposals compare to current law.

*Must be  
the same  
as before*

12-8-99

## THE WHITE HOUSE

WASHINGTON

December 2, 1999

## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Eric Liu

SUBJECT: DPC Weekly Report

Copied

Reed

Liu

Podesta

Burkhardt

(for reply (pg 2))

500-10109

*[Handwritten: Done]*

**1. Crime – Possible HUD Involvement in Gun Litigation.** As you may recall, for some time now a coalition of public housing authorities, working with HUD, has been contemplating a class action lawsuit against firearms manufacturers to recoup the costs of gun violence borne by their residents. Working with Justice, Treasury and White House Counsel, we are now preparing a strategy to make the threat of this lawsuit public, so that we can spur along the settlement talks between the manufacturers and an array of plaintiff cities and states. This disclosure will be controversial – a clear sign of the federal government's willingness to litigate against the industry, it will fuel the debate over "the era of big lawsuits" – but it will enable us to push the manufacturers directly for meaningful remedies and to shape the ultimate outcome of the negotiations. We will provide you a more detailed briefing as we set this strategy in motion. An aggressive effort to pursue a settlement with the gun industry also will give us an opportunity to highlight Congress's failure to enact gun legislation.

*[Handwritten: N]*

**2. Health Care – New CHIP Enrollment Numbers.** The latest figures (still preliminary and not yet public) show that nearly 2 million children are now enrolled in CHIP – twice the number we reported last summer. There are a number of reasons for this dramatic improvement, including implementation of state programs, back-to-school outreach efforts, and better reporting. We do not yet know, however, how many additional children have been enrolled in Medicaid, and given last year's decline in Medicaid-covered children, we still have much work to do. We are now reviewing a number of options for more aggressive school-based enrollment. For the FY 2001 budget development process, we also are looking at variants of the Vice President's policy proposal to cover the parents of children enrolled in Medicaid or CHIP.

*[Handwritten: are having to be enforcing this]*

**3. Health Care – ARKids Update.** As you know, HHS is reviewing whether we may legally authorize parents to enroll their Medicaid-eligible children in ARKids. We expect a determination shortly. The Congressional delegation is split, with Democrats raising concerns about the Governor's request and Republicans generally supporting it. The Democrats' position has been influenced by recent reports indicating that parents of Medicaid-eligible children enrolled in ARKids had not been not informed by the state of their option to receive more generous Medicaid coverage. Amy Rossi, while concerned that the state refuses to drop its assets test requirement, remains generally supportive of the choice concept.

12.8.99

✓ **4. Health Care – Developments on Genetic Research.** On Wednesday, the National Human Genome Project announced that it had decoded the first complete molecular script for a single human chromosome. This development and others have heightened interest in both the promise and the perils of advances in this area. We are now developing a package of actions you could take to guard against the perils. First, we are preparing a joint proclamation with the British government that genetic research findings should, to the extent possible, be in the public domain and freely available to researchers. Second, we are working with the Patent and Trademark Office to develop new intellectual property standards for the patenting and licensing of genetic material, so that patents are not issued prematurely or without full consideration of the implications for health care research and development. Finally, we are re-opening our review of the viability of an executive order prohibiting the use of genetic information by Federal employers in hiring and promotion decisions. We had earlier considered such a ban on genetic discrimination, but a number of agencies, including State, CIA, Defense, and Peace Corps, sought exemptions. We will seek now to address their concerns and move forward on this.

9 **5. Health Care – Patient Safety Event.** Next week, you are scheduled to unveil an executive order directing federal agencies to develop an action plan to ensure patient safety through the prevention of medical errors. You will also announce new investments in research programs to improve health care quality; highlight new authority for the Agency for Health Care Policy and Research to explore issues related to medical errors; and direct HCFA to integrate patient safety initiatives into Medicare.

✓ **6. Education – Lieberman Education Bill.** Senator Lieberman and five other Democrats (Landrieu, Kohl, Bayh, Lincoln, and Wyden) have announced their intention to introduce a New Democratic ESEA reauthorization bill next session. Their proposal consolidates ESEA funding into four targeted and formula-driven grant programs for compensatory education, professional development, limited-English proficient (LEP) students, and innovative strategies. The bill includes a public school choice title encompassing charter schools and other choice strategies; it does not contain private school vouchers. The bill also contains an accountability title that would penalize states that fail to improve student achievement and fix failing schools.

✓ **7. Welfare – Substance Abuse Treatment Grants.** We thought you would be pleased to know of a little-noticed budget victory on substance abuse: with significant support from the Congressional Black Caucus, our budget negotiators more than doubled funding for SAMHSA's Targeted Capacity Expansion Grants. These grants help communities address emerging substance abuse issues and unmet treatment needs, including HIV/AIDS, women moving from welfare to work, and substance abuse among Native Americans. The FY 1999 level for this program was \$55 million, and the final budget agreement provided \$114 million.

✓ **18. Child Support – South Carolina.** You recently asked us to look into concerns raised by Gov. Hodges of South Carolina regarding his state's child support program. Under the 1988 Family Support Act, states must put in place a statewide child support computer system to make collections more efficient. Because South Carolina and a handful of other states have had difficulty completing these systems, last year we proposed and Congress enacted a provision to adjust the penalties for noncompliance: rather than lose 100 percent of federal child support payments, as originally mandated, states missing the deadline would lose only 4 percent of funds

THE PRESIDENT HAS SEEN

12-8-99

the first year, with penalties rising in subsequent years. States choosing this alternative scheme would also need to develop a compliance plan.

South Carolina chose to appeal its original penalty rather than accept the alternative penalty, and the matter is now under review at HHS. Unfortunately, HHS has little discretionary authority to provide relief to the state. As Secretary Shalala has told the Governor, the law does not allow for the "good faith" exception he is seeking. We believe South Carolina's best option is the alternative scheme. By mounting an appeal it is unlikely to win, the state risks triggering the 100 percent penalty and could lose \$21.5 million this year. Secretary Shalala has offered to help the state develop a corrective compliance plan so it can qualify for the alternative penalty.

*Ye  
Doan  
Pg 10*

**9. Children and Families – Foster Care Independence Act of 1999.** On November 19, the Senate passed the Foster Care Independence Act of 1999. An identical bill was also passed by the House the week before, clearing the legislation for your signature. As you know, the bill is largely consistent with your FY 2000 budget request to provide additional support to older children in the foster care system. The Act doubles funding for the Independent Living program to \$140 million per year (and renames it in Senator Chafee's honor), allowing educational, vocational and job training services for more of the 20,000 youth who age out of foster care each year. The Act also provides Medicaid for these youth until they are 21, and provides additional funds for adoption incentive grants, enabling states to receive the full amount of the bonuses they earned for increasing the number of adoptions from the public foster care system. We are scheduling a date when both you and the First Lady can participate in a bill signing ceremony.

3-13-00

## THE WHITE HOUSE

WASHINGTON

March 10, 2000

copied  
Reed  
Liu  
Podesta

## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Eric Liu

SUBJECT: DPC Weekly Report

**1. Crime – Juvenile Crime Conference.** In a letter sent Thursday, Representative Conyers asked Representative Hyde to help press Senator Hatch for a meeting of the conferees within two weeks. Conyers added that if a conference meeting could be scheduled, he would work in good faith with Hyde to develop a “middle ground” on gun provisions. Conyers specifically cited your idea – allowing the deposit of guns with local police departments in the few instances where gun show background checks take longer than 24 hours – as a measure he would be willing to consider in the spirit of compromise. As of Friday afternoon, Hyde had not responded. Meanwhile, the NRA on Thursday sent out alerts to members of Congress urging them to oppose the Lofgren motion to instruct conferees on the juvenile crime bill. The Lofgren motion merely calls on conferees to meet in the next two weeks, and makes no explicit mention of gun provisions.

**2. Crime – HUD Gun Buyback.** On Thursday, the House Appropriations Committee voted on its supplemental appropriations bill. As you know, the bill originally contained language to rescind funding for HUD’s gun buyback program. At the last minute, Subcommittee Chairman Walsh offered an amendment to strike the rescission language. In doing so, however, he argued that rescission language was not needed since HUD does not actually have legal authority to spend Drug Elimination Grant money on buybacks. He further threatened that if money were obligated prior to authorization of a buyback program, he would refer the issue to the GAO and would initiate appropriate action. HUD maintains that Congress gave it clear authority to make grants to eliminate drug-related and *violent* crime. To date, about 80 public housing authorities – including Flint and Memphis – have committed to conducting buybacks with HUD funding.

**3. Education – ESEA Action.** The Senate Health, Labor, Education, and Pensions Committee passed out an ESEA bill this week, with all Democrats voting against it. The bill includes a provision that would turn Title I into a block grant. Democratic amendments on class size, teacher quality, after-school, school modernization, public school choice, and accountability were defeated. Meanwhile, Senator Lieberman and seven New Democratic colleagues introduced their own ESEA proposal this week. The Lieberman bill includes accountability measures and a class size authorization similar to our bill. It consolidates a number of programs into broad performance-based grants, including some key administration priorities like after-school and education technology. At our urging, Lieberman included minimum percentages that

must be spent on those priorities, but he still consolidates more than we would like. Lieberman plans to offer his bill as an amendment during floor consideration of ESEA, expected early next month. We expect the floor debate on the Republican ESEA bill to divide sharply along partisan lines.

4. **Health Care – Medicare Coverage of Augmentative Communication Devices.**

After receiving a letter from Stephen Hawking, you asked for an update on HCFA's review of the feasibility of providing Medicare reimbursement for augmentative communication devices. On April 1, HCFA will announce its decision to extend Medicare coverage for these devices to beneficiaries with severe speech language or communication disorders. We will draft a response at the appropriate time advising Hawking of this good news and thanking him for his guidance.

5. **Health Care – Alleged Sales of Fetal Tissue.** You inquired about recent reports alleging a widespread black market in fetal tissue. If true, the allegations on "20/20" and in letters from Kate Britton are clearly illegal. That said, the two primary witnesses cited by "20/20" proved at a congressional hearing Thursday to be unreliable. The first refused to testify altogether; the second recanted virtually all of his initial charges. Nonetheless, NIH this week contacted all 150 institutions currently receiving federal funds for fetal tissue research to reiterate their legal obligations regarding the use and acquisition of fetal tissue. NIH has also begun a series of random record audits, and we will work with them to monitor this issue closely.

6. **Health Care – CBO Scoring of Administration's Drug Benefit.** On Thursday, CBO released its budget estimates, with Medicare costs and savings figures quite comparable to those of OMB/HCFA. In fact, the prescription drug benefit was scored at \$10 billion less than the number estimated by OMB/HCFA (\$160 billion versus \$150 billion). We had feared a wide gap, and this removes a major barrier to consensus. It is important to note, however, that CBO's future projections of a benefit for catastrophic drug expenses may significantly exceed ours. CBO is reportedly concerned that an open-ended benefit for catastrophic drug expenses might provide too little incentive for pharmaceutical companies to constrain the price of their products.

7. **Health Care – Medicare and Finance Committee.** We have heard reports that Chairman Roth is contemplating a universal, subsidized Medicare drug benefit in the context of a down payment on reform. The benefit would be income-related, effectively reducing the subsidy for higher-income individuals. If true, this could lay the foundation for eventual agreement with Committee Democrats. The Committee now plans on marking up a reform initiative in early May after it completes hearings. We are scheduled to transmit our legislative language next week.

8. **Health Care – Response to New York Times Article on Prescription Drugs.** Earlier this week, the New York Times inaccurately suggested that a series of studies published in Health Affairs revealed the shortcomings of our prescription drug proposal. The findings include: that low-income beneficiaries would be helped disproportionately by a drug benefit; that some seniors experience catastrophic drug expenses and need extra protections; and that some private health plans provide coverage to Medicare beneficiaries that meets or exceeds benefits provided by our plan. We have responded simply by pointing out that our plan provides additional protections to low-income beneficiaries; includes \$35 billion to add coverage for Medicare beneficiaries with catastrophic drug costs; and makes the new benefit optional so that those with more generous plan can stay in them.

✓ 9. **Health Care – Update on Minnesota's CHIP Waiver Request.** You asked for an update on Minnesota's CHIP waiver request, described by Governor Ventura in a recent letter. By the end of the month, Minnesota plans to submit a draft waiver proposal to exceed the 10 percent cap on CHIP administrative expenditures for costs associated with identifying and enrolling uninsured children. We have historically opposed such requests. At the same time, a number of states have not spent their full CHIP coverage allotments and many are in the process of submitting waivers to use their enhanced federal matching payments for other purposes.

X Minnesota may be a somewhat sympathetic case, since it has already extended coverage to 45 percent of children, but we will have to make waiver decisions with an eye to precedent and to the likely deluge of requests from other states. We want to preserve CHIP's original intent (to most efficiently cover as many children as possible), without passing up a possible way to cover more of the uninsured. We have begun to explore options and will keep you apprised.

10. **Health Care – Update on Colon Cancer.** Earlier this month, you proclaimed March National Colorectal Cancer Awareness Month. This coincides with the work of Katie Couric and others to promote public awareness of the disease and the importance of screening. We are considering a radio address for you to highlight federal efforts on this front.

THE WHITE HOUSE  
WASHINGTON

11-9-99

November 5, 1999

Copied

Read

Liu

Pedente

'99 NOV 6 PM 12:12

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Eric Liu

SUBJECT: DPC Weekly Report

**1. Health Care – Unreported Deaths Associated with GeneTherapy Trials.** You asked for an update on recent reports that gene therapy researchers failed to report six deaths and two serious illnesses of clinical trial participants to the NIH. The researchers were reportedly reluctant to report any adverse results out of fear that NIH's policy of publicly releasing this information (after removing identifiable patient characteristics to protect privacy) would hurt their company's financial standing. The researchers' failure to report these deaths is a clear violation of the current guidelines regulating research funded by NIH or conducted at institutions receiving NIH funding and can lead to suspension, limitation, or termination of NIH funding for the researchers and their facility. Recognizing these penalties, the investigators are now claiming that they withheld the names of the participants because the population studied is so small that it is impossible to maintain patient confidentiality. NIH does not believe that there is a viable confidentiality issue here (since no individually identifiable information is released). HHS is contemplating additional reporting requirements and enforcement action.

**2. Health Care – Medical Records Privacy.** Late this week, we met with the AMA and the American Psychiatric Association to review their concerns that the proposed privacy regulation would actually undermine current patient protections, rather than augment them. After reviewing the regulation in detail, representatives of the AMA acknowledged that our regulation provides a level of patient protection that is beyond what exists today. While they still would like to have a signed patient consent form before the release of information for any purpose, they pledged to emphasize their positive response to the privacy regulation as a whole and to work out any lingering concerns through an ongoing process with HHS, not through the media. Comments on the regulation are due in early January and we anticipate that the doctors, and hopefully the specialists, will give us constructive suggestions to strengthen the proposed regulation, which is due to be released next February.

**3. Health Care – Jeffords-Kennedy.** It appears very likely that the Republican conferees on the Work Incentives Improvement Act will complete work on this legislation in short order. Although we have not been invited to participate in these most recent discussions, we expect that the bill will be strong enough to gain your support. The primary outstanding issue continues to be the offsets for this solid bill, however, we expect that resolution on this legislation could be achieved by the end of next week.

4. **Crime – Guns.** On Thursday, the Vice President and congressional Democrats held an event with the domestic violence community calling on the Republican leadership to bring the gun bill to the floor with the Senate-passed provisions. The Vice President released a new Department of Justice report showing that more than 32,000 people with domestic violence convictions or restraining orders have been prevented from purchasing firearms by Brady background checks. Later that day, Rep. Carolyn McCarthy and Senators Schumer and Durbin held a separate news conference calling for a Presidential veto threat on any final budget agreement that does not contain legislation closing the gun show loophole.

✓ 5. **Crime – COPS.** On Friday, we met with all 12 major national law enforcement groups, including the Fraternal Order of Police and the National Association of Police Officers. The entire law enforcement coalition joined us in a press conference demanding that Congress go along with your budget request for 50,000 more police officers. John Podesta and Attorney General Janet Reno chaired the meeting and swore in our new COPS Director, Tom Frazier, the former police commissioner in Baltimore.

6. **Crime – Recent shootings.** (1) Honolulu. Because Hawaii has some of the toughest gun laws in the nation, the NRA has used the shooting in Hawaii to argue that gun laws don't work. Hawaii has licensing and registration laws that require local police to approve every handgun purchase by issuing a purchase permit and a 14-day waiting period. The alleged shooter, Byran Uyesugi, owned 17 legally registered firearms. While gun laws may not have prevented Uyesugi's tragic shooting spree, they have helped keep Honolulu's violent crime rate the lowest of any city its size in the nation. (2) Seattle. Washington State has weaker gun laws that do not include licensing or registration, although the state does have a five-day waiting period for handgun sales. As of this writing, the shooter is still at large and no murder weapon has been found. The ATF is utilizing ballistics technology to trace bullet casings left at the scene of the crime that may help them to determine the suspect's identity.

7. **Education – Bush Education Speech.** Governor Bush gave his third education speech, focusing on school safety, discipline and character. Once again, he borrowed heavily from our agenda, endorsing increased funding for character education, freedom of religious expression in the schools, and reforms in the Safe and Drug-Free Schools program to hold states and districts accountable for results. He also called for a lifetime gun ban for violent juveniles, which would already be law if House Republicans hadn't blocked the gun bill with his blessing. (Bush called for increased federal prosecution of juveniles who bring guns to school, but legislative provisions to do just that are hostage to the gun bill as well.) To increase discipline, Bush called for a "zero tolerance" policy for disruption and legal protection for teachers, principals and school board members enforcing that policy. Finally, he proposed vouchers for students in schools that are "persistently dangerous."

8. **Immigration – INS Restructuring.** For the past few months, Administration officials have been negotiating with Representatives Rogers (R-KY) and Lamar Smith (R-TX) on INS restructuring legislation and have made some progress toward reaching an agreement. On Thursday, the House Judiciary Subcommittee on Immigration reported legislation that includes some of the agreed-upon provisions, but does not ensure that a single, high-level immigration

official has the appropriate staff support to manage and direct our immigration system full-time. The Attorney General will continue to work with Congress to achieve an agreement.

THE PRESIDENT HAS SEEN

11-8-99

THE WHITE HOUSE

WASHINGTON

October 29, 1999

99 OCT 29 PM 7:53

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Eric Liu

SUBJECT: DPC Weekly Report

copied  
Reed  
Liu  
P. Podesta  
Pg 2  
M. Penn  
P. Podesta

**1. Health Care – Assisted Suicide.** This week, the House voted 271-156 to pass the Pain Relief Promotion Act of 1999, which creates criminal penalties for the use of a controlled substance in a physician-assisted suicide but protects the provision of palliative care. Seventy-one Democrats joined 200 Republicans in support; 20 Republicans joined the Democrats voting against. It is unclear whether the Senate will take up this issue before adjourning; a companion bill would very likely pass. In response to inquiries, we are reiterating your opposition to physician-assisted suicide, pointing to your 1997 federal funding ban. We authorized Justice to express concerns about the bill's federalism implications and enforcement provisions, but have characterized you as sympathetic to the bill's underlying intent and open to its enactment.

**2. Teen Pregnancy – Birth Rates.** On Monday, HHS released data showing major declines in teen birth and pregnancy rates for the seventh consecutive year. In 1998, there were 51.1 births per 1,000 teens, an 18 percent drop from the 1991 rate of 62.1, and near the 1986 record low of 50.2. For girls 15 to 17, the 30.4 per 1,000 rate is the lowest in four decades. Teen births have fallen in every state and across racial groups. The sharpest declines were among black teens, whose birth rates have fallen 26 percent since 1991 to the lowest since 1960. The teen pregnancy figures, though not as up-to-date, are also at record low levels. In 1996, there were 98.7 pregnancies for every 1,000 teen girls – down 15 percent from the 1991 high of 116.5.

**3. Crime – Gun Litigation.** On Wednesday, a Georgia state judge denied a motion to dismiss Atlanta's lawsuit against an array of gun manufacturers. Atlanta is one of 28 cities and counties that have filed suit against the manufacturers, alleging, among other claims, negligence in design and distribution. Slow-moving settlement talks are underway between plaintiffs and many of the manufacturers. We have been consulting with Justice, Treasury, HUD and White House Counsel to determine how we could influence these talks and steer them toward strong remedies. As you may know, HUD has been contemplating a suit by several thousand public housing authorities against the industry. The threat of such a suit – coupled with the assurance that we would much prefer negotiations – could secure us a seat at these talks. At the same time, of course, we are attuned to the risk of appearing too eager to litigate. We were also approached this week by the Attorneys General of New York and Connecticut, Eliot Spitzer and Richard Blumenthal, who are active in the settlement talks. Though they did not invite our direct participation they did want to discuss how the federal government – whether through regulation or legislation – could apply more pressure on the manufacturers. We will keep you updated.

11-8-99

**4. Crime – Reentry of Offenders.** In response to a memo to you from the Attorney General, we are working with the Justice Department to develop an initiative on the reentry of former prisoners into their communities. About 500,000 inmates will leave prison this year – with many returning to urban areas and certain neighborhoods in high concentrations. The reentry initiative would address community safety concerns and help provide support for offenders. The initiative would have two core elements. Through *reentry partnerships*, police and corrections agencies would monitor offenders, and team up with community groups to steer offenders to drug treatment, employment services, housing, and counseling services. *Reentry courts* would adapt the drug court concept of judicial supervision to oversee offenders on conditional release. Offenders would enter into individual accountability plans and face graduated sanctions for failing to meet plan requirements. We are working with Justice to develop this initiative for possible inclusion in the FY 2001 budget.

**5. Crime – COPS Update.** On Thursday, Rep. Weiner held a press conference with members of Congress and law enforcement leaders to announce his COPS reauthorization bill and to call for full funding of COPS in the budget. The bill, which has 105 co-sponsors, is identical to the Biden legislation introduced last week. Also, the Attorney General next Tuesday will address the annual convention of the International Association of Chiefs of Police (IACP), where she will focus on the success of community policing and on funding for COPS. We will continue to search out venues for our COPS budget message.

**6. Crime – Juvenile Justice Conference.** The conferees on the Juvenile Justice bill have not yet met, and there are no meetings scheduled. Congressional Democrats are now staging weekly events to pressure Republicans to enact a bill that includes the Senate-passed gun safety provisions. This week the Democrats held a press conference with 100 students associated with a gun violence victims group. On Monday, they plan to meet with grassroots activists who have come to Washington for a national gun violence prevention conference.

**7. Tobacco – Public Support for Tobacco Tax.** On Thursday, the American Cancer Society, the American Heart Association, and the Campaign for Tobacco Free Kids released a poll of likely voters on options to help balance the budget. Sixty-four percent favored raising the cigarette tax, 13 percent would cut programs and 6 percent would use the Social Security surplus. Even among conservative Republicans, 48 percent preferred the tobacco tax, 31 percent favored program cuts, and 6 percent chose Social Security. Notably, almost twice as many people would vote against a candidate for cutting Medicare, spending the Social Security surplus, or slashing education spending than for supporting a 55 cent cigarette tax increase.

**8. Education – Teacher Quality Report.** The American Council on Education on Monday issued a 10-point action agenda for college and university presidents to improve the quality of teacher education. Citing the need for 2.5 million teachers in the next decade, and the inadequate academic preparation of many teachers, the action agenda called on the presidents to invest more in their teacher education programs and in educational research.

**9. Education – National Education Goals Panel Report.** The National Education Goals Panel released a report this week showing that Connecticut's effort to increase educational

CEM, P. B. B.

for my committee

copied  
M. Penn  
P. B. B.

## THE PRESIDENT HAS SEEN

11-8-99

investment in impoverished areas, coupled with state accountability measures and assistance programs, has resulted in noteworthy gains on the NAEP test. As you know, income and parental education are key indicators of performance on this test. Researchers found, however, that such factors alone could not account for the magnitude of Connecticut's gains, and that part of the improvement was attributable to educational policy reforms. For instance, Connecticut now provides detailed information on student performance to school districts, teachers, and parents. Local districts are also linking school improvement plans and teacher evaluations to student reading achievement.

THE WHITE HOUSE

WASHINGTON

9.20.90

September 17, 1999

Copied  
Reed  
Liu  
Podesta

## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Eric Liu

SUBJECT: DPC Weekly Report

**1. Crime – Texas Shooting Update:** ATF has traced two handguns carried by the gunman in the shooting Wednesday at Wedgwood Baptist Church in Fort Worth. According to trace information and news reports, the AMT .380 caliber handgun and Ruger 9-mm semiautomatic handgun were sold to the gunman, Larry Ashbrook, by federally-licensed dealers at a 1992 gun flea market in Grand Prairie, TX. It has been reported that Ashbrook had a 1971 conviction for marijuana possession and no history of treatment for mental illness.

**2. Crime – Juvenile Justice Bill Conference:** Representatives Hyde and Conyers have been meeting this week but remain unable to reach agreement on key gun provisions. We have seen a draft of a possible Hyde compromise proposal on guns, which contains flawed provisions on gun shows (including a flea market exemption) and large capacity ammunition clips, but acceptable language on child safety locks and juvenile Brady requirements. House Republicans also are insisting on their Ten Commandments provision. The conferees may meet next week.

**3. Campaign Finance – Update on Reform Bills:** By a vote of 252-177, the House on Wednesday passed the Shays-Meehan bill, which bans federal soft money and expands the definition of “express advocacy.” Senators McCain and Feingold on Thursday then introduced a stripped-down version of their bill that includes only a soft money ban, in the hope that such a bill could secure enough votes to prevent a filibuster. Common Cause and other groups have signaled their willingness to support this strategy. Our judgment, however, is that it is premature to abandon the wider-reaching reform package just passed by the House. To ensure that we preserve some leverage in the event of a House-Senate conference, we recommend that you continue to support Shays-Meehan and the more comprehensive version of McCain-Feingold.

**4. Health Care – Patients Bill of Rights Update.** Speaker Hastert announced Friday that the House will vote on both Norwood-Dingell and Coburn-Shadegg the week of October 4. The leadership will likely attempt to focus the debate on “right to sue” issues. With this in mind, we are encouraging Representatives Norwood and Dingell to join with groups opposed to Coburn-Shadegg in a more aggressive critique of that bill’s inadequate enforcement provisions. We also are tentatively scheduling an October 12th address to a national conference of pediatricians who strongly support the Administration’s legislation. At this event, you would unveil a new regulation that applies the Patients Bill of Rights to every CHIP plan in the country.

Need to  
have something  
to feel about  
~~commitment~~

9-20-99

Copied  
Reed  
Liu  
Podesta  
Street**5. Health Care – Ads by Pharmaceutical Manufacturers Association (PhRMA).**

PhRMA has initiated what appears to be a \$30 to \$40 million dollar advertising campaign against your prescription drug benefit proposal. The ads, featuring an elderly character named Flo, charge that the Administration's drug benefit would limit access to necessary drugs, create incentives for private plans to drop coverage, and inhibit investment in research and development. Although independent experts and advocacy organizations have repudiated these charges, there has not yet been a coordinated effort to counter the campaign. A number of aging organizations plan to picket PhRMA headquarters and declare that the group does not represent the best interests of the elderly. Next week, we will also meet with representatives of the drug industry to reiterate our request that they pull the ads. A number of them reportedly believe it was a mistake to criticize your plan directly. We will keep you apprised of developments.

**8. Education – ACHIEVE Summit:**

Lou Gerstner and ACHIEVE are hosting an education summit on September 30<sup>th</sup> and October 1<sup>st</sup> in Palisades, NY, like the one you attended in March 1996. They are expecting over thirty Governors, over thirty CEOs, Secretary Riley, Bob Chase, Sandy Feldman and other key education leaders to attend. They have invited you to be the keynote speaker on the afternoon of September 30<sup>th</sup>, but your schedule makes it very difficult for you to attend. (You already have a major news announcement that morning of Census Bureau figures on income and poverty, and you leave the next morning for a Western swing). We do not yet know whether Governor Bush is going, but the summit will attract substantial press coverage, with 400 reporters expected. That week also marks the tenth anniversary of the Charlottesville summit.

**7. Education – ESEA Reauthorization Update:**

The House Education and Workforce Committee is planning to mark up Title I legislation by the end of this month. On the Senate side, Senator Jeffords is still drafting a comprehensive ESEA bill. Senator Lieberman is also planning to introduce an ESEA bill later this month that will include your class size initiative and accountability measures but will consolidate many ESEA programs and focus the money more heavily on impoverished school districts.

**8. Tobacco – Synar Amendment:**

In 1992, Congress enacted the Synar Amendment to require states to make progress in reducing tobacco sales to minors. This year, for the first time, HHS has made a preliminary finding that seven states (DE, IA, MO, MN, OR, RI, WY) and the District of Columbia have failed to meet their targets, making them subject to a statutory 40 percent cut in their Substance Abuse Prevention and Treatment block grant. Secretary Shalala has called the governors and members of Congress from those states to notify them and to describe the appeals process. She has also indicated the Administration's willingness to work with Congress to pass a more graduated penalty. As you may recall, we made similar changes to state child support enforcement penalties last year. Senator Durbin is drafting a promising alternative that would 1) modulate the penalty depending on how much of the target was met, while 2) raising the required rate of retailer compliance from 80 to 90 percent by 2008. We hope to add a legislative fix to the SAMSHA reauthorization bill now pending in the Senate.

**9. Tobacco – Bidis:**

You asked whether there was anything we could do about "bidis," the small, cheap and often flavored cigarettes that are growing in appeal among the young. Currently, the FTC considers bidis cigarettes, requiring that the Surgeon General's health

warnings appear on packages and in advertising, but many retailers and importers are unaware of this. We could direct the FTC to notify all tobacco importers of the status of bidis and of the warning requirements. Bidis containing tobacco are also considered cigarettes by the Treasury Department and are taxed as such. Businesses that import them will have to apply for an importer's permit before January 1; this will help us track the volume entering the country. The Food and Drug Administration (FDA) is also examining bidis and evaluating whether they fall under the "drug and device" regulatory standard. The agency is unlikely to act, however, while the Supreme Court is reviewing its jurisdiction over tobacco products.

**10. Violence Against Women – House Republican Fetal Protection Legislation:** On a party-line vote, the House Judiciary Committee on Tuesday passed H.R. 2436, the "Unborn Victims of Violence Act of 1999," which would make it a new and separate federal offense to kill or injure "a child in utero" by assaulting or injuring a pregnant woman while committing certain federal crimes. (It specifically exempts abortions). The bill, sponsored by Canady, Graham and Chris Smith, is a clever, thinly veiled attempt to treat a fetus of any age as a life under federal law. The Department of Justice advised that the bill was not unconstitutional, but sent a letter to the Committee articulating the Administration's opposition. We are working with House Democrats to devise a strong substitute that would call for tougher penalties for crimes against pregnant women and additional protections from violence against women. There is no similar bill pending in the Senate.

**11. Welfare – Out-of-Wedlock Birth Bonus:** Last week, HHS awarded the first bonus funds under the 1996 welfare reform law for the five states with the largest decrease in out-of-wedlock births (and an accompanying decline in abortion rates). California, D.C., Michigan, Alabama, and Massachusetts each received \$20 million. Altogether, 12 states experienced a reduction, and the national rate held constant over the four-year period measured by the bonus.

**12. Welfare – Initiatives to Address Poverty:** In response to a recent Chicago Tribune story, you asked us to gather information about your anti-poverty initiatives and the trips you have made to poor communities. We are working with NEC to update and expand a set of documents prepared as part of your first New Markets tour. These documents highlight the Administration's accomplishments on behalf of poor communities and families, as well as the initiatives we continue to fight for (including EZ/ECs, CDFI, EITC, CHIP, Head Start, minimum wage, New Markets, child care, and Welfare-to-Work). We can release this information in conjunction with new Census data on poverty and income due September 30<sup>th</sup>. We will make sure the Tribune reporter and others receive this information.

**13. Immigration – English Language/Civics Education Initiative:** On Thursday, White House and Education Department officials met with education, literacy, immigration and civil rights groups to discuss your English Language/Civics Education Initiative. This initiative, which the Administration's FY 2000 budget funds at \$70 million, would help communities combine ESL programs with civics and life skills instruction, to help ensure that adults with limited English proficiency get the tools they need to enter American life. The groups were very supportive and intend to advocate for funding of this initiative.

8-8-00

THE WHITE HOUSE

WASHINGTON

August 4, 2000

cap. red  
Reed  
Chow  
Podesta

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed  
Barbara Chow

SUBJECT: DPC Weekly Report

**1. Health Care - - HHS Prescription Drug Pricing Conference:** Next Tuesday and Wednesday, HHS is hosting a major conference focusing on current prescription drug pricing practices in the marketplace. It will focus on four broad areas: (1) cost pressures; (2) pricing trends; (3) utilization trends; and (4) controlling costs. Participants will include representatives of Medicare beneficiaries, patient groups, pharmacists, private sector pharmacy purchasing groups, insurers, pharmaceutical manufacturers, and researchers. The conference is likely to validate that a Medicare drug benefit structured along the lines of your proposal would achieve discounts far more significant than predicted by the Congressional Budget Office. Because of the relatively academic nature of this meeting, we are advising against White House participation, but we can highlight any key findings produced by the meeting.

**2. Health Care - - Medicaid Upper Payment Limit Update:** Within the next week, the HHS Inspector General is likely to release a report on its investigation into state financing abuses utilizing the so-called upper payment limit loophole. Although we have yet to see the report, we believe it will find that a number of states are using this financing mechanism to receive 100 percent Federal dollars to underwrite state budget priorities, many of which have little or nothing to do with health care. This finding will validate the concerns that HHS and OMB have highlighted and provide justification for the regulation on they plan to release sometime this month. The New York Times is likely to write an editorial criticizing states' misuse of these dollars and concluding that continued reliance on this financing mechanism could lead to another debate on block-granting the Medicaid program. We also are working with HHS to design its notice of proposed rulemaking to be as sensitive as possible to the impact on health care providers relying on this funding tool. Our overriding goal will be to stop abusive state financing practices while protecting the legitimate interests of health care providers.

**3. Health Care - - Greenstein Report on Parental Health Care Coverage:** Later this month, the Center for Budget and Policy Priorities is expected to release a new report demonstrating that the few states that have independently expanded coverage to parents have noted a significant concurrent increase in enrollment of eligible but previously uninsured children. In fact, there was a 16 percent increase in Medicaid coverage of children in these states. This finding helps validate the importance of the Clinton-Gore parental coverage policy and we are considering

Can we allow  
state to  
fund on Health?

using it as a tool to re-energize Congressional interest in this policy. It will also help distinguish the health care policy differences between the Gore and Bush camps. The release of this report follows a surprisingly strong Senate floor vote (51 to 47) for your parents policy in which Senators Collins, Chafee, Snowe, Jeffords, DeWine, and Specter voted for this measure.

**4. Crime -- Gun Shows:** This week, SAFE Colorado filed nearly double the number of signatures required (110,000) to place their state ballot initiative to close the gun show loophole on the November ballot. If passed, the initiative would create a new state law requiring background checks on all firearms sales at gun shows. As a follow up to your April visit to Denver to kickoff of SAFE Colorado's volunteer drive for the initiative, you issued a statement commending them for their efforts. This was a major victory for gun safety groups because the gun lobby made several attempts to stall signature collection so that SAFE Colorado would not collect the minimum 62,000 signatures required to place the initiative on the ballot. Three recent statewide polls indicating that 80 percent of Colorado residents support the initiative.

**5. Tobacco -- World Health Organization Conference on Tobacco:** Next week in Chicago, the American Cancer Society, American Medical Association, Robert Wood Johnson Foundation, and the World Health Organization (WHO) will be hosting the 11th World Conference on Tobacco OR Health. Secretary Shalala will address the conference, and we are working with HHS to ensure she highlights your tobacco-related budget proposals. Conference attendees will receive a presidential message congratulating them on their commitment to tobacco control and highlighting the Administration's accomplishments and FY 2001 initiatives. We are also preparing for a meeting of the WHO in Geneva this October, where negotiations will begin on the framework convention on tobacco control, the first international health treaty sought by the WHO. The Administration is committed to securing a strong, effective, ratifiable agreement that helps national governments take coordinated steps to reduce the harmful effects of tobacco use.

**6. Education -- Kansas State School Board Elections:** In a Republican primary on Tuesday, voters in Kansas ousted three of four conservative members seeking re-election to the state school board, all of whom had supported the decision to remove human evolution from the state science standards a year ago. Three moderates who pledged to return evolution to the standards won the primary, and will be running in November against Democrats who hold similar positions on this issue. While last year's 6-4 state school board vote did not prohibit the teaching of evolution, it removed evolution and the Big Bang theory from state assessments, and was seen as a major victory for advocates of creationism.

THE WHITE HOUSE WED 9-11-00

9-11-00

'00 SEP 08 7:54

THE WHITE HOUSE

WASHINGTON

copied  
Reed  
Chow  
Podesta

September 8, 2000

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed  
Barbara Chow

SUBJECT: DPC Weekly Report

**1. Youth Violence -- FBI Monograph:** On Wednesday, the FBI released a monograph presenting a systematic procedure for threat assessment and intervention designed to be used by educators, mental health professionals and law enforcement agencies. The use of this assessment/intervention model could help school authorities identify and deal with high-risk threats, and respond to less serious threats in a measured way. The initial press response focused on concerns that such a document would be used to profile students, potentially stigmatizing them unfairly. However, the document specifically disavows the usefulness of "profiling" children. Thursday's stories recognized the FBI's intent, although some concerns continue to exist.

**2. Youth Violence -- National Campaign Event:** On Thursday, you will participate in an event with the National Campaign Against youth Violence (a separate briefing memo will provide more details). The Campaign will be launching its new PSAs as well as providing a report to the Board members and other supporters of the Campaign.

**3. Crime/Guns -- Preventing Gun Sales to Unlicensed Individuals:** The ATF has nearly completed creation of a new system that will allow gun manufacturers and gun dealers to ensure that they do not transport firearms to criminals or juveniles who present fake federal firearms licenses in attempts to illegally acquire firearms through the mail. Current law prohibits gun manufacturers and gun dealers from mailing firearms to unlicensed individuals, and requires them to obtain a copy of a valid federal firearms license before shipment of any guns. However, there is currently no way for them to ensure the validity of those licenses without a phone call to

9-11-00

the ATF. This new system will create a new, easily accessed ATF website where the validity of licenses may be checked online. The system was created in response to the recent attempt by two New Jersey teenagers to order guns over the Internet and have them shipped to their home using a fake federal firearms license. Their attempt was prevented by a UPS worker who became suspicious of the shipment when he realized that the recipients were underage. We are currently working with Treasury on a possible announcement of the launch of this new system.

**4. Welfare -- Child Support/Fatherhood Bill:** Last week, the House passed the Child Support Distribution Act by a vote of 405-18. This bill, spearheaded by Representatives Nancy Johnson and Ben Cardin, contains child support provisions that are very similar to those proposed in your budget, allowing states to pass through more child support payments directly to children and simplify child support distribution rules. The bill also includes Fatherhood grants to communities. While these grants have a somewhat different focus and delivery system than your Fathers Work/Families Win grants, there is considerable common ground. You issued a statement commending the House for this bipartisan action and urging the Senate to take action before it goes home. We will work closely with all parties toward a final bill that contains the key elements of these bills and our proposals.

**3. Education -- Secretary Riley's Back to School Speech:** Secretary Riley gave his annual back-to-school address at the National Press Club on Thursday morning. The Secretary highlighted the success of your education agenda; released a report showing that your class size reduction initiative has benefited 1.7 million children; and echoed the legislative priorities you outlined on Tuesday. The main theme of Secretary Riley's speech was the importance of transitions in the lives of school-aged children and how parents, schools, communities, and the government can support all children as they go through these difficult periods. He concluded by announcing the creation of the Commission on the Senior Year of High School, led by Governor Paul Patton of Kentucky, to evaluate possibilities for helping more kids graduate from high school prepared for college or the workplace.

**4. Health Care -- Nursing Home Quality Report and Legislation:** Next week, you are tentatively scheduled to release a new HHS report assessing our success in assuring quality care in nursing home settings. You will also unveil a new legislative initiative designed to provide further incentives for improvements in this area. The report concludes that there is significant progress in improving quality of care within nursing homes. It validates the importance of Federal nursing home standards, but will recommend that the Federal government do more to improve this record. The new, \$1 billion five year grant proposal provides funding to encourage states to hire larger numbers of better qualified nursing home professionals; accelerate physical plant upgrades to ensure patient safety and quality of life; provide continuing education and training of nursing staff; and convert outdated nursing homes to assisted living facilities. It will also provide grants to states to reward nursing homes that meet the IOM recommended staffing levels for registered nurses or have not had a serious standard of care violation for three to five years. This legislation could be integrated in any provider give-back initiative and is fully funded within the previously non-specified portion of the Administration's \$40 billion provider restoration initiative you unveiled earlier this year.

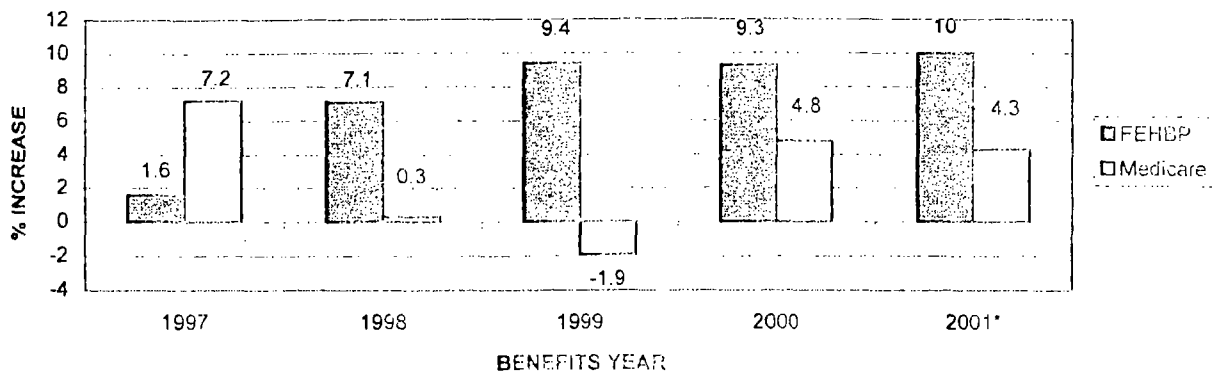
9-11-00

**Health Care - - Update on Bush Prescription Drug Proposal:** In the aftermath of Governor Bush's prescription drug initiative, Senator Lott and Finance Committee Chairman Roth indicated that they intend to have the Committee mark-up a low-income prescription drug benefit modeled along the lines of a portion of the Bush proposal. The Republicans are taking the position that the only responsible action to take this fall is to make a serious downpayment on the prescription drug benefit so that those "most in need" can receive assistance. Although at first glance, a low-income first approach might be attractive, close scrutiny of state experience in setting up and running these programs demonstrates otherwise. Such an approach will not work for the 20 million beneficiaries over 125 percent of poverty (\$14,600 for a single) who would be explicitly ineligible, but also poorly covers the target population of low-income beneficiaries. This is because state based programs for seniors have a notoriously poor record of covering eligible populations. In fact, comparable programs only cover between 15 and 45 percent of the eligible population. Moreover, state based programs would result in severe limits in the number and types of drugs covered, and would produce a large disparity amongst the states in the benefit offered and delivered. In addition, because Senator Roth is only dedicating \$1.3 billion to this program in 2001, and allowing states to buy out the programs they currently have up and running, virtually every dollar allocated will almost inevitably be used to buy out the base. And finally, a Medicare drug benefit, which now covers 98 percent of all eligible seniors, could be implemented more quickly and effectively than 50 state based programs that the NGA is already on record as opposing. For these reasons, even advocates for the poor have rejected this policy. However, we are not taking this proposal lightly, and are working to ensure that Democrats (Breaux, Kerrey, and Baucus) on the Finance Committee do not support this initiative.

**Health Care - - FEHBP premiums to increase by 10 percent next year:** In the upcoming week, OPM will announce that for the fourth straight year, premiums within the FEHBP will increase by amounts that more than double Medicare growth rates / premium increases. Forty percent of this year's increase is attributable to increasing prescription drug prices. The remainder is a combination of utilization increases, demographic changes, and the new mental health parity provision (1.3 percent). Ironically, although FEHBP has been touted as the great hope for a Medicare model, Medicare growth rates have been substantially lower than FEHBP in each of the last four years (see chart). OPM believes that they could do better in constraining costs if they could use selective contracting purchasing mechanism to help purchase particular benefits, such as dental and prescription drug benefits, and limit the number of health plans permitted to participate in the program through higher quality standards. We are working on legislative proposals on Capitol Hill to do both, but have seen little interest by the Congress and the insurance industry and providers in this policy. The lack of success in constraining health care costs within FEHBP has the potential to undermine those in the Congress advocating FEHBP type solutions for Medicare reform.

ST  
we haven't  
multi-tier

FEHBP VS. MEDICARE ANNUAL PER CAPITA GROWTH RATES  
(1996 - 2001)



\*preliminary projections, not for distribution

**Health Care -- Update on Patients' Bill of Rights:** Next week, you are scheduled to participate in a bipartisan event with several members from both houses with Families USA. The advocacy organization will unveil a new electronic tote-board that updates the number of patients harmed by health plan actions each day the patients bill of rights fails to be enacted into law.

In addition, Speaker Hastert, Congressman Norwood, and Congressman Ganske, and other Republicans, are working with the Senate in an attempt to attract more Republicans towards a Norwood-Dingell model of the Patients' Bill of Rights. As they work to develop compromises that could attract additional Republicans, Senator Daschle and Senator Kennedy are planning a floor amendment strategy to continue the pressure on the Senate to move a real and enforceable Patients' Bill of Rights.

**Children and Families -- Urban Institute Report on Child Care and After-School.** On Monday, the Urban Institute will release a new report, *Child Care Patterns for School-Age Children with Employed Mothers*, as part of their comprehensive study of child care in America. This report finds that 4 million 6-12 year-old children with employed mothers are regularly without adult supervision when they are not in school and still more children are caring for themselves for at least part of the time they are out-of-school. The report also highlights the difference in child-care and after-school patterns along a variety of family characteristics, including income, race and ethnicity and parental work schedules, as well as how arrangements differ from state to state. The report concluded that higher-income parents are more likely to rely on self-care, as are whites and parents who work traditional hours. The report speculated that this finding could be due to the fact that lower-income communities may rely more heavily on relative care due to safety concerns that could deter parents from leaving their children alone.

THE WHITE HOUSE

WASHINGTON

October 20, 2000

10-21-00

copied  
Chow  
Rodesta  
Jennings

MEMORANDUM TO THE PRESIDENT

FROM: Barbara Chow

SUBJECT: DPC Weekly Report

**1. Housing -- New Vouchers and Flexibility:** In addition to securing 79,000 new housing vouchers in the VA-HUD appropriations bill, we were also able to amend the statute to significantly improve the local 'project-basing' option for Public Housing Authorities (PHAs). Project-basing permits the PHA to expand affordable housing options and improve voucher utilization by promising that vouchers will be available for up to 25 percent of the units in a building as long as the owner/developer agrees to guarantee the availability of those units for tenants with a voucher for 10 years. While this authority existed before, it was very difficult to use, failed to preserve tenant choice, and did not permit the PHA to terminate a contract when tenants no longer chose a particular building. The new language ensures that tenants can move from a project-based unit by getting the PHA's next regular Section-8 voucher. In the past, tenants were locked into a particular building because project-based vouchers did not have this 'continued assistance option'. In addition, PHAs will now be able to terminate contracts with an owner if no tenants want to live in the building ensuring that federal dollars are not locked into a development that becomes undesirable for some reason. Finally, project basing can be used to create supportive housing arrangements like a Second Chance Home or elderly housing.

**2. Welfare -- Immigrant Food Stamps and Health Insurance:** On Monday, you released a statement for World Food Day in which you called upon Congress to enact your budget proposals to restore access to food stamps and health coverage for vulnerable legal immigrants. These changes would build on the progress made in 1997 and 1998 to fix the harsh immigrant provisions in the welfare reform law that had nothing to do with welfare reform. The statement was very well received in the religious, immigrant, and nutrition advocacy communities. Meanwhile, Congress passed the Agriculture appropriations bill that failed to include immigrant food stamp provisions. Also, after Lamar Smith and Bill Archer wrote a letter last week urging Hastert to reject health care restorations for legal immigrants, the Republican leadership released preliminary details on their partisan BBA givebacks package which excluded state options to extend Medicaid and SCHIP to pregnant women and children. We will continue to work with the groups and key members of Congress to add these health and nutrition work supports for legal immigrants to any available vehicle.

**3. Welfare -- Out-of-Wedlock Births:** Last week, the Centers for Disease Control released a report on nonmarital childbearing from 1940 to the present. While this does not contain any new data, it does put the encouraging trends of the past few years in context -- after a period of dramatic growth from 1940 to 1990, out-of-wedlock childbearing has leveled off or slowed its rate of increase during the 1990s. The birth rate for unmarried women dropped 1 percent between 1998 and 1999, and 6 percent since its peak in 1994. While the 1999 rate (43.9 births per 1,000 unmarried women aged 15-44) is technically the lowest level since 1990, it is only slightly lower than the 1997 birth rate due to an upward blip in 1998. The percent of all births that are to unmarried women increased through the early 1990s, but has stabilized at between 32 and 33 percent since 1994. The number of unmarried births rose slightly (averaging just over 1 percent per year) during the 1990s, but at a much slower rate than the average annual increase of about 6 percent during the 80's.

**4. Education -- Report bolsters NBPTS:** A report by the Center for Educational Research and Evaluation was released this week on the value of National Board for Professional Teaching Standards (NBPTS) certification. The statistically-based study focused on two of the 16 NBPTS certificate areas -- Early Adolescence/English Language Arts and Middle Childhood/Generalist. The report essentially confirms the validity of the NBPTS system as a means of assessing and identifying accomplished teachers, and has high praise for and the quality of teachers that undergo the national certification process. Secretary Riley will be addressing the annual NBPTS conference on Saturday, and will read a letter from you. The new National Board Teachers will be announced in November. It is anticipated that this new round of certification will more than double the current level of 4,804 of National Board Certified teachers across the country.

**5. Health Care -- Update on the Balanced Budget Refinement Act:** On Thursday, the Congressional Republican leadership released their Medicare / Medicaid provider and beneficiary refinement initiative. Despite the Administration veto threat on this legislation, it continued to include a significantly disproportionate allocation of resources towards HMO payment increases, and an insufficient investment in longstanding beneficiary and health care provider priorities. In fact, the legislation dedicates over a third of the \$28 billion / 5 year package to HMOs, despite the fact that these plans serve only 16 percent of the population. Just as troubling is the fact that it included no accountability provisions to require plans to stay in service areas in return for these payment increases. Although this legislation was viewed as unstoppable at the beginning of this week, the Democrats' embrace of the Administration's opposition to the current distribution of dollars has slowed the momentum towards Congressional passage. This may enable us to negotiate a better agreement over the weekend. This will only happen if the Congressional leadership chooses to engage in a meaningful negotiation and take the position that it is in their best interests to pass a bill that is certain to be enacted. If they do, our top priorities will be to increase teaching academic health centers, hospital, and home health payment rates, and key beneficiary improvement provisions. Such provisions include Medicaid coverage for legal immigrant children and pregnant women, full funding of the Ricky Ray trust fund, expanding the homebound definition for home health care services so that individuals with disabilities do not lose their eligibility if they leave their homes, immediate Medicare coverage of individuals with Lou Gehrig's disease (Lois Capps' highest priority), funding for the Grassely-Kennedy Family Opportunity Act, which provides a new Medicaid option for children with disabilities, and waiving cost sharing requirements for

get to know  
the program

Medicare preventive services. We will advocate for at least partially offsetting the cost of these initiatives by reducing the excessive HMO payment increases. However, in addition to advocating for the elimination of expensive and unnecessary provisions, we will almost inevitably have to insist on more funds to finance our priorities – approximately \$35 to \$40 billion over five years. Speaker Hastert may be an advocate in this regard, as he requires significant additional Medicaid investments to help pay for a fund to ease the transition to our new UPL policy for states and hospitals.

✓ **6. Children and Families -- Early Learning Opportunities Act:** Senators Stevens and Kennedy have agreed with Representative Goodling to attach a five year authorization of S. 2866, the Early Learning Opportunities Act to the Labor-H appropriations bill. The bipartisan Early Learning Opportunities Act, introduced in July of 2000, is a direct successor to the Administration's Early Learning Fund proposed as part of your Child Care initiative in the 1998 State of the Union. This bill would allow the Secretary of HHS to award grants to States, who in turn would award grants to local collaborative early learning councils, for the purposes of improving the quality of child care and providing quality early learning opportunities to children under five year of age.

✓ **7. Education -- Pennsylvania First State Approved for Ed Flex:** As you know, the Education Flexibility Partnership Act (Ed Flex) was enacted last year, with eligibility dependent upon states having their standards, assessments, and accountability mechanisms in place in line with the Title I requirements. Pennsylvania is the first state that has been approved for Ed Flex, though eight others have applied, and three of the states that participated in the 12-state Ed Flex Demonstration are anticipated to apply soon because their Ed Flex status has expired. Under Ed Flex, Pennsylvania now has the authority to exempt local school districts from certain statutory and regulatory requirements under ESEA; in exchange, the schools must demonstrate that they will improve student achievement. The state has already approved one district for the program.

✓ **8. Education --GAO Report on Funds for Construction, Including Charter Schools:** The GAO released a report requested by Rep. Goodling a week ago that details the difficulties charter schools encounter in accessing funds for construction and facilities. It suggests options such as grants, direct loans, loan guarantees, loan pools, and tax-exempt bonds and tax credits that the federal government could utilize if it were to take on a greater role in financing charter school facilities. The report also concludes that "increased federal assistance would change the nature of the federal government's relationship with traditional and charter schools as well as with the local and state governments that are primarily responsible for purchasing, constructing, renovating and leasing school buildings." The report projects that it would cost \$112 billion to bring school buildings nationwide up to par (the Department estimates the cost at \$127 billion).

10-2-00

10 SEP 28 1999

THE WHITE HOUSE  
WASHINGTON

September 28, 2000

copied  
chow  
Podesta

## MEMORANDUM TO THE PRESIDENT

FROM: Barbara Chow

SUBJECT: DPC Weekly Report

**1. Drunk Driving --.08 BAC:** The Transportation conference did not meet this week, but is expected to convene Monday. Chairman Wolf is expected to offer a compromise on the .08 BAC issue. The original Lautenberg measure would give states three years to adopt .08 BAC, with failure to do so resulting in a 10% loss in federal highway funds and 5% each year thereafter. We understand that the Wolf compromise would create a growing sanction for failure to adopt the .08 standard, starting at 2%, and steadily increasing to an 8% loss of highway funds. Currently, 18 states, D.C. and Puerto Rico have .08 BAC as their impaired driving standard. Of the remaining states, 30 have .10 BAC as their impaired driving standard and two states (MA, SC) do not have a set BAC level (a "per se standard") at which someone is considered too impaired to drive. We are continuing to work closely with the Chief of Staff, OVP, Legislative Affairs and OMB on targeted outreach. On Friday, MADD President Millie Webb - who lost her daughter and nephew and suffered severe burns in a crash involving a .08 BAC driver - asked us to convey her personal thanks to you for your ongoing support and your Thursday .08 BAC remarks.

**2. Guns - - Report on Gun Injuries:** On October 8, the Department of Justice's Bureau of Justice Statistics is planning to release a Gun Injury Report, which includes the total number of nonfatal gunshot injuries and firearm-related deaths from 1993 to 1997. The report includes data showing the number of shootings that were the result of an assault, suicide, homicide, or accident. Key findings from the report include: (1) the number of ~~gunshot wounds from assaults treated in hospital emergency rooms fell 39%~~; (2) ~~homicides committed with a firearm fell 29%~~; (3) 80% of all crime-related gunshot victims were male, almost half were black males and about one quarter were black males ages 18 to 24; (4) over half of the victims of nonfatal gunshot wounds from crime were younger than 25; and (5) 28% of all violent victimizations were committed with a firearm.

10-2-00

**3. Welfare - - Immigrant Access to Benefits:** The Administration has taken two recent actions to reduce unnecessary collection and reporting of immigration and Social Security number (SSN) information related to immigrant benefits. Last week, five agencies issued a notice that a very rigorous standard of "knowledge" would have to be met before triggering the provision in the welfare reform act requiring agencies to report immigrants they know to be undocumented. This notice follows guidance issued the week before, clarifying that states have flexibility to design their application forms and procedures so that questions about the immigration status and SSN of non-applicant family members does not deter eligible family members in a mixed-status household from applying for benefits. While the agencies have and will continue to actively reach out to immigrant groups, advocates, and state officials on these matters, we opted for a low-key rollout to avoid Congressional backlash.

**4. Welfare - - Food Stamps:** In your FY 2001 budget, you proposed to make it easier for low-income working families to own vehicles and receive food stamps, as well as to restore food stamp eligibility to about 165,000 legal immigrants by 2005. We have been pursuing a number of avenues to get these items considered in final negotiations. In addition, we have been preparing for a possible event on October 4 where you could announce new food coupons for approximately 500,000 senior citizens to exchange for fresh produce at farmers markets, roadside stands, and community-supported farms. At the event you could also announce other efforts to reduce domestic hunger and call on Congress to adopt your food stamp initiatives.

**5. Education - - Glenn Commission Report:** The National Commission on Mathematics and Science Teaching for the 21<sup>st</sup> Century, chaired by Senator John Glenn, issued a report on Wednesday examining the current state of math and science education. Specifically, the report recommends state, district and school level assessments of what teachers need to deliver high-quality math and science education; professional development aligned to meet those needs; reward and incentive programs for exemplary teaching; recruitment and retention efforts to bring more high-quality people into the classroom; and improved support for teachers including higher salaries. The report recommends an annual investment of \$5 billion, with every dollar of state funds matched by two dollars on federal funds, to accomplish this effort

**6. Education - - Cincinnati Merit Pay Program:** Cincinnati has become what is believed to be the first public school district in the country to scrap its traditional teacher salary structure and replace it with a schedule that bases pay on classroom performance. In a 54%-46% vote, the Cincinnati Federation of Teachers approved the plan, which will be implemented in the 2002-2003 school year. Unlike plans in some districts and states, the Cincinnati model does not link teacher pay to student test performance. Instead, it increases pay for educators who meet teaching goals set by the district. The hallmark of the plan is the creation of five career categories. Beginning teachers will be labeled "apprentices" and can progress through the system to become "novice," "career," "advanced," and "accomplished" educators, provided they meet the district goals. Frequent, in-depth evaluations administered by a principal and a consulting teacher will determine whether teachers advance in the career categories, stay in the same categories,

10-2-00

or slide back into a lower one. In addition to classroom observations, teachers will be required to submit portfolios that include logs of parent contacts, sample lesson plans and student work, a list of professional development activities, and a grade book.

#### 7. Children and Families - - Violence Against Women Act Reauthorization

(VAWA): On Tuesday, after your event in New Mexico, highlighting the importance of VAWA programs, the House overwhelmingly voted to reauthorize VAWA 415-3. The next day, you sent a letter to the Senate, urging immediate consideration of freestanding VAWA, before its authorization expires on September 30. Senator Lott, however, has signaled that he plans to use VAWA as a "sweetener" to pass other legislation, including possibly bankruptcy reform. Women's groups are sending the message that VAWA should not be added to legislation that is harmful to women.

**8. Health Care - - Update on Reallocation of CHIP Funds:** After reading reports that 40 states are scheduled to lose the unspent portion of their 1998 CHIP funds, you asked whether we should take a position that would allow these states to keep a portion of their unspent funds. Obviously, this would have the impact of reducing the scheduled redistribution of CHIP funds to the 10 states that have spent their entire 1998 allotment. They will likely argue such an action would effectively reward states that have been slow to implement the program. From a pure policy perspective, we believe it would be advisable to allow states that have not spent all their money to retain a portion of their funds, as we do not want these states to have any excuse for not moving aggressively to implement their programs. In addition, states that have spent all their funds would still receive an increase in their allotment - just not as large as it would have otherwise been. However, we expect that the Congress will come to a consensus on what the formula for such a redistribution should be. In fact, earlier this week, the Commerce Committee marked up a compromise that allows the states that have not spent their entire allotments to keep approximately 60 percent of the \$2 billion in unspent funds. The remaining \$700 million would be divided amongst the 10 states (including NY) that have spent their entire 1998 allotments. We would advise that HHS provide technical assistance to the states, with an acknowledgement that there should probably be a reallocation of dollars, but that the principle of rewarding "good states" should not be significantly undermined. Within that construct, we would strongly recommend that we not specify the percentage split, but instead defer to the legislative process.