

NLWJC - Kagan

DPC - Box 053 - Folder-007

Tobacco-Settlement: State Money

[2]

Tob-act - state money

Note that this memo is based on second-hand verbal descriptions — we are not aware of any specific legislation.

Chiles Medicaid Tobacco Recovery Idea

Under current law if the states recover Medicaid costs as part of a tobacco suit, they are required to pay back federal Medicaid matching payments.

CBO would score any legislation that forgives the states liability as a cost (\$1.2B over 5 years).

The \$1.2B represents CBO's estimated amount of federal recoveries, less certain administrative costs (e.g., lawyers fees). Moreover, the federal amount is adjusted downward by CBO because states will assert that the tobacco recoveries are not based on the Medicaid smoking costs and because CBO regularly "discounts" the HHS Secretary's resolve in collecting from the states. [The fact that states are willing to offset the \$1.2B may indicate that the estimate of the federal share is too low.]

Given that CBO would score a cost of \$1.2B over 5 years, the idea is for the states to offset the costs by paying back the government. Each state would pay according to the percentage of the national tobacco recoveries it received. That is, if Florida accounts for 30% of all tobacco recoveries, it would pay 30% (\$360m) of the \$1.2B to the federal government.

Concerns

There are several concerns with this idea, they have been organized into three categories: definition; budget/scoring; and enforcement.

Definiton The development of national tobacco legislation involves clearly identifying the basis of the settlement payments (e.g., real versus nominal dollars; inflation factors in the outyears); etc.). The basis of the payment would have to be clarified.

Budget/Scoring As a matter of precedent, OMB resists accepting CBO scoring in law because it is inconsistent with the President's economic assumptions, baseline technical assumptions, and scoring assumptions. Consequently, OMB may score the costs of forgiving state payments differently than CBO.

To implement the law, we believe the proponents of the idea are thinking of writing the dollar amount in law. Given that estimates vary over time, drafting legislation that locks in a dollar figure can have unintended outcomes. For example, Medicare beneficiaries are supposed to pay 25% of Part B costs. At one point dollar

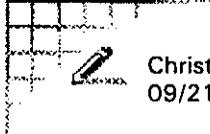
amounts, rather than the percentage, were written into law. When Medicare actual expenditures came in lower than estimated expenditures, beneficiaries were paying more than 25% of Part B costs.

Enforcement Obviously, OMB staff would not recommend forgiving states. l

It is not clear how the payments would be made to the federal government and how they would be enforced. Under what circumstances would the states be compelled to make these payments? If a state's economy performed poorly, could the states simply choose not to pay the federal government? Is it likely that all states will agree to this idea, or is Florida an exceptional case? If the cost of forgiving the recovery is \$1.2B and the states are willing to pay this cost, why not simply collect the federal share of the recoveries?

The most rational mechanism for enforcement, assuming one accepts the estimated dollar recoveries, is to take the amounts out of federal payments to the states for Medicaid. This assures that the federal government gets its share of recoveries.

However, if one enforces this policy through Medicaid, it is not clear how this idea differs from current law. Under current law, the Secretary is directed to recover from state Medicaid grants the federal share of amounts recovered by the states from the tobacco companies for Medicaid costs related smoking.



Christopher C. Jennings
09/21/98 04:15:34 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, Cynthia Dailard/OPD/EOP, Jeanne Lambrew/OPD/EOP
Subject: Re: Paragraphs for memo to Erskine 

A few questions:

Do we have a sense about the degree there is Hill support for this proposal, particularly as it relates to allocation of dollars? My sense is that they have not pushed this aspect of the proposal as much as the general recapture prohibition provisions.

Second, does any support for this type of amendment undermine our tobacco strategy / possibility of comprehensive legislation next year?

Third, if we do decide to move in this direction, doesn't it make sense to see if we can resolve our other big state recoupment issue -- provider tax and donations negotiating authority -- at the same time? If we feel that we have to move in this direction, this might be a good thing to get in return for supporting the states in this effort. Although this would complicate matters for the short-term, it would relieve a major headache that is about to painfully confront us after the election. (It could be done by either integrating the NGA tobacco recoupment initiative with our current increased negotiating authority proposal OR we could follow their approach and simply ask the states to pay back the CBO (much reduced) assessment of what we would otherwise recapture through normal enforcement activities. Just a thought...

cj

Tob. - state money

THE WHITE HOUSE
WASHINGTON

September 21, 1998

MEETING WITH GOVERNOR LAWTON CHILES (D-FL)

DATE: September 22, 1998
TIME: 2:00p.m.
LOCATION: Chief of Staff's Office
FROM: Mickey Ibarra *MI*
Fred DuVal *FD*

I. PURPOSE

Governor Chiles has requested a meeting with you on behalf of the Democratic Governors to discuss tobacco.

II. BACKGROUND

Governor Chiles wants to meet with you to discuss tobacco and the possibility of requiring states to fund certain priorities in exchange for Medicaid recoupment protection. The Domestic Policy Council will be providing a detailed briefing of the points that Governor Chiles will raise with you.

The National Governors' Association has stated that its top three priorities for 1998 are tobacco recoupment protection, expanding Ed-Flex to all states and resolving the Indian Gaming issue. Governor Chiles will not raise Ed-Flex with you, however, he may raise the issue of Indian Gaming (see attached talking points.)

In addition to tobacco and Indian Gaming, Governor Chiles may also raise the FICA exemption decision with you. The Governors have long supported a FICA exemption that would help minimize the costs of running publicly-funded work programs for welfare recipients. They have pressed for this Treasury ruling for one and a half years and are becoming impatient with the amount of time it has taken to finalize the ruling. Governor Chiles has been the loudest voice in expressing his frustration. Please see DPC's attached background and talking points paper on this issue.

The final subject that Governor Chiles could potentially raise is that of cost allocation. Representatives from all 50 states have met with representatives from OMB, the Domestic Policy Council, and IGA to discuss the new cost allocation guidelines as required by the 1998 Agriculture Research Bill. The States identified 25 areas of concern and HHS was able to satisfy all but three. Included among the outstanding issues is whether the Administration will seek to recover Medicaid administrative dollars in the upcoming

**MEETING WITH GOVERNOR LAWTON CHILES
PAGE TWO**

Congressional budget battle. Please see DPC's attached background and talking points paper on this issue.

III. PARTICIPANTS

Governor Chiles
Charlie Salem, Director, State of Florida Washington Office
Bruce Reed
Fred DuVal

IV. PRESS PLAN

Closed Press, no stakeout

VI. ATTACHMENTS

Tobacco background paper (provided by DPC)
Indian Gaming background paper
Cost allocation background and talking points (provided by DPC)
FICA background and talking points (provided by DPC)
Attorneys General letter on tobacco
Biography of Governor Chiles

September 21, 1998

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed
Elena Kagan

SUBJECT: Tobacco Update

This memo (1) advises you of recent conversations we have had with an attorney for the industry, which confirm that the industry has no interest in expanding its expected settlement with the states, in the way suggested by Dick Scruggs, to include the federal government; (2) informs you of a recent NGA/NAAG proposal that Congress pass legislation eliminating the federal government's claim for a portion of state tobacco recoveries, and outlines a compromise proposal that Governor Chiles may suggest to you on Tuesday; and (3) outlines a new idea of Bruce Lindsey's to try to use the state settlement discussions to gain clear FDA jurisdiction over tobacco products.

1. Meyer Koplow, the outside counsel for Philip Morris, told us last week that the industry has no interest in bringing the federal government into its settlement discussions with the states. (Our initial conversations with Koplow took place the week before last, but Koplow took some time to speak with his client and get back to us.) According to Koplow, the industry does not think it makes sense to upset the state negotiations, given how close they are to success, in order to pursue a broader settlement whose prospects of completion are highly uncertain. (Koplow, of course, speaks only for Philip Morris, but if Philip Morris is not interested in talking with us, we can bet that no one else is either.)

In explaining this conclusion, Koplow first noted the legal complexities involved in crafting a comprehensive settlement -- in particular, the difficulty of insulating the liability protections and the FDA provisions from legal challenge. Although he thought there was some chance of resolving these issues to all parties' satisfaction, he said (correctly) that we would have to do much hard work before knowing whether such a resolution was possible. Koplow also noted the practical difficulties involved in the Scruggs scheme; for example, he believes that the states would not agree to any arrangement that would subtract punitive damages from their share of the money. Finally, Koplow stressed the "psychological" difficulties of attempting to reach an agreement. The industry, according to Koplow, simply does not trust us; it fears that we will bow to political pressure and increase our demands during negotiations.

Koplow left open the possibility that the industry would want to deal with us separately at some future time, after it had completed the state settlement. He noted that Philip Morris wants to resolve all government claims, including potential claims by the federal government. He implied that the kind of deal Philip Morris contemplates would not necessitate legislation and would include (1) money, (2) FDA jurisdiction, and (3) certain marketing restrictions excluded from the state settlement (in part so the industry has something to offer the federal government). He did not specifically raise liability protections in this context.

2. The National Association of Attorneys General (NAAG) wrote a letter to Congressional leaders last week urging them to pass legislation before Congress adjourns to “clarify that the Health Care Finance Administration should not assert any claims against state tobacco recoveries” (letter attached). We can expect the NGA to support this demand strongly; indeed, Republican Governors probably have talked already with Senator Lott and Speaker Gingrich about moving this legislation. A set of talking points prepared for Democratic Governors, for use in a recent phone call with the Administration, urges us to support the legislation, as does a letter that Senator Graham just sent you (talking points and letter attached).

Governor Chiles is meeting with you on Tuesday, primarily to discuss this issue. (As you know, Florida has a very special interest in the issue because it is one of four states to have completed a settlement with the industry.) Chiles may urge you to support a bill that simply eliminates the federal government’s claim to any tobacco recovery, as described above. His staff, however, has suggested that Chiles may come in with a compromise option, predicated on the agreement we reached with the NGA in the context of the McCain legislation. Under this approach, the federal government would renounce its claim to a state recovery only when the state agreed to use half its money on a menu of seven items: child care; child welfare; the maternal and child health block grant; the substance abuse block grant; the safe and drug free schools program; Eisenhower education grants; and the state match for the children’s health insurance program (subject to a six percent ceiling). This approach would give us exactly what we would have gotten from the “state side” of the McCain legislation, and we should seriously consider it -- especially given the alternative legislation that the NGA and NAAG are proposing.

We should note that any proposal restricting the federal government’s ability to bring claims against the states will involve serious budget issues. The Congressional Budget Office currently projects that the federal government will recoup \$1.2 billion over five years from state tobacco settlements; we can expect the Office to score even Chiles’s compromise approach at approximately that amount. The Governors supposedly have agreed on a plan to reimburse the federal government for this cost, under which they would divide the cost amongst themselves based on their share of the total settlement funds. OMB is currently evaluating this proposal.

3. Bruce Lindsey has proposed a more ambitious plan for using our recoupment claims as leverage to get something out of a state settlement. Under the Lindsey plan, we would drop our recoupment claims if a state agreed to (1) take 45 percent of the money unrestricted; (2) use

45 percent of the money for the seven items on our menu; and (3) give over 10 percent of the money to a "tort fund" which would pay legal judgments against the industry. If the judgments failed to exhaust the tort fund, the remaining money in the fund would return to the unrestricted state pot. Conversely, if the judgments exceeded the tort fund, the remaining liability would come out of the restricted state pot -- and if that too were exhausted, would revert to the industry. In exchange for this potentially valuable benefit the industry would agree to FDA jurisdiction -- if possible, through the settlement itself; if not, by dropping its opposition to legislation.

The great virtue of this scheme is that it could make the state settlement partly our victory: if everything works correctly, we would achieve the important goal of full FDA jurisdiction. The scheme, however, raises at least three questions. First, we may not be able to convert this deal into an effective guarantee of FDA jurisdiction. The legal difficulty of getting regulatory jurisdiction through a settlement is heightened in this scheme because we probably could not be a party to the agreement; moreover, the industry's assurance that it would not fight a legislative solution (even if it is believed) hardly guarantees the result we want in a Congress replete with FDA-haters. Second, even if we could surmount this problem, the states may well refuse to consider this plan, given that it puts more than half of their money at risk of going back to the industry for legal judgments. Third, the left in our own party may react with outrage to this agreement, arguing that we effectively have "bought" FDA jurisdiction by granting the industry relief from liability. We would have to explore these questions more thoroughly before pursuing this option.

Indian Gaming

Talking Points

- We are very aware of the concerns expressed by the Governors on this issue.
- We have expressed our opposition to the Enzi-Sessions Amendment because it denies tribes a right to gaming granted by IGRA, without the benefit of Congressional hearings or to tribal consultation.
- There are legitimate concerns on both sides about the appropriate scope of gaming. These are appropriating the subject of Department of Interior-lead negotiations which are currently taking place and which, we hope, will produce consensus between the tribes and the states on amendments to IGRA that would improve the compacting process and increase regulatory capacity.

Background

Governors, along with the nation's Attorneys General, are currently in negotiations with Tribes, the Department of the Interior, and the Department of Justice, to find feasible solutions to concerns both parties have with the Indian Gaming Regulatory Act (IGRA.)

IGRA was enacted to allow Indian tribes the opportunity to pursue gaming for economic development on Indian lands. Under IGRA, Tribes are only authorized to conduct class III gaming operations if such gaming is permitted by the state. Further, a tribe can conduct class III gaming only under two circumstances:

- pursuant to a mutually agreed-upon Tribal State compact; or
- in circumstances in which states fail to negotiate a compact in good faith. IGRA authorizes the Secretary to issue "procedures" to define the nature and scope of authorized gaming activities. IGRA only authorizes the Secretary to issue "procedures" after states have been provided with a full opportunity to negotiate compact terms.

Under IGRA, tribes were given the right to file suits directly against states to prompt states to negotiate the potential terms of gaming compacts with tribes. In *Seminole v. Florida*, 116 US 1114 (1996), the U.S. Supreme Court held that a state may assert an Eleventh Amendment immunity defense to avoid a lawsuit brought by a tribe alleging that the state did not negotiate in good faith. As a result of this decision, states can avoid entering into good faith negotiations with Indian tribes without concern about being subject to suit by tribes.

Under these circumstances, the Secretary's authority to issue "procedures" may provide the only avenue for allowing Indian gaming activities to occur in states that allow or permit non-Indian gaming.

The Secretary published a proposed rule on January 22, 1998. The proposed regulations, 63 Fed. Reg. 3289 (Jan. 22, 1998), are intended to provide an administrative remedy for Indian tribes when a state fails to negotiate in good faith with an Indian tribe over the terms and conditions of a tribal-state compact as required by IGRA. Such a remedy would be available when a state not only failed to negotiate in good faith, but also successfully asserted a sovereign immunity defense to a Federal court action brought about by a tribe under IGRA. Such a defense was recognized by the Supreme Court in the Seminole decision. The Department is currently reviewing comments that have been provided on the proposed rule.

The Enzi-Sessions Amendment to the FY 1999 Interior Appropriations bill passed the Senate under unanimous consent on Tuesday, September 15. The Amendment would continue the current moratorium on the Secretary's approval of tribal-state compacts not first approved by the state, and would prohibit the Secretary from promulgating the proposed rules which provide a procedure for class III Indian gaming in the absence of a compact.

Cost Allocation

Talking Points

- **We still believe Medicaid cost allocation is justified.** We cannot allow states to increase federal administrative costs by keeping their entire capped TANF block grants and shifting administrative costs formerly charged to TANF to the open-ended Medicaid and Food Stamp programs. Our budget made an across-the-board change for every state, because we did not have state specific data to rely upon.
- **The passage of the Agriculture Research Bill put into law cost allocation for Food Stamps and proved that a state-by-state approach to making these adjustments is possible.** I know White House and HHS staff have worked closely with governors staff to ensure that the Ag Research bill collects accurate state specific data. Because state data will now be available, we are willing to consider a similar approach in a Medicaid cost allocation proposal rather than our original across-the-board reduction in administrative costs.
- **Cost allocation should not affect children's health outreach.** The Medicaid cost allocation proposals are designed to recapture potential increases in Federal spending -- they do not "cut" spending. As such, states would have the same amount of Federal match that they would have had before. All administrative activities would still be matched by the Federal government.

Background

- Before welfare reform, States charged most common administrative costs of AFDC, Medicaid and Food Stamps to their AFDC budget. Because the matching rate for all of these open-ended programs was the same, States would receive the same Federal matching funds regardless of which program paid for these common costs.
- However, welfare reform has changed this equilibrium. TANF (1) consolidated cash assistance and related programs, (2) built common administrative costs of Medicaid, Food Stamps and AFDC into the TANF block grants, and (3) limited the amount of funds in TANF that may be used for administration. Even though they are built into the grants, many States have sought to allocate some of the common administrative costs to Medicaid and Food Stamps to free up more dollars within the capped TANF grants.
- In general, government accounting rules call for each program to pay its own administrative costs -- the so-called "benefiting program rule." CBO estimates presume that states are following this approach. As states shift administrative costs from the capped TANF block grant to the open-ended Food Stamp and Medicaid programs, conservative estimates suggest that Federal costs would increase by at least \$3 billion in FY's 99-03 with no commensurate benefit for low-income individuals. The President's FY '99 budget proposed to adjust the match rate on administrative costs in Food Stamps and Medicaid from 50 percent to 47 percent to account for the cost shift from TANF.

Welfare Reform: Application of FICA to Workfare Jobs

Talking Points

- The President strongly supports exempting workfare payments from FICA taxes, but wants to ensure that such action does not weaken worker protections.
- I understand from the Treasury Department that the draft notice is being edited to ensure that the action does not weaken worker protections, and this editing process has delayed matters a bit. Nothing has changed in the language which makes clear workfare is exempt from taxes, just some additional legal language has been provided to make clear that the IRS notice does not affect the Fair Labor Standards Act.
- I know this ruling is long overdue, but I want you to know that the language is being finalized as we speak and we are as eager as you are to complete this action.

Background

Treasury and the IRS have prepared a draft notice stating that workfare positions are not subject to FICA taxes (workfare participants are already ineligible for the EITC as a result of a Balanced Budget Act provision). Governors have long sought this FICA exemption to help minimize the costs of running publicly-funded work programs for welfare recipients. However, organized labor is concerned that such a notice will provide support for legal challenges that worker protections do not apply to workfare. Through Department of Labor guidance issued in May 1997, the Administration had taken a firm stand that minimum wage and other labor protections apply to workfare positions.

A year ago, after the President spoke to the NGA, he discussed this issue with several governors and told them that he supports exempting workfare payments from FICA taxes. The Treasury and Labor Departments have worked to craft language to try to minimize any effect on worker protections.

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CHRISTINE T. MILLIKEN
*Executive Director
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September 17, 1998

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Speaker of the House Newt Gingrich
U.S. House of Representatives
Washington, D.C. 20515

Minority Leader Richard Gephardt
U.S. House of Representatives
Washington, D.C. 20515

Dear Senators Lott and Daschle and Representatives Gingrich and Gephardt:

As state Attorneys General, we have communicated with Congressional leaders a number of times about youth smoking and tobacco litigation. Today we wish to reiterate our strong support for legislation that would protect state tobacco litigation or settlement recoveries from federal Medicaid recoupment claims.

Four states have already settled their lawsuits. A negotiating team is now seeking to reach a proposed settlement that would be made available to all of the other states and territories. However, whether the funds are paid through settlement or through court verdicts, the issue of Medicaid recoupment remains a constant concern for states.

A frequent misconception is that the state lawsuits are based entirely on recovering money through the Medicaid program. In reality, state lawsuits are based upon a variety of theories and measures of recovery. For example, many states are pursuing civil penalties under consumer protection statutes, treble damages under antitrust laws, or forfeiture of profits from sales of cigarettes to underage buyers. Some states have made no Medicaid-related claims at all.

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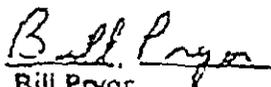
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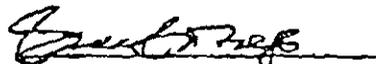
The vastly better solution would be for Congress to clarify that the Health Care Finance Administration should not assert any claims against state tobacco recoveries. Instead, the funds can be better utilized in each state to compensate for and to counter the effects of cigarette smoking.

It is important that the legislation can be passed before Congress adjourns this year. We ask for your support for legislation like S.1471, H.R. 2938, or other mechanisms to ensure that tobacco settlement payments stay in their respective states. Thank you for your consideration.

Sincerely,



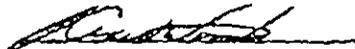
Bill Pryor
Attorney General of Alabama



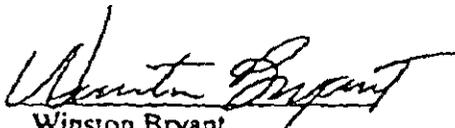
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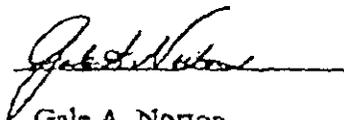
Grant Woods
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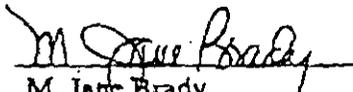
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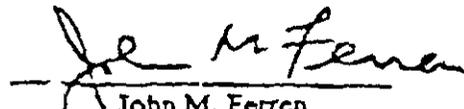


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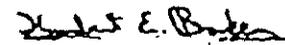


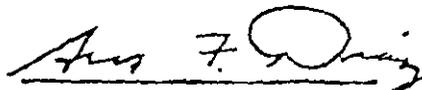
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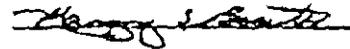

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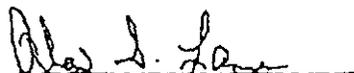

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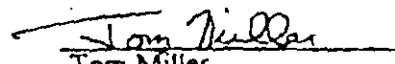

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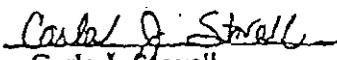

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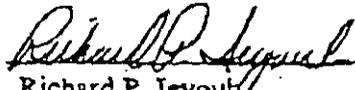

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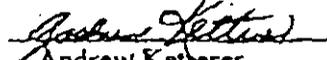

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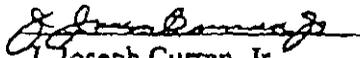

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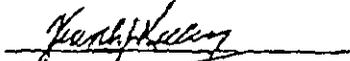

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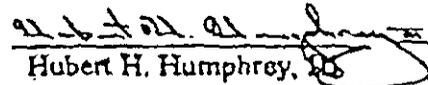

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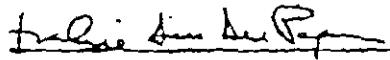

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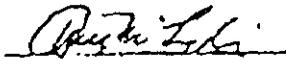

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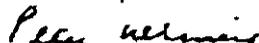

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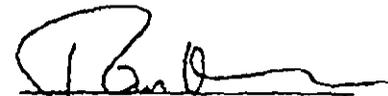

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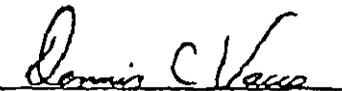

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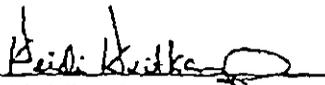

Philip T. McLaughlin
Attorney General of New Hampshire

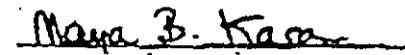

Peter Verniero
Attorney General of New Jersey

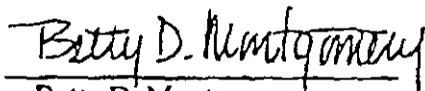

Tom Udall
Attorney General of New Mexico


Dennis C. Vacco
Attorney General of New York

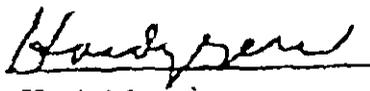

Michael F. Easley
Attorney General of North Carolina

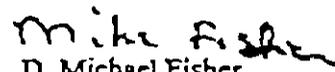

Heidi Heitkamp
Attorney General of North Dakota


Maya B. Kara
Attorney General of N. Mariana Isl.

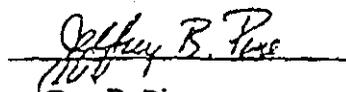

Betty D. Montgomery
Attorney General of Ohio

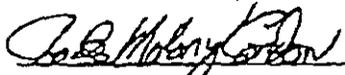

W. A. Drew Edmondson
Attorney General of Oklahoma


Hardy Myers
Attorney General of Oregon


D. Michael Fisher
Attorney General of Pennsylvania


José A. Fuentes-Agostini
Attorney General of Puerto Rico


Jeffrey B. Pine
Attorney General of Rhode Island



Charlie Conden
Attorney General of South Carolina



Mark Barnett
Attorney General of South Dakota



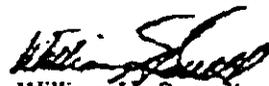
John Knox Walkup
Attorney General of Tennessee



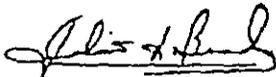
Dan Morales
Attorney General of Texas



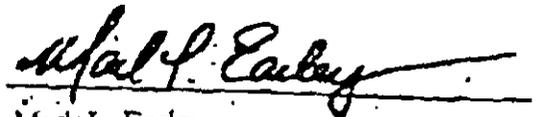
Jan Graham
Attorney General of Utah



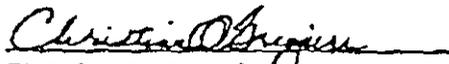
William H. Sorrell
Attorney General of Vermont



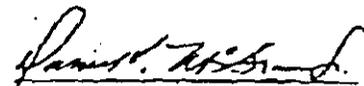
Julio A. Brady
Attorney General of Virgin Islands



Mark L. Earley
Attorney General of Virginia



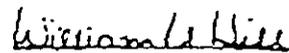
Christine O. Gregoire
Attorney General of Washington



Darrell V. McGraw Jr.
Attorney General of West Virginia



James E. Doyle
Attorney General of Wisconsin



William U. Hill
Attorney General of Wyoming

cc: Senators Lugar and Harkin, Agriculture Committee
Senators Stevens and Byrd, Appropriations Committee
Senators Domenici and Lautenberg, Budget Committee
Senators McCain and Hollings, Commerce Committee
Senators Roth and Moynihan, Finance Committee
Senators Hatch and Leahy, Judiciary Committee
Senators Jeffords and Kennedy, Labor and Human Resources Committee
Senators Bob Graham and Connie Mack, Florida
Representatives Smith and Stenholm, Agriculture Committee
Representatives Livingston and Obey, Appropriations Committee
Representatives Kasich and Spratt, Budget Committee
Representatives Bliley and Dingell, Commerce Committee
Representatives Hyde and Conyers, Judiciary Committee
Representatives Archer and Rangel, Ways and Means Committee
Representatives Bilirakis, Hastings, and Shaw, Florida
Representative Hansen, Utah
Representative McClinnis, Colorado
Representative Meehan, Massachusetts
Representative Pryce, Ohio
Representative Waxman, California

Governor Lawton Chiles of Florida

Birthdate: April 3, 1930
Family: Married; four children
Spouse: Rhea
Religion: Presbyterian
Party: Democrat
Elected: November 1990, 1994
Term Expires: January 1999

LAWTON CHILES was born in Lakeland, Florida. He attended the University of Florida, earning a bachelor's degree in 1952 and a law degree in 1955. He also served in the U.S.

Army as an artillery officer in Korea from 1953 to 1954.

He served in the Florida House of Representatives from 1958 to 1966 and in the Florida Senate from 1966 to

1970. He was elected to the U.S. Senate in 1970, where he served until 1989. In Congress, he became the first Floridian to serve as chairman of the Senate Budget Committee. From his legendary walk across the state during his 1970 U.S. Senate campaign to placing a \$100 limit on individual campaign contributions during his two gubernatorial races, Governor Chiles has demonstrated an uncanny sense of timing and political style. His down-home manner, strong work ethic, and commitment to constituents have made "Walkin' Lawton" Chiles a favorite of Floridians. A fourth generation Floridian, Governor Chiles has been a strong champion of the state's children and families. He engineered an historic drop in the state's infant mortality rate by promoting parental care for mothers and infants; he brought the state's landmark legal action against the nation's top cigarette makers to a successful close in August 1997 by winning an \$11.3 billion victory over tobacco and earmarking the dollars to protect children's health; and he steered a \$2.9 billion plan through the Florida legislature in November 1997 to build more schools and alleviate classroom overcrowding in the state. He is a member of the National Governors' Association Executive Committee and is NGA's co-lead Governor on Medicaid.

Tob - state ^{money} ~~payments~~

Fred Duval 09/23/98 04:54:12 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Re: Chiles 

- (1) not historically, but sadly, increasingly so.
- (2) indeed not! (but a liitle more wouldn't hurt!)

I briefed Bruce on what I'd learned on tobacco.

I've asked Charly Salem to try and build a coalition of states to come back to us and make the request again on the menu approach.

Ron Klain @ OVP
10/05/98 04:37:01 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: State Medicaid/Tobacco Legislation

I am starting to get calls from our liberal friends expressing concerns about the Congress waiving the fedl claims to the state settlements. I have pretty much told them to forget it, but there is carping out there.

One point that I cannot easily waive off: fears that the federal release will be "conditioned" on the states agreeing to limit attorneys fees. This would be a political problem for us. Let me know if this is looming.

ToS - nr - state money



Cynthia A. Rice

10/08/98 06:40:56 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc: Christopher C. Jennings/OPD/EOP, Jeanne Lambrew/OPD/EOP, Cynthia Dailard/OPD/EOP

Subject: Numbers you asked about

Bruce -- the CBO score of the Medicaid works about how I described earlier. It's based on assumptions of how many states will settle suits in the next five years, and the likelihood that HCFA will actually collect the federal share. CBO keeps these assumptions quite close to the vest, and OMB doesn't know what they are. But as the table below shows, CBO expects the federal government in the next five years to recoup about 11.4% of the federal share of the 50 state settlement dollars, which means the following scenarios would be possible:

1) Assume 25% of states would settle, and HCFA would recoup 45% of federal funds:

$$.25 \times .45 = 11.3\%$$

2) Assume 15 percent of states would settle and HCFA would recoup 75% of federal funds:

$$.15 \times .75 = 11.3\%$$

	FY 99	FY 00	FY 01	FY 02	FY 03	5 YR
McCain Bill State Payments	6.2	4.4	5.0	5.1	5.5	26.2
McCain Bill, Federal Share of State Payments (57%)	3.5	2.5	2.85	2.9	3.1	14.9
Cost of Recoupment Provision	.14	.28	.36	.45	.45	1.7
Recoupment Cost as Percentage of Federal Share	4.0%	11.2%	12.6%	15.5%	14.5%	11.4%

Tob-acc-state money

cc: Chris
CR
EK

Congress of the United States

Washington, DC 20515

October 7, 1998

*Bruce R
for response*

Erskine B. Bowles
Chief of Staff to the President
The White House
Washington, DC 20500

Dear Mr. Bowles:

We are writing to urge the Administration to support the inclusion of language in a continuing resolution or omnibus appropriations bill for fiscal year 1999 to prevent the U.S. Department of Health and Human Services from seizing a portion of states' recoveries in tobacco-related litigation.

Last November, the Health Care Financing Administration (HCFA) notified state Medicaid directors that it intended to recoup the federal "share" of Medicaid matching dollars from states that reached settlements with the tobacco industry. In December, HCFA agreed to withhold attempts to recover settlement funds from states until Congress had an opportunity to address the issue in federal legislation. Now that broader tobacco legislation is stalled, and with a number of states scheduled to go to trial in the coming months, it is urgent that this issue be resolved this year.

We are seeking passage of H.R. 2938 or similar legislation to ensure that HCFA cannot treat funds recovered by the states from tobacco companies as an overpayment under the Medicaid program. We are not seeking to address broader tobacco policy concerns through this legislation, rather, we seek only to clarify this narrow issue.

The legislation would be fully paid for by the states themselves, thus making the provision revenue neutral. This position is supported by National Conference of State Legislatures, the National Governors Association, and the National Association of Attorneys General.

States have taken the lead in the tobacco debate by assuming the financial risk of lawsuits to recover tobacco-related health care costs, and we believe that these funds should remain with the states. We therefore urge the Administration to support passage of a provision that can be endorsed by Members on both sides of the aisle as part of a continuing resolution or an omnibus appropriations bill for fiscal year 1999. Thank you for your consideration.

Sincerely,

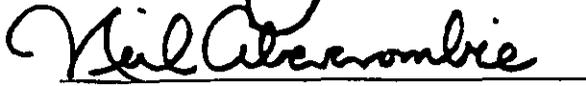
Eddie Bernice Johnson
Eddie Bernice Johnson, M.C.

Bennie G. Thompson
Bennie G. Thompson, M.C.

James L. Oberstar
James L. Oberstar, M.C.


Max Sandlin, M.C.

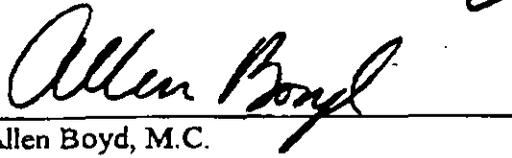

Corrine Brown, M.C.


Neil Abercrombie, M.C.


Robert Wexler, M.C.


Ciro D. Rodriguez, M.C.

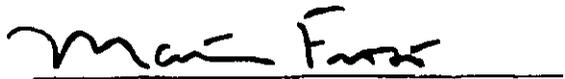

Peter J. Vislosky, M.C.

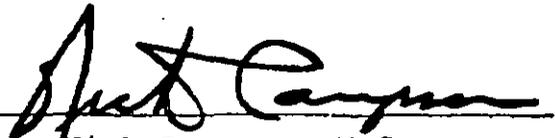

Allen Boyd, M.C.


Ken Bentsen, M.C.


Peter Deutsch, M.C.


Ralph M. Hall, M.C.


Martin Frost, M.C.


Nick Lampson, M.C.


Bill Luther, M.C.

Tobacco - state money

THE WHITE HOUSE

WASHINGTON

October 6, 1998

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed

SUBJECT: Meeting with Representative Waxman

Representative Waxman has requested this meeting to discuss Federal recoupment of Medicaid revenues. As you know, we oppose the NGA's current proposal to eliminate our recoupment claims outright, which would allow the states to use all their funds in an unrestricted manner. You told Governor Chiles that we would relinquish our claims, but only if the states agreed to use half their money on the menu of seven items that we negotiated with the NGA as part of the McCain legislation (child care, child welfare, the maternal and child health block grant, the substance abuse block grant, the safe and drug free schools program, Eisenhower education grants, and the state match for the children's health insurance program). Senator Lott apparently opposes any such conditions.

Waxman objects to any attempt to resolve the issue this year, because he believes that a resolution would deter passage of comprehensive tobacco reform next term. If something has to be done this year, however, Waxman is likely to prefer the position of the public health groups, which are calling for 20 percent of the federal portion of the settlement funds to be spent on tobacco control activities (cessation, prevention, etc.). Thus, they want 50 percent of the funds for unrestricted purposes, 40 percent for the state menu, and 10 percent for tobacco control. Waxman's staff told us that they believe it is important to reserve funds from the state settlements for federal tobacco control initiatives, in case the state settlement gives Congress less of an incentive to pass comprehensive reform next year.

Your goals for this meeting should be to convey:

- (1) we are not actively pursuing a resolution to this issue;
- (2) we will not support any resolution unless it includes, at a minimum, the McCain menu;
- (3) we will try to add some funding for tobacco control activities to any resolution;
- (4) our primary objective must be to work together to make sure that the Republicans do not pass a no-strings rider which prevents federal recoupment and allows unrestricted use of the funds.

Tob - state -
state money

**JOSHUA
GOTBAUM**
10/13/98 10:05:34 AM



Record Type: Non-Record

To: Sylvia M. Mathews/OMB/EOP, Elena Kagan/OPD/EOP, Jacob J. Lew/OMB/EOP
cc: Adrienne C. Erbach/OMB/EOP, Victoria A. Wachino/OMB/EOP
Subject: FYI: Waxman opposition to any tobacco recoupment in omnibus

----- Forwarded by Joshua Gotbaum/OMB/EOP on 10/13/98 10:03 AM -----

.....
Daniel N. Mendelson
.....

10/13/98 09:26:54 AM
.....

Subject: Re: call from Karen Lightfoot 

Waxman wanted to reiterate his opposition to ANY deal on tobacco in the omnibus. He sees this as a primary motivator for next year's debate on this issue.



Cynthia A. Rice

10/13/98 12:04:08 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP
cc: Cynthia Dailard/OPD/EOP
bcc:
Subject: Re: state settlement 

Based on Wall Street and news reports, CD put together these helpful comparisons of marketing restrictions in the proposed settlement

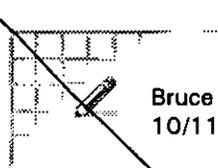


minn1013.wpd Compares proposed state settlement, FDA rule, and Minnesota



sett1013.wpd Compares proposed state settlement and FDA rule

Bruce N. Reed



Bruce N. Reed
10/11/98 03:51:03 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc:
Subject: state settlement

Two news items from Gary Black: Timing slips to week of 10/26, and Scruggs's secret plan on Medicare rider isn't much of a secret.

October 9, 1998

HIGHLIGHTS

1. Anticipated timing of the new AG settlement has slipped to the week of 10/26. This was said to be due to a prior scheduling conflict by lead AG Gregoire, but may reflect additional time needed to get a critical mass of AGs behind the deal prior to its announcement. Or, it may reflect the industry needing time to digest what has become a very complex set of renegade provisions.

**Comparison of Advertising Restrictions in
the FDA Rule, Minnesota Settlement,
and AG's Proposed State Settlement**
(October 13, 1998)

Advertising Restriction	FDA Rule	Minnesota Settlement	AG's Proposed Settlement
Bans all billboards	No	Yes	Yes
Bans all transit advertisement	No	No	Yes
Bans outdoor advertising within 1000 feet of schools and public playgrounds	Yes	Yes	No
Restricts advertising to black-and-white text only for publications, direct mail or outdoor billboards except in publications with a predominant adult readership or at adult only facilities	Yes	No	No
Restricts advertising to black-and-white text only for point of purchase sales.	Yes	No	No
Imposes size limits on outdoor signs at retail locations (14 square feet)	No	No	Yes
Prohibits the sale or giveaways of promotional products like caps or gym bags that carry cigarette brand names or logos	Yes	Yes	Yes
Prohibits brand-name sponsorship of sporting or entertainment events, but permits it in the corporate name	Yes	No	No. Allows one sponsorship per manufacturer.
Prohibits placement of tobacco products in films	No	Yes	Yes

**Comparison of Advertising Restrictions in
the FDA Rule and the AG's Proposed State Settlement**
(October 13, 1998)

Advertising Restriction	FDA Rule	AG's Proposed Settlement
Bans all billboards	No	Yes
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Prohibits placement of tobacco products in films	No	Yes

Tob - r - state money

CAMPAIGN For TOBACCO-FREE Kids

NATIONAL CENTER FOR TOBACCO-FREE KIDS

TO: Bruce Reed
 FROM: Matthew L. Myers
 DATE: 10/02/98
 SUBJECT: HCFA Tobacco Waiver

cc Chris
 EK
 CR
 Josh
 + return

Bruce

I have met with the key members of ENACT and they have reached an agreement on their position on the effort to have the federal government waive its right to the state Medicaid money. Our position is embodied in the attached draft letter.

My hope is that we can count on your support and the support of the Administration for this position.

Let's talk when you get a chance.

Dear Senator _____

RE: Effort to waive Federal Share of State Medicaid Settlements: Implications for Public health

On September 30, 1998 Senator Kay Bailey Hutchison announced her intention to introduce an amendment to the Labor, HHS, Education Appropriations vehicle that would waive the federal government's claim to the federal portion of any money the states receive as the result of the lawsuits the states brought against the tobacco companies to recover Medicaid funds spent to treat tobacco related diseases. Over 50 % of the money the states are seeking belong to the federal government as its share of Medicaid. The current legislative proposal would not require the states to spend any of these federal funds to reduce the number of Americans addicted to tobacco or to reduce the death toll from tobacco – the very purpose for which these cases were brought.

We do not object to legislation that would permit the states to retain the funds they receive in these cases, provided, however, that a significant amount of the funds recovered (no less than 20% of the federal portion of these funds) is earmarked to reduce tobacco use and the harms caused by tobacco.

We do oppose legislation that would waive the federal government's share of these funds if that legislation does not specifically set aside money to reduce tobacco use and the death and disease caused by tobacco

Over 400,000 Americans died from tobacco caused disease last year and over a million children started using tobacco for the first time. Funding for tobacco control programs can make a difference. It would be a national tragedy if cases that were brought to recoup billions of dollars spent because of tobacco caused disease were settled without any of the money being used to reduce the death toll from tobacco.

The amount of money at stake is substantial. Four states (Mississippi, Florida, Texas, and Minnesota) have already settled their cases for billions of dollars. The remaining states are in negotiations in an effort to settle all of the remaining cases. The media has reliably reported that the tobacco industry has offered to pay approximately \$200 billion over twenty-five years to settle these cases. Thus, the federal government's share could exceed \$100 billion over twenty-five years or approximately \$40 billion over ten years.

We urge you to insist that no less than 20% of the federal government's share of the funds from the state tobacco Medicaid cases be earmarked specifically for programs to reduce tobacco use and the harms caused by tobacco and to oppose any legislation that fails to do so.

American Cancer Society
American Heart Association
American Academy of Pediatrics
American College of Chest Physicians
American Academy of Family Physicians
National Center for Tobacco Free Kids
National Association of County and City Health Officials

Tobacco - set -
state money

Cynthia Dillard 10/14/98 10:52:15 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Cynthia A. Rice/OPD/EOP, Elena Kagan/OPD/EOP, Cathy R. Mays/OPD/EOP

cc:

Subject: here is Bilirakis language. it is the same as Hutchison.

To prohibit the Secretary of Health and Human Services from treating any Medicaid-related funds recovered as part of State litigation from one or more tobacco companies as an overpayment... (Introduced in the House)

HR 2938 IH

105th CONGRESS

1st Session

H. R. 2938

To prohibit the Secretary of Health and Human Services from treating any Medicaid-related funds recovered as part of State litigation from one or more tobacco companies as an overpayment under the Medicaid Program.

IN THE HOUSE OF REPRESENTATIVES

November 8, 1997

Mr. BILIRAKIS (for himself, Mr. DAVIS of Florida, Mr. YOUNG of Florida, Mrs. THURMAN, Mr. BOYD, and Mr. MICA) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To prohibit the Secretary of Health and Human Services from treating any Medicaid-related funds recovered as part of State litigation from one or more tobacco companies as an overpayment under the Medicaid Program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON TREATING ANY MEDICAID-RELATED FUNDS RECOVERED FROM ONE OR MORE TOBACCO COMPANIES AS AN OVERPAYMENT.

(a) PROHIBITION ON TREATMENT AS OVERPAYMENT- Section 1903(d)(3) of the Social Security Act (42 U.S.C. 1396b(d)(3)) is amended--

(1) by inserting '(A)' before 'The'; and

(2) by adding at the end the following:

“(B) Subparagraph (A) and paragraph (2)(B) shall not apply to any amount recovered or paid to a State as part of a settlement or judgment reached in litigation initiated or pursued by a State against one or more manufacturers of tobacco products, as defined in section 5702(d) of the Internal Revenue Code of 1986.”.

(b) EFFECTIVE DATE- The amendment made by subsection (a) applies to amounts recovered or paid to a State before, on, or after the date of enactment of this Act.

Tobacco - state money

Fred Duval 10/13/98 05:39:31 PM

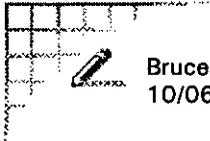
Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Christopher C. Jennings/OPD/EOP, Elena Kagan/OPD/EOP
cc: Mickey Ibarra/WHO/EOP
Subject:

If there is no deal on tobacco recoupment I don't want there to be blame placed on us. My reports are that our opposition to a unrestricted deal is being used to blame us for no deal. I think we should now be pro-active in indicating that we are willing to accept a deal with the McCain menu and committing that to paper. A Bowles letter perhaps. I recognize that pressure from Myers etc may make this difficult, but if we can do it, it would improve our posture with the states looking to place blame.

Chris, thanks for calling Charly back.

Tob - or - state money



Bruce N. Reed
10/06/98 04:43:07 PM

Record Type: Record

To: Cynthia Dailard/OPD/EOP

cc: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, Cynthia A. Rice/OPD/EOP

Subject: Re: memo for Erskine

I think our position should be we'll support the McCain menu, but we'll try to get some \$ for tobacco as part of it if we can. Our #1 objective has to be to make sure that the R's don't force a no-strings rider down our throats. We believe supporting the previously negotiated, NGA-backed McCain menu is the best way to do that. If R's agree to strings, we can debate which strings do the most good (some D's would argue it's important to lock up \$ for tobacco now; others would argue that would make it impossible to do more later). We're not in as good a position as Waxman to demand a tobacco set-aside, since we supported this menu once before.

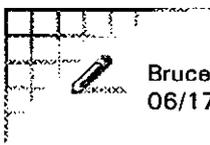
Tob - & r - state money

STATE TOBACCO SETTLEMENT FUNDS

May 15, 1998

- **\$196 billion over 25 years** from the legislation will be allocated to states from a trust fund. These grants will be a mandatory, permanent appropriation. Federal spending for new options on children's health outreach will be netted from this amount.
- **50 percent** of the grants may be used by states for any purpose. The remaining 50 percent will be used for specified restricted purposes, described below.
- **Options for restricted funds.** States can use the restricted funds in any amount that they choose (except for CHIP) to add to any one or all of the following options:
 - Substance Abuse and Mental Health Services Administration grant programs
 - Maternal and Child Health Bureau's Title V program
 - Child Care and Development Block Grant
 - Child welfare programs (Title IV-B)
 - Safe and Drug-Free Schools program
 - Professional Development (Eisenhower) grants
 - Match for the Children's Health Insurance Program (limited to 5 percent of restricted funds)
- **Each program's current matching rules** will be used except for an increased Federal match of 80 percent for child care block grant funds above the appropriated amount.
- **Supplement, not supplanting spending:** Funds from the restricted portion of the grants may not be used as state match for Federal programs (except for CHIP). There will be a maintenance of effort on a program-specific basis, that consists of:
 - 95 percent of the FFY 1997 state spending on the programs listed below, trended by the lower of inflation (CPI) or the Federal appropriation growth.
- **Options for the use of restricted funds will be re-assessed every 5 years.** An independent organization (e.g., General Accounting Office or National Academy of Sciences) will conduct evaluations and assessments of spending options every 5 years, and make recommendations on improvements.

Tib - ser - state money



Bruce N. Reed
06/17/98 09:43:17 AM

Record Type: Record

To: Christopher C. Jennings/OPD/EOP, Elena Kagan/OPD/EOP, Fred DuVal/WHO/EOP

cc:

Subject: chiles

Tuesday June 16, 9:38 pm Eastern Time

Fla. gov urges opposition to national tobacco deal

TALLAHASSEE, Fla. June 16 (Reuters) - Gov. Lawton Chiles on Tuesday urged state senators to oppose a national tobacco settlement he says will cost Florida \$4 billion in lost revenue.

Eight months after landing a \$11.3 billion settlement with tobacco companies to offset costs of smoking-related illnesses, Chiles said in a letter that amendments to a federal tobacco deal could strip as much as 35 percent off the state's settlement.

Chiles said federal lawmakers, who in June 1997 reached a conceptual agreement with the industry on a national accord, are proposing a \$514 billion settlement that funnels money away from states to fund federal priorities.

In addition, there are no guarantees that states that have already struck deals will receive an amount equal to their individual settlements.

"I am even more concerned that these amendments are not related to the public health goals that were a fundamental part of the June 1997 agreement and Florida's individual state settlement," Chiles wrote.

Federal lawmakers are trying to forge a national settlement with the industry, which has been besieged by litigation and has during the past year opted for the first time in its history to settle claims.

The lawmakers are attempting to finalize a deal before they adjourn for the summer.

Mississippi, Texas and Florida have each reached out of court agreements with the industry. Minnesota brought its case to court and in May signed a consent decree.

Though varying slightly, all states have argued that tobacco companies should reimburse state taxpayers for Medicaid costs incurred for smoking-related illnesses.

Tobacco-state money

George V. Voinovich
Governor of Ohio
Chairman

Raymond C. Schef, 2/3
Executive Director

Thomas R. Carper
Governor of Delaware
Vice Chairman

Hall of the State:
444 North Capitol Street
Washington, D.C. 20001-1512
Telephone: (202) 624-5300



May 19, 1998

FYI -

5/19

Bruce Reed
Elena
Chris J.
Larry
Peter J.
Cynthia R.
Fred

Bill W.

from Mickey

The Honorable John McCain
Chairman
Senate Commerce, Science and Transportation Committee
508 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator McCain:

The nation's Governors have had two primary areas of interest throughout the debate over the development of comprehensive tobacco settlement legislation - the financial resolution of state lawsuits against the tobacco industry and programmatic reforms.

Settlement of State Lawsuits. As the full Senate begins to consider your bill, we wanted to convey to you our support for the state financing sections of your manager's amendment and thank you for your commitment to ensuring that the settlement funds directed to the states are sufficient to resolve state claims against the tobacco industry. However, Governors have not taken a position on the legislation in its entirety.

In your negotiations with the White House, both parties recognized the priority of protecting the \$196.5 billion over twenty-five years in tobacco settlement funds reserved for the states in the bill passed out of your committee in April. This \$196.5 billion will be set aside for the states in a trust fund, walled off from the federal budget and the appropriations process. Preserving and protecting these state funds continues to be one of the Governors' most important priorities in the development of tobacco legislation.

To ensure that these state settlement funds remain in the states, free from any attempt by the federal government to seize funds as Medicaid overpayments, your manager's amendment sets up a structure in which half of the state funds would have to be spent on a list of federal health, education, and welfare programs. These funds will be used, directed, and administered by the states for programs to promote the health, education, and welfare of our citizens, as well as assistance for at-risk youth, and the well-being of all children. The other half of the state funds would be wholly unrestricted in their use.

In order to guarantee that the final bill includes at least \$196.5 billion for the states, protected from appropriations fluctuations and free from any risk of recoupment, we are prepared to accept the restrictions on the use of 50 percent of state settlement funds as set forth in your manager's amendment. We will strongly oppose any amendment introduced on the floor that attempts to further restrict state choices, or to decrease state funding.

Page 2

Programmatic Flexibility. As passed out of the Senate Commerce Committee, S. 1415 includes important programmatic flexibility for the states. For example, licensing of tobacco retailers remains a state responsibility. States will be charged with enforcing "no sales to minors" requirements, with performance targets gradually increasing from 75 percent to 90 percent. Bonuses will be available to states that exceed the targets. The development of appropriate penalties for both retailer and youth violations of "no sales to minors" requirements will be left to states.

With flexibility, Governors can design policies that complement the array of programs already in place in our states and communities. We appreciate your continuing support for many important state flexibility priorities, and we will strongly oppose any floor amendments that undermine our ability to create and implement effective programs. For example, Governors would oppose amendments to impose unrealistic targets that would ultimately undermine the ability of states to conduct effective enforcement strategies to reduce youth smoking.

We were surprised to learn that your manager's amendment retreats from a very important component of state flexibility that was included in the bill passed out of your committee related to environmental tobacco smoke (ETS). The Commerce Committee bill created national ETS standards but preserved for states the ability to opt-out of this federal preemption of traditional state authority. Your manager's amendment essentially nullifies this opt-out.

The Governors are concerned about the health impacts of exposure to environmental tobacco smoke and believe that steps must be taken to protect public health. However, these protections should be undertaken at the state and local levels, rather than by the federal government. A number of experiments are already underway across the country to reduce exposure to secondhand smoke. Results from these experiments vary, and substantial questions have been raised regarding the enforceability of smoking bans in public facilities. We oppose the revised ETS section in your manager's amendment and believe that the provision cannot be successfully implemented.

Proposed national legislation on the regulation of tobacco products will have a significant impact on tobacco growers and quota holders, their communities, and states whose economies are closely linked to agriculture. The Governors urge Congress and the administration to address the needs of these communities and the need for a strong, fair, grower-owned tobacco program.

If we can provide you with clarification of our views, please do not hesitate to let us know.

Sincerely,


Governor George V. Voinovich


Governor Thomas R. Carper

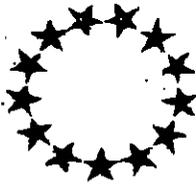
**NATIONAL
GOVERNORS'
ASSOCIATION**

George V. Voinovich
Governor of Ohio
Chairman

Raymond C. Scheppach
Executive Director

Thomas R. Carper
Governor of Delaware
Vice Chairman

Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1512
Telephone (202) 624-5500



May 19, 1998

The Honorable Thomas A. Daschle
Minority Leader
S-221 U.S. Capitol
Washington, D.C. 20510

Dear Senator Daschle:

Over the next few days, the Senate will consider an array of amendments to S. 1415. One of those amendments likely will be a proposal by Sen. John Kerry (D - Mass.) to require states to spend a fixed percentage of their tobacco settlement funds on child care. We are writing to express our opposition to this and any other amendment that would undermine the carefully balanced sections of the manager's amendment related to the state litigation settlement account.

The manager's amendment includes \$196.5 billion over twenty-five years for the states in a trust fund, walled off from the federal budget and the appropriations process. Half of the state funds will be unrestricted in their use. The other half will be spent on a list of federal health, education, and welfare programs, as prioritized by the states. This list of programs was painstakingly negotiated between the Governors and the White House with the blessing of Sen. John McCain (R - Ariz.).

Because Governors agree that child care is an important component of the successful implementation of welfare reform, we were committed to ensuring that the child care block grant was included on the list. Other listed programs include maternal and child health, children's health insurance, the substance abuse and mental health block grants, child welfare, safe and drug-free schools, and professional development for teachers.

Just as important as the menu of options set forth in the list is the recognition that states must be free to individually prioritize spending among the listed programs. Each state's needs will vary, and in order to take maximum advantage of the funding opportunities presented by the legislation, states must be able to tailor their investments to meet their needs. The agreement with the White House and Sen. McCain specifies that prioritization decisions must be made by the states.

The National Governors' Association strongly opposes the Kerry amendment, which dictates state funding choices. Under the proposal, 20 percent of states' restricted funding would have to be spent on child care. This fundamentally undercuts the agreement included in the manager's amendment and would make it impossible for Governors to continue to support this agreement. In addition, by locking states into a specific child care requirement, the Kerry amendment would prevent states from meeting other compelling needs as their particular circumstances dictate.

If we can provide you with clarification of our concerns, please do not hesitate to contact us.

Sincerely,


Governor George V. Voinovich


Governor Thomas R. Carper

SPENDING OPTIONS UNDER THE RESTRICTED SHARE OF THE STATE FUNDS
Additional Federal Funding over 5 Years
If States Increase Spending in Each Program Equally

	Fiscal Year 1997		5-Year Spending With Equal Increases \$ billions
	Federal Spend. \$ billions	Percent of Total	
Maternal & Child Health	0.70	10%	1.30
Child Care & Development Block Grant	2.70	40%	5.00
Child Welfare Programs (IV-B)	0.50	7%	0.93
Substance Abuse & Mental Health Adm. programs	1.60	24%	2.96
Safe & Drug Free Schools	0.50	7%	0.93
Professional Dev'l (Eisenhower) grants	0.35	5%	0.65
Children's Health Insurance Program match (6%)*	0.41	6%	0.75
TOTAL	6.76	100%	12.50

* "Fiscal Year Spending in 1997" is a place holder that assures that 6 percent of the total is reserved for CHIP

tbl-ser - state money

Comparison of State Spending Menus

Bills	McCain	Conrad	Harkin/Chafee
Structure	"A State may use funds received under [the State Litigation Settlement Account] as the state determines appropriate."	Specified percentage of Trust Fund for various state programs and some unrestricted funding for states.	Specified percentage of Trust Funds amounts for state payments. Includes: 1) base payment (states can use at their discretion); 2) block grant (various specified options); 3) bonus pool for states who exceed youth smoking targets. For each state's total funds: - No more than 50% of each state's funds can be used at the state's discretion for any activities it chooses (#1); - No less than 50% must be used to augment a specified range of state and federal programs (#2).
List of Items/Earmarks	None.	Some unspecified funding for states. Specific Earmarks for: 1) Child Care/Early Development (\$13.9 billion) 2) Class Size (\$4.9 billion) 3) Medicaid Outreach/Enrollment (\$3.3 billion)	Block grants (#2) can be used for the following 20 programs: - State programs under MCH Block Grant, SAMHSA, Preventive Health Block Grant, TANF, WIC, IDEA Part B, SSBG and CSBG, Food Stamps, LIHEAP, Medical Assistance Programs, and for: - Federal programs: Head Start, Even Start, CHCs, child welfare, federally funded child care programs, child abuse, education programs, CHIP, federally-funded child care programs, other anti-tobacco/health programs

Tob-acc - state money

THE WHITE HOUSE

WASHINGTON

June 16, 1998

Dear Governor Voinovich and Governor Carper:

In response to your request for clarification about my position on S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act, I am writing to reiterate my strong opposition to actions by the Senate to further reduce the State Litigation Settlement Account or impose any additional restrictions on it. Since the beginning of the Senate floor debate, I have opposed amendments that reduce the \$196.5 billion state allocation that was envisioned in the original Attorneys General agreement.

It is my firm belief that we would not be having a debate on bipartisan comprehensive legislation without the efforts of the states and their Attorneys General. As such, I will insist that any legislation adequately reflect the important state contributions to reducing the use of tobacco by our nation's children. I believe this commitment was evident in the joint agreement we reached on the level and uses of state funds included in the McCain manager's amendment.

The continued leadership and engagement of the Governors is essential to passing tobacco legislation this year. As experienced lawmakers, you know that this bill will go through a number of changes before final passage. I want to reiterate my strong commitment to working with you in the weeks ahead to ensure that a strong, equitable and comprehensive tobacco bill is enacted into law that reflects the pivotal role of the states in this process.

Sincerely,



The Honorable George Voinovich, Chair
The Honorable Thomas Carper, Vice Chair
National Governors' Association
444 North Capitol Street, NW
Washington, D.C. 20001

cc: Senator John McCain

National Governors' Association
Lead Attorneys General in the June 20, 1997 Tobacco Settlement
Statement on Senate Tobacco Legislation

*Please
dist. to
Mishky*

FOR IMMEDIATE RELEASE

June 16, 1998

Contact: Becky Fleischauer, NGA, 202/624-5364

Fred Olson, Washington A.G.'s office, 360/664-9081

**DAYS BEFORE LANDMARK TOBACCO SETTLEMENT
ANNIVERSARY, GOVERNORS-ATTORNEYS GENERAL DECLARE—
*“Senate Bill is Drifting into Treacherous Territory. Return to Reason.”***

Washington D.C.— Just days before the one-year anniversary of the original June 20, 1997 tobacco agreement lead attorneys general in the landmark tobacco settlement and the nation's governors sent an urgent message to Congress and the White House—“As we reflect on the work accomplished by state attorneys general in clinching the landmark tobacco settlement proposed one year ago, we are deeply concerned that the spirit of the settlement has been distorted. The question of whether we bring to fruition the work of the attorneys general hangs in the balance of Washington politics. The current bill jeopardizes a historic opportunity.

In a joint statement National Governors' Association (NGA) Chairman Ohio Gov. George V. Voinovich and NGA Vice Chairman Delaware Gov. Thomas R. Carper and Washington Attorney General Christine Gregoire and Colorado Attorney General Gale Norton urged the Senate to restore the \$196.5 billion in payment to states for settlement of their lawsuits while the bill is still on the floor of the Senate. “States sparked the first lawsuits against tobacco companies to reduce youth smoking, secure public disclosure of tobacco documents, and recover state health care costs, among other goals. The state leadership and years of effort that went into these lawsuits brought us to the brink of passing landmark tobacco legislation. Because states began this fight, and stayed with it despite overwhelming odds, states must be at the core of the final resolution. The Senate legislation under consideration today reduces states to the status of bystanders in a process states initiated,” said NGA and lead attorneys general in a joint statement.

In the hands of the Senate, the original \$368.5 billion tobacco settlement negotiated by the states attorneys general has now ballooned to \$516 billion. While the federal government dramatically increased its share of tobacco settlement funding, state funding and flexibility suffered a marked decrease. The level of funding reserved for the states has already shrunk by at least 30 percent and potentially more—a level no longer consistent with the amount negotiated by the state attorneys general in the original June 20, 1997 agreement.

Attorneys General and governors made clear from the beginning of the Senate's legislative debate that preserving and protecting state settlement funds would be of highest priority. Governors and attorneys general supported the \$196.5 billion over twenty-five years included in the original manager's amendment considered in the Senate, but recent amendments make it impossible for governors and attorneys general to support the state financing section of the current bill.

If the Senate passes a bill inconsistent with the original attorneys general agreement and ignoring states' needs, the states must be free to continue to pursue their own lawsuits against the tobacco industry. As the Senate continues consideration of tobacco legislation this week, governors and attorneys general hope the Senate will ensure that state settlement funds are not subject to federal recoupment, including those states that choose not to participate in the federal settlement.

--END--

Tob - sur - state money



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 15, 1998

THE DIRECTOR

The Honorable John McCain
Chairman
Committee on Commerce, Science & Transportation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

You asked for our views on a series of possible amendments that may be offered to S. 1415 that would undermine the present structure of the State Litigation Settlement Account. In its current form, S. 1415 represents a careful balancing between the states and the Federal government, advancing the public health and other goals we share; therefore, the Administration opposes further changes.

Changes to this agreement would harm the goal of passing historic comprehensive, bipartisan tobacco legislation. State efforts have been central to the development of this legislation, and the states deserve recognition of their efforts. We therefore oppose amendments that would reduce the amount designated for state purposes.

We also recognize the importance of the carefully constructed balance between restricted and unrestricted funds, and the menu of uses that would be supported by the former. It is for this reason that we also oppose additional amendments that would change the parameters for or uses of the restricted funds.

Minimizing additional changes to the State Litigation Settlement Account is important to assure that the bill represents a fair balance between flexibility and accountability, and helps protect the states' very legitimate interest in this legislation. As always, we look forward to continuing working with you to produce a bill that will make a major contribution to public health, our children and our nation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob J. Lew".

Jacob J. Lew
Acting Director

cc: The Honorable Ernest F. Hollings
The Honorable John F. Kerry



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 15, 1998

THE DIRECTOR

The Honorable John F. Kerry
United States Senate
Washington, D.C. 20510

Dear Senator Kerry:

You requested our views on amendments to the tobacco legislation proposed by Senator Gramm and others that would eliminate any restrictions on uses of funds in the State Litigation Settlement Account. The Administration strongly opposes such amendments because they would eliminate the requirement that states use part of tobacco funds for programs that improve public health and support children. The current structure of the State Litigation Account reflects a careful balance between the interests of the states in flexible use of tobacco receipts and the Federal interest that their use be accountable and contribute to public health.

We believe that additional changes to this carefully constructed agreement would harm the goal of passing historic comprehensive, bipartisan tobacco legislation.

We thank you for your support, and look forward to continuing working with you and your colleagues to enact comprehensive, bipartisan tobacco legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob J. Lew".

Jacob J. Lew
Acting Director

cc: The Honorable John McCain

CHILDREN'S HEALTH OUTREACH POLICIES IN THE TOBACCO BILL

POLICIES: The tobacco bill contains two policies that gives States additional funds and flexibility to enroll uninsured children.

- **Enhanced Matching for Children's Outreach Efforts:** In the welfare reform bill, a \$500 million Medicaid fund was created to help offset State costs of "delinking" welfare from Medicaid and ensuring families' know about their continued eligibility for Medicaid. Few States, however, have taken advantage of this fund so far, in part because it focuses narrowly on welfare families.

The proposal in the tobacco bill would allow States to receive its 90 percent matching rate for outreach activities for all uninsured children, not just those who would have been eligible for welfare. In addition, the proposal would remove the sunset of the fund in 2000 and add another \$25 million to assist States with increased outreach activities.

- **Broadening Options for Enrolling Children in Medicaid:** The Balanced Budget Act of 1997 (BBA) gave States the option to bring more eligible but uninsured children into Medicaid by allowing certain providers and people grant "presumptive eligibility." A child may temporarily be covered by Medicaid if preliminary information suggests that they qualify. However, the costs of this temporary (up to two month) coverage must be subtracted from States' Children's Health Insurance Program (CHIP) allotments -- even though the children are covered by Medicaid.

The proposal in the tobacco bill would: (1) give States greater flexibility to decide who can determine presumptive eligibility (e.g., sites such as schools, child care resource and referral centers, and CHIP eligibility workers); and (2) eliminate the requirement that States subtract the costs of presumptive eligibility from their CHIP allotments.

POINTS

- **Expanding children's health coverage was the original use of tobacco funds.** These options are consistent with the original Attorneys General agreement on the use of tobacco funds: to increase health insurance coverage for children. Although CHIP goes a long way toward this goal, it does not provide States sufficient flexibility or funds to help cover the 4.7 million children eligible for Medicaid but uninsured today.
- **Builds on existing State options.** These policies expand current options passed, with bipartisan support, in the BBA and welfare reform. They are not new, mandatory or prescriptive; States may design how best to use the funds and where best to enroll children.
- **Outreach funds may be used for CHIP or Medicaid.** States are now implementing CHIP and may want to use this funding to make families aware of the new program. States may also decide to use the funds or take the presumptive eligibility option to increase Medicaid coverage of children.

NATIONAL
GOVERNORS
ASSOCIATION

News Release



Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1512
Telephone (202) 624-5330

FOR IMMEDIATE RELEASE

June 17, 1998

Contact: Becky Fleischauer, NGA, 202/624-5364

THE NATION'S GOVERNORS HAVE HIGH HOPES FOR SENATE'S SECOND CHANCE WITH TOBACCO BILL

Washington D.C.— The nation's governors expressed high hopes for the Senate tobacco bill's return visit to the Senate Commerce Committee. "The Senate bill, as amended, departs sharply beyond the attorney general's original agreement. It's time to remember where this issue started—in the states," said National Governors' Association (NGA) Chairman Ohio Gov. George V. Voinovich and Vice Chair Delaware Gov. Thomas R. Carper, outlining their terms of governors' support for the state financing section included in any final tobacco settlement package passed by the Senate.

While the federal government dramatically increased its share of tobacco settlement funding, state funding and flexibility suffered a marked decrease over the past two weeks. Federal priorities are being funded at the expense of state settlement funds. The level of funding reserved for the states has already shrunk by at least 30 percent and potentially more—a level no longer consistent with the amount negotiated by the state attorneys general in the original June 20, 1997 agreement.

"States sparked the first lawsuits against tobacco companies to reduce youth smoking, secure public disclosure of tobacco documents, and recover state health care costs, among other goals," said Govs. Voinovich and Carper. "The state leadership and years of effort that went into these lawsuits brought us to the brink of passing landmark tobacco legislation. Because states began this fight, and stayed with it despite overwhelming odds, states must be at the core of the final resolution. The Senate legislation returned to committee today ignores this reality."

"As Congress continues its work on tobacco legislation, we hope members will produce a final package that reflects the origin of this historic opportunity," said the governors. "After bearing all of the risk initiating the suits and all of the expense of years of arduous negotiations and litigation necessary to develop these lawsuits, it is only reasonable and sensible that any final settlement legislation include a protected core of funding for states."

--END--

**SPENDING OPTIONS UNDER THE
RESTRICTED SHARE OF THE STATE FUNDS**

OPTIONS	MATCH
Maternal & Child Health Block Grant	4 Federal dollars for every 3 State dollars
Child Care & Development Block Grant	80 / 20 match (proposed)
Child Welfare Programs (IV-B)	75 / 25 match
Substance Abuse & Mental Health Services Administration	—
Safe & Drug Free Schools	—
Professional Development Grants	—
Children's Health Insurance Program match (6%)	—



Cynthia A. Rice

06/11/98 05:27:42 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Tobacco Bill and Means Testing of Child Care

States can spend Child Care and Development Block Grant funds only on families up to 85 percent of the state median income. They also must spend no less than 70 percent of their funds on families who are receiving welfare, transitioning off welfare, or at risk of being dependent on welfare.

Our child care budget proposal omitted this second requirement to allow states to aim funds at the working poor. As you know, our language was cleared internally, but never officially submitted to the Hill (except as I understand it, shared with some of our friends on the House side).

The tobacco bill also omits this second requirement for the additional child care money, at I believe OMB's suggestion. However, this does not eliminate the basic limitation that states to spend CCDBG funds only on families under 85 percent of the state median income.

Message Sent To:

Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Laura Emmett/WHO/EOP
Cynthia Dailard/OPD/EOP
Jeanne Lambrew/OPD/EOP
Jennifer L. Klein/OPD/EOP
Neera Tanden/WHO/EOP
Nicole R. Rabner/WHO/EOP

Tob - state money



Cynthia A. Rice

06/12/98 03:21:09 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, Cynthia Dailard/OPD/EOP

Subject: Tobacco Letter to the Governors

Bruce -- they say you and Mickey discussed this this morning and that you agreed to a letter?

----- Forwarded by Cynthia A. Rice/OPD/EOP on 06/12/98 03:24 PM -----



03:02:12 PM

Record Type: Record

To: Christopher C. Jennings/OPD/EOP, Cynthia A. Rice/OPD/EOP, Jeanne Lambrew/OPD/EOP, Sarah A. Bianchi/OPD/EOP

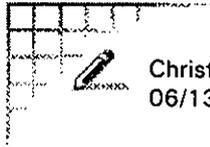
cc: Emory L. Mayfield/WHO/EOP, Mickey Ibarra/WHO/EOP

Subject: Tobacco Letter to the Governors

Can we get a POTUS letter to the Governors on tobacco by Monday? We consulted with Jonathon Jones (Carper) and Charlie Salem (Chiles), who said the Governors really want the Administration commitment in writing to \$196.5 for states? In addition, they have asked us to make clear our opposition to any new amendments that would further reduce states' share.

Charlie also reports that Chiles is ready to walk, and called Graham last night to say vote no. Chiles is also preparing a letter to the FL Cong delegation with the same message.

Job - ser - state money



Christopher C. Jennings
06/13/98 11:22:03 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Re: Tobacco Letter to the Governors 

I thought we all decided to draft a letter to the Senate Leadership re our position on subsequent amendments on the Senate floor would suffice. Bill, isn't that good enough, particularly if it includes the good "states brought us to this point" rhetoric?

Do we really want to send a letter out to the Governors on the \$196.5 billion at this point in the game? If I thought we had any chance of getting back up to that number, I would say we should. But if it has no chance, I would advise not.

I talked with Jennifer B. from NGA on Friday and, while she wished we would send a strong signal on the \$196.5 figure, she wasn't under any great illusion that we would. Her big message was to not send any letter if we were going to include a single reference to opposing the Gramm amendment. (Our compromise was to write two letters; Jeanne sent them both to you.)

I await your thoughts. Give me a call or a page.

Thanks.

cj

Message Copied To:

William H. White Jr./WHO/EOP
Elena Kagan/OPD/EOP
Bruce N. Reed/OPD/EOP
Jeanne Lambrew/OPD/EOP
Sarah A. Bianchi/OPD/EOP