

**NLWJC - KAGAN**

**EMAILS RECEIVED**

**ARMS - BOX 043 - FOLDER -004**

**[01/23/1999 - 01/25/1999]**



January 23, 1999

**WELFARE TO WORK EVENT**

**DATE:** January 25, 1999  
**LOCATION:** Presidential Hall  
Room 450, Old Executive Office Building  
**BRIEFING TIME:** 9:45am - 10:10am  
**EVENT TIME:** 10:15am - 11:15am  
**FROM:** Bruce Reed

**I. PURPOSE**

**With welfare caseloads down by nearly half since 1993 and over 10,000 companies committed to welfare-to-work, you will announce today a new package of initiatives designed to ensure that those remaining on the welfare rolls make a successful transition from welfare to work, with a new focus on increasing the employment of low-income fathers so they can support their children. Your \$1 billion Welfare-to-Work initiative will help 200,000 more people go to work. At least \$150 million will go toward helping fathers fulfill their responsibilities to their children by working and paying child support. Remaining funds will focus on long-term welfare recipients with the greatest obstacles to employment. You also will announce today that your budget will contain new welfare-to-work housing vouchers, transportation funds, and tax credits to help those on welfare get to work and stay employed. Taken together, these initiatives will provide parents the tools they need to support their children and succeed in the workforce.**

**II. BACKGROUND**

**Welfare-to-Work Funds with a Focus on Fathers**

Your \$1 billion Welfare-to-Work initiative will help 200,000 long-term welfare recipients in high-poverty areas move into lasting unsubsidized employment. **It is an extension of the two-year \$3 billion Welfare-to-Work program you secured in the Balanced Budget Act. The initiative, as reauthorized, will provide at least \$150 million to ensure that every state helps fathers fulfill their responsibilities by working, paying child support, and playing a responsible part in their children's lives.** Under this proposal, states and communities will use a minimum of 20 percent of their formula funds to provide job placement and job retention assistance to low-income fathers who sign personal responsibility contracts committing them to work and pay child support. This effort will further increase child support collections, which have risen 80 percent

since you took office, from \$8 billion in 1992 to \$14.4 billion in 1998. Remaining funds will go toward assisting long-term welfare recipients with the greatest barriers to employment to move into lasting jobs. The reauthorized program also will double the welfare-to-work funding available for tribes.

The Department of Labor will announce today the availability of \$240 million in competitive grants from the current \$3 billion Welfare-to-Work program. These funds will support innovative local welfare-to-work strategies for individuals with limited English proficiency, disabilities, substance abuse problems, or a history of domestic violence.

#### **Transportation and Housing for Families Moving From Welfare to Work**

**You also will announce today that your budget will contain \$580 million for welfare to work housing vouchers and transportation assistance to help those on welfare get to work and stay employed.** Your budget will provide \$430 million for 75,000 welfare-to-work housing vouchers, including \$144 million in new funds for 25,000 additional vouchers. This is a 50 percent increase over the 50,000 vouchers you secured last year. The vouchers will help families move closer to a new job, reduce a long commute, or secure more stable housing so they can perform better on the job. **Your budget will also increase Access to Jobs transportation funding from \$75 million to \$150 million,** doubling the number of individuals and communities that can receive transportation assistance. This competitive grant program supports innovative state and local transportation solutions such as shuttles, van pools, new bus routes, and connector services to mass transit to help welfare recipients and other low income workers get to work.

#### **Private Sector Hiring from the Welfare Rolls**

You will announce that your budget will include \$530 million to extend for one year the Welfare to Work and Work Opportunity Tax Credits to encourage more employers to hire welfare recipients and other disadvantaged individuals. Already, in response to your challenge two years ago in the State of the Union, 10,000 companies have joined the Welfare to Work Partnership and hired, retained, and promoted hundreds of thousands of former welfare recipients. Forty-two percent of these companies are very small businesses (25 or fewer employees), while four percent are very large businesses (3,000 or more employees).

#### **Welfare Rolls Decline as More Recipients go to Work**

You will release state-by-state data showing that welfare caseloads are at their lowest level in 30 years and that the welfare rolls have fallen by nearly half since you took office.

Since January 1993, 36 states have had caseload declines of more than 40 percent and nationwide the rolls have fallen by 44 percent, from 14.1 million to just below 8 million. Recent information released by the Department of Health and Human Services also shows that the percentage of welfare recipients working has tripled since 1992, that an estimated 1.5 million people who were on welfare in 1997 were working in 1998, and that all states met the first overall work participation rates required under the welfare

reform law.

### **III. PARTICIPANTS**

Robert J. Higgins, President and Chief Operating Officer, Fleet Financial Group, Inc.  
Governor Mel Carnahan (D-MO)  
Carlos Rosas,

### **IV. PRESS PLAN**

Open Press.

### **V. SEQUENCE OF EVENTS**

- You will be announced into the room accompanied by Governor Mel Carnahan, Robert J. Higgins, and Carlos Rosas.
- Robert J. Higgins, President and COO, Fleet Financial Group, Inc., will make remarks and introduce Governor Mel Carnahan.
- Governor Mel Carnahan will make remarks and introduce Carlos Rosas.
- Carlos Rosas will make remarks and introduce you.
- You will make remarks, work a ropeline, and then depart.

### **VI. REMARKS**

Remarks Provided by Speechwriting.



January 23, 1999

## WELFARE TO WORK EVENT

**DATE:** January 25, 1999  
**LOCATION:** Presidential Hall  
Room 450, Old Executive Office Building  
**BRIEFING TIME:** 9:45am - 10:10am  
**EVENT TIME:** 10:15am - 11:15am  
**FROM:** Bruce Reed

### I. PURPOSE

To highlight the successes of welfare reform and call upon Congress to pass a new set of welfare-to-work initiatives in your budget.

### II. BACKGROUND

You will announce today a new package of budget initiatives to ensure that those remaining on welfare make a successful transition to work. This package includes: a \$1 billion extension of the Welfare-to-Work Program, with a new focus on increasing employment of low-income fathers; a 50 percent increase in welfare-to-work housing vouchers; and a 100 percent increase in welfare-to-work transportation funding. You will also announce that welfare rolls have declined by 44 percent since you took office and that the Welfare to Work Partnership now has 10,000 members.

#### **Welfare-to-Work Funds with a Focus on Fathers**

Your \$1 billion Welfare-to-Work initiative will help 200,000 long-term welfare recipients in high-poverty areas move into lasting unsubsidized employment. **It is an extension of the two-year \$3 billion Welfare-to-Work program you secured in the Balanced Budget Act. The initiative, as reauthorized, will provide at least \$150 million to ensure that every state helps fathers fulfill their responsibilities by working, paying child support, and playing a responsible part in their children's lives.** Under this proposal, states and communities will use a minimum of 20 percent of their formula funds to provide job placement and job retention assistance to low-income fathers who sign personal responsibility contracts committing them to work and pay child support. This effort will further increase child support collections, which have risen 80 percent since you took office, from \$8 billion in 1992 to \$14.4 billion in 1998. Remaining funds will go toward assisting long-term welfare recipients with the greatest barriers to employment to move into lasting jobs. The reauthorized program also will double the

welfare-to-work funding available for tribes.

The Department of Labor will announce today the availability of \$240 million in competitive grants from the current \$3 billion Welfare-to-Work program. These funds will support innovative local welfare-to-work strategies for individuals with limited English proficiency, disabilities, substance abuse problems, or a history of domestic violence.

#### **Transportation and Housing for Families Moving From Welfare to Work**

**You also will announce today that your budget will contain \$580 million for welfare to work housing vouchers and transportation assistance to help those on welfare get to work and stay employed.** Your budget will provide \$430 million for 75,000 welfare-to-work housing vouchers, including \$144 million in new funds for 25,000 additional vouchers. This is a 50 percent increase over the 50,000 vouchers you secured last year. The vouchers will help families move closer to a new job, reduce a long commute, or secure more stable housing so they can perform better on the job. **Your budget will also increase Access to Jobs transportation funding from \$75 million to \$150 million,** doubling the number of individuals and communities that can receive transportation assistance. This competitive grant program supports innovative state and local transportation solutions such as shuttles, van pools, new bus routes, and connector services to mass transit to help welfare recipients and other low income workers get to work.

#### **Private Sector Hiring from the Welfare Rolls**

You will announce that your budget will include \$530 million to extend for one year the Welfare to Work and Work Opportunity Tax Credits to encourage more employers to hire welfare recipients and other disadvantaged individuals. Already, in response to your challenge two years ago in the State of the Union, 10,000 companies have joined the Welfare to Work Partnership and hired, retained, and promoted hundreds of thousands of former welfare recipients. Forty-two percent of these companies are very small businesses (25 or fewer employees), while four percent are very large businesses (3,000 or more employees).

#### **Welfare Rolls Decline as More Recipients go to Work**

You will release state-by-state data showing that welfare caseloads are at their lowest level in 30 years and that the welfare rolls have fallen by nearly half since you took office.

Since January 1993, 36 states have had caseload declines of more than 40 percent and nationwide the rolls have fallen by 44 percent, from 14.1 million to just below 8 million. Recent information released by the Department of Health and Human Services also shows that the percentage of welfare recipients working has tripled since 1992, that an estimated 1.5 million people who were on welfare in 1997 were working in 1998, and that all states met the first overall work participation rates required under the welfare reform law.

### III. PARTICIPANTS

#### Briefing Participants:

Bruce Reed  
Cynthia Rice  
Doug Sosnik  
Paul Begala  
Joe Lockhart  
Broderick Johnson  
Jeff Shesol

#### Event Participants:

Governor Mel Carnahan (D-MO)

Robert J. Higgins, President and Chief Operating Officer, Fleet Financial Group, Inc.  
Carlos Rosas, a 32 year old father from St. Paul, Minnesota, who enrolled in a fathers' program employment program in October 1996 when he was not making enough money to keep up with his child support obligation for his son, Ricardo, who is now 12 years old. At that time, Ricardo's mother was receiving welfare. Since joining the program operated by the Ramsey County Child Support office, Carlos has worked hard to earn a GED, pay full child support for his son, save money so Ricardo can go to college, and improve his own future. Carlos is currently balancing a full time job as a head maintenance worker, where he make \$8.50 an hour, with finishing his second year at a two-year Electronics Technology/ Computer Sciences program.

### IV. PRESS PLAN

Open Press.

### V. SEQUENCE OF EVENTS

- You will be announced into the room accompanied by Governor Mel Carnahan, Robert J. Higgins, and Carlos Rosas.
- Robert J. Higgins, President and COO, Fleet Bank, will make remarks and introduce Governor Mel Carnahan.
- Governor Mel Carnahan will make remarks and introduce Carlos Rosas, father.
- Carlos Rosas will make remarks and introduce you.
- You will make remarks, work a ropeline, and then depart.

### VI. REMARKS

Remarks Provided by Speechwriting.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Karin Kullman ( CN=Karin Kullman/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:24-JAN-1999 17:23:13.00

SUBJECT: Final Details for WTW Event

TO: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

Here's a final lowdown for the event Monday morning:

Times:

9:45am - 10:10am            Briefing (Oval Office)  
10:15am - 11:15am           Event (Presidential Hall -- OEOB 450)

Briefing Participants:

Bruce Reed  
Cynthia Rice  
Doug Sosnik  
Paul Begala  
Joe Lockhart  
Broderick Johnson  
Jeff Shesol

Program

Robert Higgins, President and COO, Fleet Financial Group, Inc.  
Gov. Mel Carnahan  
Carlos Rosas, Father  
POTUS

On-stage

Seated:

Sec. Herman  
Sec. Shalala  
Admin. Alvarez  
Sec. Slater  
Eli Segal  
3 Fleet Bank employee success stories

Backdrop:

Presidential Seal only

Audience:

Rep. Cardin (D-MD)  
Rep. Hinojosa (D-TX)  
Mrs. Jean Carnahan (spouse of Gov. Carnahan)  
Jane Campbell, Commissioner, Cuyahoga County, OH  
Representatives of NACo, USCM, and various counties

Congressional Staff

Agency Staff

Representatives from fathering groups, housing and transportation interest groups, human services groups,  
Representatives from companies involved in the Welfare to Work Partnership

Press Briefing:

Bruce, Sec. Herman and Sec. Shalala will brief in the briefing room following the event, at approximately 11:40am. Lockhart's regular briefing will follow immediately after.

You should all have a packet this morning including the briefing paper, press paper, the state by state number charts, the color map of caseload reduction, bios on Fleet bank and it's success story employees, and our father. Please let me know if anyone has any questions. Thanks!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:24-JAN-1999 19:56:59.00

SUBJECT: Q&A for Monday on your chair in WW (press ofc wants by 8:30) Cynthia 62846

TO: ELENA (Pager) #KAGAN ( ELENA (Pager) #KAGAN [ UNKNOWN ] )

READ:UNKNOWN

CC: 4697 ( 4697 @ WHCA\*[ UNKNOWN ] )

READ:UNKNOWN

TEXT:



January 24, 1999; Sunday 18:30 Eastern Time

SECTION: Washington - general news

LENGTH: 800 words

HEADLINE: Welfare Hits 30-Year Low

BYLINE: LAURA MECKLER  
AP-Welfare ,0833

DATELINE: WASHINGTON

BODY:

The number of people on welfare has fallen to its lowest level in 30 years, President Clinton will announce Monday. But the new figures also show the dramatic declines of recent years are beginning to slow in certain states.

The president will also offer a package of programs aimed at helping more people get to jobs and encouraging businesses to continue hiring them.

Nationally, just under 8 million people remained on welfare at the end of September, down 44 percent from 14.3 million in 1994. But state officials and academics alike have long cautioned that, at some point, nearly all the people who can move off welfare with relative ease will have left. That will leave those with deeper problems like substance abuse, domestic violence and very little education.

"With welfare reform, the more you succeed, the harder the job becomes," said Don Winstead, who heads Florida's welfare reform program.

Clinton hopes to make that job easier. Administration officials said he will announce proposals included in the budget he will submit to Congress next month, including:

\$1 billion to help 200,000 long-term welfare recipients in high-poverty areas move to work. It's the continuation of a two-year-old program with a new requirement that 20 percent be used for low-income fathers.

\$430 million to give 75,000 housing vouchers that help people on welfare move closer to a new job.

\$150 million in transportation money to help people get to jobs, often in suburbs not served by public transportation.

\$530 million to extend the tax credit for businesses that hire people off welfare.

As he did in his State of the Union address, the president will also trumpet the falling welfare numbers.

"On a national basis, the caseload drop has been remarkably steady," said Bruce Reed, the president's chief domestic policy adviser.

But the figures show the drops in some states may have begun to slow in the final quarter of fiscal year 1998. In at least eight states, most of which have seen incredible drops since 1993, the reductions slowed to a trickle in July, August and September 1998.

"There's a difference between the first three quarters of the year and the last quarter of the year," said Michael Kharfen, a Department of Health and Human Services spokesman.

State officials say they are preparing to serve welfare recipients with tougher problems, moving beyond the "work first" approach that helps recipients look for work and then pushes them to take any job they can find. Under work first, states don't try to solve every problem or get people the education they may need. They simply try to find them jobs, reasoning that work experience will help them move up the economic ladder.

But that isn't enough for everyone, state officials say.

"We're past the situation where someone comes in who may need a little bit of confidence building, who may need a brush-up on skills and may need a new battery for the car all things we can do," said John Garlinger of the Kansas Department of Social and Rehabilitation Services. "We are left with the hard-core people."

Kansas has cut its welfare rolls by 62 percent since 1993, but by the end of the last fiscal year, healthy quarterly drops of 8 to 10 percent fell to just 1.7 percent.

Other states seeing dropoffs include Arizona, Arkansas, Connecticut, Florida, Massachusetts and North Carolina. New Mexico, after nearly cutting its rolls in half, actually saw a 40 percent increase during 1998.

Seasonal variations may explain some of it. In Massachusetts, the rolls always stay higher near September, when the state gives clothing vouchers for every child on welfare.

But other states say they have begun to "bottom out."

"We knew that after that wave of families went off the rolls, the somewhat harder work would begin," said Joe Quinn, spokesman for the Arkansas Department of Human Services. In Arkansas, the rolls fell just 2.7 percent in the last quarter after drops of about 9 percent in previous quarters.

In Kansas, officials are working with community mental health centers to aid people with substance abuse problems. They are screening for learning disabilities and training caseworkers to spot victims of domestic violence.

Jack Tweedie, who tracks welfare reform for the National Conference of State Legislatures, said states are financially prepared to work with harder-to-serve people because of the money saved from fewer people getting checks.

Reed, Clinton's adviser, isn't convinced the decrease has slowed, but says the president's proposals will help when it inevitably does.

"A lot of people thought we'd hit that point a long time ago," he said, "and more of the people on welfare have responded more quickly than anyone anticipated."

LANGUAGE: ENGLISH

LOAD-DATE: January 24, 1999

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 08:31:24.00

SUBJECT: Caseload analysis

TO: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Robert F. Schoeni ( CN=Robert F. Schoeni/OU=CEA/O=EOP @ EOP [ CEA ] )  
READ:UNKNOWN

CC: edahl ( edahl @ os.dhhs.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

CC: Jennings-Lynn ( Jennings-Lynn @ dol.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

CC: mkharfen ( mkharfen @ acf.dhhs.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:  
Updated analysis of national caseload trends

Bob, note Sept 98 numbers got revised slightly -- HHS will send revised month by month chart so you can update your database.===== ATTACHMENT  
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:  
Unable to convert ARMS\_EXT:[ATTACH.D21]MAIL49243742G.036 to ASCII,  
The following is a HEX DUMP:

00001A00021004000000000002B00000525002000010A00000000000000001F0008000000013000  
002B001F00080000010130020020001F0008000002013002002B001F0008000003013002002B00  
1F0008000004013002001C001F0008000005013002001C000300060001000000010004001C0001  
0101000000061645040400B72C0E0001000000FAF2991607266A00050010000000171C2C000300  
1A0000002000000006000500000077110907000E0000007711010C020C030C040C050C0A001A00  
0000194342434F5059005F08000000000000190000051900000521000100000B000100000E0020  
00  
00  
00  
4C00420000001100B2000100  
00  
00  
00  
00002B7100002B7100002B00  
00  
000C000C000000000000000200000000FF417269616C001B001B00F00F20000C000C00000000  
000000002000000000FF417269616C001B004800E60F1000000110000E00000011080000000000

**Clinton Presidential Records  
Automated Records Management  
System [EMAIL]**

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

---

**Hex Dump file is not in a recognizable format, has been incorrectly decoded or is damaged.**

---

**File Name:** p\_f2473427\_opd\_html\_1.xls

**Attachment Number:** [ATTACH.D21]MAIL49243742G.036 to ASCII

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Fred DuVal ( CN=Fred DuVal/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:25-JAN-1999 08:51:29.00

SUBJECT:

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

did you see AG Tom Miller's proposal? he is looking to me for feedback.  
Any counsel?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 08:52:56.00

SUBJECT: I don't see the VP LA Times story on funds for ESL

TO: J. Eric Gould ( CN=J. Eric Gould/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: dana.colarulli ( dana.colarulli @ sba.gov [ UNKNOWN ] )  
READ:UNKNOWN

TO: john\_f.\_bohm ( john\_f.\_bohm @ hud.gov [ UNKNOWN ] )  
READ:UNKNOWN

TO: linda.lawson ( linda.lawson @ ost.dot.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

TO: edahl ( edahl @ os.dhhs.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Heather M. Riley ( CN=Heather M. Riley/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jake Siewert ( CN=Jake Siewert/OU=OPD/O=EOP [ OPD ] )  
READ:UNKNOWN

TO: Roger V. Salazar ( CN=Roger V. Salazar/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Julie B. Goldberg ( CN=Julie B. Goldberg/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jason H. Schechter ( CN=Jason H. Schechter/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Dag Vega ( CN=Dag Vega/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Joseph C. Fanaroff ( CN=Joseph C. Fanaroff/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Ruby Shamir ( CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elizabeth R. Newman ( CN=Elizabeth R. Newman/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jennifer M. Palmieri ( CN=Jennifer M. Palmieri/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Joseph P. Lockhart ( CN=Joseph P. Lockhart/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Sarah A. Bianchi ( CN=Sarah A. Bianchi/O=OVP @ OVP [ UNKNOWN ] )  
READ:UNKNOWN

TO: zina.pierre ( zina.pierre @ sba.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

TO: corine.hegland ( corine.hegland @ ost.dot.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

TO: jacquie\_m.\_lawing\_at\_ospost ( jacquie\_m.\_lawing\_at\_ospost @ hud.gov @ inet [ UNK  
READ:UNKNOWN

TO: jennings-lynn ( jennings-lynn @ dol.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

TO: Karin Kullman ( CN=Karin Kullman/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Chandler G. Spaulding ( CN=Chandler G. Spaulding/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Melissa G. Green ( CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Sarah E. Gegenheimer ( CN=Sarah E. Gegenheimer/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Julia M. Payne ( CN=Julia M. Payne/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Linda Ricci ( CN=Linda Ricci/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Beverly J. Barnes ( CN=Beverly J. Barnes/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Nanda Chitre ( CN=Nanda Chitre/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Amy Weiss ( CN=Amy Weiss/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Barry J. Toiv ( CN=Barry J. Toiv/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

The LA Times appears to have not run the story on the Vice President's announcement of additional ESL funds (which is the last Q&A of the attached) but I understand the VP will still be announcing the policy today in California, along with the legal immigrant benefits story which made the NY Times.

Thus you may want to change the question to

Is today's Los Angeles Times correct in reporting that the Vice President will announce today that the Administration's budget will include additional funding for English as a second language instruction?

Andrea Kane  
01/25/99 08:17:06 AM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: Welfare Q&As

Q&As for today's Welfare to Work event

Message Sent

To: \_\_\_\_\_  
Barry J. Toiv/WHO/EOP  
Joseph P. Lockhart/WHO/EOP  
Amy Weiss/WHO/EOP  
Jennifer M. Palmieri/WHO/EOP  
Nanda Chitre/WHO/EOP  
Elizabeth R. Newman/WHO/EOP  
Beverly J. Barnes/WHO/EOP  
Ruby Shamir/WHO/EOP  
Linda Ricci/OMB/EOP  
Lawrence J. Haas/OVP @ OVP  
Joseph C. Fanaroff/WHO/EOP  
Kevin S. Moran/WHO/EOP  
Dag Vega/WHO/EOP  
Julia M. Payne/WHO/EOP  
Jason H. Schechter/WHO/EOP  
Sarah E. Gegenheimer/WHO/EOP  
Julie B. Goldberg/WHO/EOP  
Melissa G. Green/OPD/EOP  
Roger V. Salazar/WHO/EOP  
Jake Siewert/OPD/EOP  
Chandler G. Spaulding/WHO/EOP  
Heather M. Riley/WHO/EOP

Message Copied

To: \_\_\_\_\_  
Cynthia A. Rice/OPD/EOP



Automated Records Management System

**Welfare-to-Work Q&As** Hex-Dump Conversion  
**January 25, 1999**

**Q: What is the President announcing today?**

A: With welfare caseloads down by nearly half since 1993 and over 10,000 companies committed to welfare-to-work, President Clinton will announce today a new package of initiatives designed to ensure that those remaining on the welfare rolls make a successful transition from welfare to work, with a new focus on increasing the employment of low-income fathers so they can support their children. The President's \$1 billion Welfare-to-Work initiative will help 200,000 more people go to work. At least \$150 million will go toward helping fathers fulfill their responsibilities to their children by working and paying child support. Remaining funds will focus on long-term welfare recipients with the greatest challenges to employment. The President also will announce today that his budget will contain new welfare-to-work housing vouchers, transportation funds, and tax credits to help those on welfare get to work and stay employed. Taken together, these initiatives will provide parents the tools they need to support their children and succeed in the workforce.

**Q: Is the rate of caseload decline beginning to slow? And to what extent is the caseload decline related to the economy and to people going to work?**

A: Today the President will release state-by-state data showing that welfare caseloads are at their lowest level in 30 years and that the welfare rolls have fallen by nearly half since he took office. Since January 1993, 36 states have had caseload declines of more than 40 percent and nationwide the rolls have fallen by 44 percent, from 14.1 million to just below 8 million. The rate of decline is almost exactly the same as it was a year ago. For example, between January and September of 1997, caseloads declined 14 percent; between January and September of 1998, they declined 13 percent. Because the number of people on welfare has fallen dramatically, the same percentage decline in 1998 obviously represents fewer people than it did in 1997, but the rate of decline has not slowed.

The AP reported that the rate of caseload decline is slowing in some states. We are watching this trend closely, but it is too early to determine whether or not this represents a significant pattern. We do not find it terribly surprising that the rate of decline may be slowing in states who have reduced their caseloads dramatically over the past few years and are now working with those who have the greatest challenges to employment. That is exactly why we need to make this additional investment in helping those who remain on the rolls move into jobs and to ensure that those who have gone to work succeed in their jobs.

Only some of this caseload decline can be attributed to the economy. In a study published in May 1997, which only looked at caseload trends from 1993 - 1996, the Council of Economic Advisers attributed 44 percent of the caseload decline to the strong economy and about one-third of the decline to state welfare reform waivers the Administration granted to states to change their welfare reform policies. More recent analysis by CEA finds that only 20 percent of the decline in caseloads between 1994 and 1998 can be explained by economic conditions and only 8 percent of the decline since 1996 can be accounted for by the economy.

Recent information released by the Department of Health and Human Services shows that more welfare recipients are working and more people are leaving welfare for work. The percentage of welfare recipients working has tripled since 1992, an estimated 1.5 million people who were on welfare in 1997 were working in 1998, and that all states met the first overall work participation rates required under the welfare reform law.

**Q: Why is the President seeking more Welfare-to-Work money when states aren't spending all their welfare block grant (TANF) funds?**

A: These additional Welfare-to-Work funds will ensure the hardest-to-employ welfare recipients living in the highest poverty areas get the help they need to get jobs and succeed in the work place. Those remaining on the welfare rolls often face the greatest challenges such as limited English proficiency, substance abuse, or a disability which requires more intensive commitment of resources. The funds will also ensure both parents contribute to their children's support, by focusing a minimum of \$150 million on increasing the employment of low-income fathers so they can pay more child support.

**Q: Couldn't TANF funds be used for these purposes?**

A: Welfare-to-Work funds can achieve these purposes more directly. For example, most Welfare-to-Work funds flow automatically through the states to communities with the greatest needs (those with highest poverty levels, most long-term welfare recipients, and highest unemployment). Many states, faced with additional TANF funds due to unexpected caseload declines, need to get TANF funds reappropriated in order to direct additional funds to the neediest individuals. Since state TANF block grant levels are fixed, some states may wish to reserve these additional TANF funds for "rainy day funds" when additional funds may be needed due to population increases or regional recession.

Similarly, Welfare-to-Work funds can be used to employ non-custodial parents of children on welfare without additional changes to a state's TANF plan. Often under state law the noncustodial parents of children on welfare are ineligible under TANF, which usually focuses on the custodial parent. Many states would need to redefine, probably in state statute, their definition of an eligible TANF family in order to serve noncustodial parents with TANF funds.

**Q: Why aren't states spending their TANF funds more quickly?**

A: The most recent data reported by the states to the Department of Health and Human Services show that by the 3rd quarter of FY 1998, states had obligated about three-quarters of TANF funds available to them in the October 1997-June 1998 period. HHS expects future data to show a substantial increase in spending commitments because 1) states will have had the opportunity to appropriate these additional funds, which they did not initially plan for because they did not expect such large caseload declines; 2) state policy decisions made in early 1998 will now be implemented, resulting in additional expenditures. HHS expects states to leave some TANF funds unspent, leaving them in the federal treasury for a "rainy day" when additional funds may be needed due to population increases or a regional recession.

**Q: Aren't some states already using Welfare-to-Work funds to employ fathers? What's new about the President's proposal?**

A: Today, Governor Carnahan of Missouri will describe how his state has successfully used Welfare-to-Work funds to help low-income fathers increase their employment so they can support their children. Missouri is one of several states (along with Wisconsin and Michigan) that designated all or most of their FY 1998 Welfare-to-Work funds for noncustodial parents of children on welfare (some other states used a portion of their funds for this purpose). Because of the success these states have had, the President proposes to require every state to spend at least 20 percent of its funds to help low-income fathers work and pay child support.

**Q: How is what you are proposing for fathers different from Congressman Clay Shaw's bill introduced last session?**

A: We believe our proposal is consistent with Congressman Shaw's goal of encouraging states and communities to help fathers become more involved in their children's lives, but our proposal is somewhat more targeted on low income fathers with children on welfare, and builds upon an existing program instead of creating a whole new program. (Our proposal would require states to spend at least 20 percent of their Welfare-to-Work funds, or at least \$150 million, to help low income fathers work and pay child support will also help fathers get involved with their children. Congressman Shaw's bill established a separate block grant for states to fund projects that encourage fathers to marry, be better parents, and increase their employment and earnings. He proposed \$2 billion over 5 years, with \$200 million in the first year, and targeted 80 percent of the funds to fathers with incomes below the state or local average.)

**Q: Why are you proposing additional funds for fathers employment programs when the recent evaluation of the Parents' Fair Share demonstration showed disappointing results?**

A: Our proposal builds on the lessons of Parents' Fair Share. The evaluation showed that the demonstration succeeded in increasing the fathers' child support payments, but did not have significant impacts on employment and earnings. One of the lessons from the study was the importance of building stronger links to employment services for these fathers, many of whom do work but only in intermittent and low-paid jobs. Our proposal does this by providing fathers employment funds through the workforce system (former Private Industry Councils, now known as Workforce Investment Boards) whose core mission is to help people get and keep good jobs. These workforces boards will be required to work closely with state and local child support offices to ensure fathers meet their child support obligations, which, as a result of the 1996 welfare law, are much tougher than those in place during the Parents' Fair Share demonstration.

**Q: The President said in the State of the Union that this additional \$1 billion would help an additional 200,000 people go to work. How was that figure arrived at?**

A: The figure is based on a total of \$1.3 billion (\$982 M in federal funds that flow to states and communities, allocation to tribes, and competitive grants -- excluding those funds used for evaluation and technical assistance -- plus \$357 M state match required for the formula funds) and assumes an estimated cost of \$6,500 per individual served. The 200,000 people includes approximately 170,000 hard-to-serve welfare recipients and 30,000 low income fathers (assuming that every state spends 20 percent of their formula funds, or \$150 M, plus match on fathers and assuming the same average costs).

**Q: Does the \$1 billion you are proposing go the Welfare to Work Partnership?**

A: No. The \$1 billion Welfare-to-Work grant program administered by the Department of Labor provides formula awards to states and communities and competitive grants to innovative governmental and non-governmental efforts to help long-term, hard to employ welfare recipients and non-custodial parents obtain lasting unsubsidized employment.

The Welfare to Work Partnership is a private entity consisting of 10,000 businesses committed to hiring from the welfare rolls. Today, Fleet Bank President and Chief Operating Officer Robert Higgins will describe how his company, a member of the Welfare to Work Partnership, is hiring, retaining, and promoting welfare recipients (the bank hired over 800 in 1998 alone, representing about 7.5 percent of the bank's new hires.)

Many Welfare to Work Partnership companies, like Fleet, work closely with local Private Industry Councils and non-profit agencies who receive Welfare-to-Work funds. For example, the Northern Rhode Island Private Industry Council identified welfare recipients and helped train them for jobs at Fleet's Lincoln Rhode Island Financial Services Call Center.

**Q: What is the Administration doing this year on housing and transportation for people moving from welfare to work?**

A: Today, the President will announce that **his new budget will provide \$430 million for 75,000 welfare-to-work housing vouchers, including \$144 million in new funds for 25,000 additional vouchers, and will increase Access to Jobs transportation funding from \$75 million to \$150 million.**

We're pleased that Congress fully funded the President's FY 1999 request for \$283 million to provide 50,000 welfare-to-work housing vouchers -- the first new housing vouchers approved in five years. This week, HUD will announce the grant competition so local housing authorities, working in partnership with organizations responsible for welfare reform and Welfare-to-Work, can apply for these new vouchers to help families move closer to a job, reduce a long commute, or secure more stable housing that will help them get or keep a job. The TEA-21 transportation bill authorized up to \$150 million annually for the President's Access to Jobs transportation initiative and the FY 99 budget appropriated \$75 million for this first year. Secretary Slater announced the grant competition for these funds in late October, and is currently reviewing the proposals it received (which far exceed the funds available).

**Q: Is some of the caseload decline the President will be announcing due to new Food Stamp work rules that were added to the 1996 law by Rep. John Kasich? An article in yesterday's Washington Times says the work rule moved 700,000 off welfare.**

A: No. The President's announcement that welfare caseload have declined by nearly half since he took office and 35 percent since 1996 refers to the decline in people on TANF (formerly AFDC). The Washington Times story is referring to work rules put in place in 1996 for able-bodied Food Stamp recipients without dependents, who in 1998 comprised 3 percent of the Food Stamp caseload. The Times' headline that the work rule moved 700,000 people off welfare is actually not a conclusion reached by the General Accounting Office study cited in the story. That study found that in 1998 in the 42 states for which they could obtain data, there were 514,000 able-bodied Food Stamp recipients without dependents and in 1995 in all 50 states there were 1.3 million such individuals on Food Stamps. However, it is somewhat misleading to conclude that therefore the work rule resulted in 700,000 people leaving the rolls for work because 1) the 700,00 difference would be lower if we had 1998 data for all 50 states; and 2) there are other reasons why people leave the Food Stamp rolls, including the growing economy.

**Q: Does the Administration support requiring able-bodied Food Stamp recipients without dependents to work 20 hours a week?**

A: The President believes able-bodied individuals on Food Stamps should work or perform workfare, but those who are unable to get jobs should not lose their Food Stamps. In his FY '98 budget, the President proposed changes to this provision to make it more fair to people who want to work but can't find jobs, including additional funds to provide workfare and training opportunities for individuals facing the Food Stamp time limit (which allows able-bodied individuals without dependents to receive Food Stamps for only 3 months in 36 if they are not working 20 hours a week). The Balanced Budget Act did increase the amount of funds available for this purpose and provide some additional flexibility to states to exempt individuals from these requirements.

**Q: Is today's New York Times correct in saying the President's budget will propose to restore certain benefits to legal immigrants?**

A: Yes. The Vice President is announcing today in San Francisco that the Administration's FY 2000 budget will restore important disability, health, and nutrition benefits to additional categories of legal immigrants, at a cost of \$1.3 billion over five years. This proposal will build upon the Administration's success in the Balanced Budget Act and the Agricultural Research Act in restoring eligibility for Medicaid, SSI, and Food Stamps to hundreds of thousands of legal immigrants. Upon signing the 1996 welfare law, the President vowed to reverse unnecessary cuts in benefits to legal immigrants that had nothing to do with the goal of moving people from welfare to work.

**Q: Is today's Los Angeles Times correct in reporting that the Administration's budget will include additional funding for English as a second language instruction?**

A: Yes. The Vice President is announcing today that the President's new budget will include a \$70 million initiative to help states and communities provide expanded access to high quality English language proficiency instruction, linked to practical instruction in civics and life skills including how to navigate the workplace, public education system, and other essentials. This initiative is designed both to help meet the extraordinary demand for English and civics instruction in immigrant communities and to demonstrate our shared commitment to fully integrating new Americans into our social and civic life. States, community-based organizations, local education agencies, and other non-profits will compete for grants to support English proficiency and civics instruction. With \$70 million, the initiative will be able to provide English language and civics instruction to approximately 150,000 people in FY 2000.



**Tobacco Q&A**  
**January 25, 1999**

**Q: What does the Administration think of New York state's plans to spend their portion of the tobacco settlement? Is the Administration still going to claim a share of the recent tobacco state settlement?**

A: The President has always said that tobacco settlement funds should be spent to promote public health and assist children. Under current law, the federal government is obligated to recoup a portion of these tobacco recoveries, and the Administration will proceed in accord with that statutory obligation. The President, however, has made clear that he is open to working with the states to resolve these federal claims in exchange for a commitment by the states to use tobacco money for specified activities including public health and children's programs.



Openly gay at 17, she was so harassed and intimidated by classmates that dropping out of Galileo High was more appealing than staying in school.

Thirty-five years later, Owens has become the first openly lesbian school board president in California, elected this month to head the San Francisco Board of Education. At 52, she holds two master's degrees and a doctorate. Now, finally, she feels she is in a position to make a difference for gay youth.

"I didn't get the support I needed in the K-12 system," Owens said over lunch. "That's why I'm happy to be a role model for young gays and lesbians."

Describing herself as an educator who wants to improve schools for all children, "whatever their race and sexual orientation," Owens feels an urgency to make sure teachers and students treat gay youth with respect.

"There are not enough gay role models in leadership positions," Owens said. "One thing we must do is talk in school about all of the significant contributions gays and lesbians have made throughout history."

Owens wants the district's required reading lists, for example, to identify authors by ethnicity -- and sexual orientation.

"We have a reading list for our students," Owens said. "I want the authors who are gay and lesbian to be identified as gay and lesbian. Next to James Baldwin's name should be the words 'black' and 'gay.'"

When the San Francisco school board found itself at the vortex of a national controversy last March over a proposal to make the "too white" high school English curriculum more multicultural, Owens entered the fray by calling for more books by gay authors.

"If we're going to establish a list and talk about diversity, we need to have it reflective of all students," Owens said. "And if you leave out gay and lesbian students, you leave out a significant portion of our student population."

The first openly gay elected school board president in San Francisco was Tom Ammiano, in 1990. Angie Fa served as The City's first openly lesbian school board member, in 1992.

'A great counterpoint'

"I think having an openly lesbian school board president is very important because it's a great counterpoint to the right-wing attacks on homosexuality in our schools," said Ammiano, who now serves as president of the Board of Supervisors. "Fighting for inclusion is an uphill battle. Juanita is carrying that torch."

Owens, whose mother was second-generation Portuguese and father was Irish and American Indian and from Tennessee, describes herself proudly as a "lesbian of color."

Born in Sacramento, Owens lived there until her parents divorced when she was 4. She then lived on and off with her mother in San Francisco and grandmother in Sacramento. She has no memories of her father.

While in San Francisco, Owens attended Jean Parker Elementary, Francisco Middle School and Galileo High.

"School was difficult"

"For me, school was difficult because I was a lesbian," she said haltingly, fidgeting in her seat. "We're talking about the 1960s. I was threatened. It was hostile. I had to take different routes home. It was very hard to be gay."

Her mother discovered she was gay in an age-old tradition that transcends sexual orientation: She walked in on her with her girlfriend.

"My mother didn't accept it at first, but she did later on," Owens said. "I was 15 when I actually knew. It's something that kind of evolved. It wasn't like there was one moment, where I said, 'Aha! I'm a lesbian.'"

After leaving high school in her senior year, she attended City College before transferring to S.F. State. She then enrolled at the University of San Francisco, earning her bachelor's degree in sociology, her master's

and doctorate in education, and another master's in counseling and psychology.

She has worked as a student counselor at City College and various community colleges since the early 1980s. She was recently named dean of counseling at City College.

With dark circles under her eyes attesting to long hours at work, Owens has a spirited smile that lights up her face.

She has reason to smile. Besides the steady gains in her professional life, she is happy with her private life. She has been in a 4-year relationship with Rosalinda del Moral, 51, an elected member of the Democratic Central Committee who once taught kindergarten at John Muir.

Looking ahead

Owens is looking ahead; her political ambitions clearly extend beyond the school board presidency.

Asked whether she hopes to run for a seat on the Board of Supervisors, Owens demurred, saying, "At this point, my interest is on being president of the Board of Education."

When pressed, she allowed, "It is something I'm interested in exploring in the future."

One of the first things Owens plans to do as school board president is work to increase public participation in board meetings and district decisions.

The Board of Education has been criticized for making critical decisions without sufficient community input. It has also been accused of being a rubber stamp to the powerful schools Superintendent Bill Rojas. Owens replaces as president Carlota del Portillo, who was a Rojas defender and lost her bid for re-election in November.

The seven members of the Board of Education have wide-ranging power, determining everything from graduation requirements to how much funding goes to arts education. Board members oversee the state's fifth largest public school district, with 65,000 students and a \$540 million annual budget.

Despite all this, board meetings, held every other Tuesday evening at Everett Middle School, draw few parents.

To increase participation, Owens wants to hold a monthly open house modeled after Mayor Brown's popular Saturday morning gabfests. The public would be invited to speak with board members about school issues, Owens said.

School board road show

Owens also plans on moving school board meetings around The City, hosting four meetings in four different neighborhoods, beginning in March or April.

All of this is welcome news to members of Coleman Advocates for Children and Youth, who have long called for more open dialogue between the school district and the community.

"People don't really understand the importance of the Board of Education, that it is the body that makes the policy decisions for the school district," said Marybeth Wallace, a parent liaison with Coleman.

"I have to say," Wallace added, "I have a more positive attitude now that Juanita is president. She has made herself accessible. Right there is a change."

Owens, for her part, says she's always done the nontraditional and, to a certain extent, the unexpected.

"In spite of all the obstacles I faced, of being a person of color, being a lesbian, coming from a working class family," she said, "I've managed to earn four degrees and -- I hope -- become a role model."

=====  
===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

## TEXT:

## RFC-822-headers:

Received: from conversion.pmdf.eop.gov by PMDF.EOP.GOV (PMDF V5.1-9 #29131)  
id <01J6XZYTRXS006IUW@PMDF.EOP.GOV>; Mon, 25 Jan 1999 04:02:33 EST

Received: from storm.eop.gov by PMDF.EOP.GOV (PMDF V5.1-9 #29131)  
with ESMTTP id <01J6XZYWJ368005ESB@PMDF.EOP.GOV>; Mon,  
25 Jan 1999 04:02:29 -0500 (EST)

Received: from netcom15.netcom.com ([192.100.81.128])  
by EOP.GOV (PMDF V5.2-29 #34437) with ESMTTP id <01J6XZY84SBU000FMR@EOP.GOV>;  
Mon, 25 Jan 1999 04:01:56 -0500 (EST)

Received: (from rwockner@localhost)  
by netcom15.netcom.com (8.8.5-r-beta/8.8.5/(NETCOM v1.02)) id BAA01839; Mon,  
25 Jan 1999 01:01:22 -0800 (PST)

=====  
===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: MaryEllen C. McGuire ( CN=MaryEllen C. McGuire/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:25-JAN-1999 11:16:21.00

SUBJECT: AmeriCorps Visibility Conference Call

TO: Anne E. McGuire ( CN=Anne E. McGuire/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: JGompert ( JGompert @ cns.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

TO: Thurgood Marshall Jr ( CN=Thurgood Marshall Jr/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Stacie Spector ( CN=Stacie Spector/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Karen Tramontano ( CN=Karen Tramontano/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jennifer M. Palmieri ( CN=Jennifer M. Palmieri/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Thomas L. Freedman ( CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Tanya E. Martin ( CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Ann F. Lewis ( CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Shirley S. Sagawa ( CN=Shirley S. Sagawa/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: TWest ( TWest @ cns.gov @ inet [ UNKNOWN ] )  
READ:UNKNOWN

CC: Ruby Shamir ( CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Carolyn T. Wu ( CN=Carolyn T. Wu/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Just a reminder that we are having an AmeriCorps Visibility Conference call today at 4pm.  
757-2100 code 4129. Hope you can attend.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith ( CN=Mary L. Smith/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 11:59:31.00

SUBJECT: Legislative Strategy for 1000 New Native American teachers

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Thomas L. Freedman ( CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

Gene wanted Ceci Rouse to write up a legislative strategy for getting the money for the 1000 new Native American teachers. This initiative is already authorized under current law so it is only an appropriations issue. I talked with Mike Cohen, and it appeared that there were three main areas to focus on: (1) making sure that OMB and the Department of Education continue to push it; (2) reaching out to legislative allies on this; and (3) making sure the groups highlight it. Let me know if you have any problems with this. If not, I will outline this broad strategy to Ceci.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 12:07:11.00

SUBJECT: comments on education section of Edley's book

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

I reviewed the education chapter and introduction again over the weekend, and have a number of comments. Please note, I did not have a chance to do any fact checking -- I presume the number Chris uses are right and have been double checked by him and others.

1. The fundamental concern with this chapter has been addressed already, in our memo to POTUS. The Compact for Equal Opportunity in Education is clearly at odds with the President's State of the Union proposals and the direction that ESEA reauthorization is taking, so I can't imagine that piece staying in here as is. If it is removed or substantially changed to reflect what POTUS has already proposed, the structure (but not necessarily the content) of much of the rest of the workplan would also need to be altered, since some of the issues in the workplan--quality teachers, social promotion, accountability for all--are addressed in the SOTU proposals. However, I'm not clear what the process is for resolving this conflict, so rather than relitigating now, I'll offer other comments designed to strengthen the rest of the chapter.

2. A couple of editorial comments:

p.1 of the education section: I don't remember if in 1957 there was such a thing as "breaking news" television coverage. Someone should check before POTUS declares he remembers it.

p.6: sentence describing our class size reduction effort should end with the point that reducing class size will "...have positive effects on student achievement particularly for minority youngsters."

p. 8: The sentence "On the other hand, I have seen that Federal education programs are often too confining, with their red tape and narrow categorical programs." is a problem (beyond the fact that it is contained in the disputed section on the "Compact". First, in the beginning of the Administration, we made a major and successful effort to reduce regulations and red tape in el/sec programs (e.g., we cut regs in ESEA programs by 2/3). This sentence doesn't reflect our own success. Second, since then, we have added several of our own programs with "narrow categorical purposes" including Class Size reduction and the America Reads initiative, which are as categorical as anything we found when we came into office. I would simply drop this point.

3. In the section highlighting aspects of the nation's workplan - the education issues that must be addressed -- Chris pays inconsistent attention to the extent to which our own initiatives help the nation address the challenges in question. While I know this section is not

intended to be a compendium of federal education programs, it does seem important to highlight Presidential initiatives that support the nation's work. To that end, I offer the following suggestions (a number of these highlight NEC initiatives, so I assume they will respond similarly): Support families and promote early learning opportunities. the discussion here should mention that our America Reads initiative includes a significant effort -- through outreach, work with community based organizations, development of materials, etc. as well as budget proposals -- to encourage parents to read to their kids and to become literate themselves.

Teaching -- This section should at least mention the initiatives POTUS highlighted last week -- scholarships to recruit people to teaching in high poverty communities, Troops to teachers and the Native American teacher recruitment initiative.

Buildings -- Should underscore our battle over the past 2 years to enact federal legislation to support school modernization.

Technology -- In addition to the e-rate, there should be some mention of our nearly \$2 billion technology Literacy Challenge Fund, to help get computers and trained teachers in the classroom.

English Language Acquisition. I think there should be some indication that POTUS believes that if local communities should strive to help kids become proficient in English in 3 years.

Safety -- There should be some mention of our school safety initiatives, with a particular emphasis on zero - tolerance for guns in schools, other efforts to keep guns away from kids, and after-school programs designed to keep kids safe.

Overall, I think this section is otherwise quite good.

4. I think this section could hit harder on state and local responsibility to provide kids with an equal education opportunity. Chris walks up to this on p.5, when he briefly discusses the impact of financing schools from the local property tax base. While I would not favor an extended Presidential assault on current school finance mechanisms and local governance arrangements, I think a more forceful discussion from the former Governor of Arkansas would be appropriate, on how states must step up to their constitutional responsibilities to provide equal education opportunity -- even though it can be tough politically and may require some states to take a new look at how education is financed. POTUS could argue that as states step up to the plate here, they should couple their efforts with strong accountability for results.



**QUESTIONS PRESENTED**

Before 42 U.S.C. 1395mm was superseded in 1997, it authorized the Secretary of Health and Human Services to enter into contracts with private HMOs and similar healthcare organizations under which they would receive a fixed, per-person monthly fee for each Medicare beneficiary that chose to enroll in (and to receive medical services or coverage from) the HMO in place of traditional fee-for-services Medicare coverage. The HMO, in turn, was required to provide enrolled beneficiaries with all medical treatments and services that Medicare ordinarily would cover. Any disputes between the HMO and the beneficiary regarding coverage ultimately would be resolved by the Secretary or her agents.

Alleging that HMOs participating in the Section 1395mm program failed to provide beneficiaries with a meaningful opportunity to contest their coverage decisions, plaintiffs filed this nationwide class action lawsuit. They alleged that the HMOs participating in the Section 1395mm program were "state actors" subject to the requirements of the Due Process Clause of the Fifth Amendment, and that the procedures employed by the HMOs were inconsistent with the requirements of that Clause. After plaintiffs filed suit and the district court issued an injunction in their favor, however, Congress comprehensively reformed the relevant legal and regulatory framework governing coverage determinations. The new statutory scheme withdraws the Secretary's authority to enter into contracts under Section 1395mm, and replaces that provision with a new Medicare Part C and a new "Medicare + Choice" program that offers vastly expanded procedural protections for enrolled beneficiaries.

The questions by this case presented are:

1. Whether the decision by a Section 1395mm risk-sharing HMO, to refuse an enrolled Medicare beneficiary's request for health services, constitutes government action subject to the requirements of the Due Process Clause of the Fifth Amendment.
2. Whether the district court properly issued a mandatory injunction, creating new procedural requirements that HMOs must follow and the Secretary must enforce under Section 1395mm, on due process grounds.
3. Whether Congress's enactment of new Medicare Part C, which supersedes the Secretary's authority to contract under Section 1395mm, and establishes a new "Medicare + Choice" program that provides greatly enhanced procedural protections for Medicare beneficiaries enrolled in private HMOs, renders the current dispute moot, warranting vacation of the judgment below and a remand to the district court for consideration of the new statutory and regulatory scheme.

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1998

No. 98-

DONNA E. SHALALA, SECRETARY OF HEALTH  
AND HUMAN SERVICES, PETITIONER,

v.

GREGORIA GRIJALVA, ET AL.

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

**PETITION FOR A WRIT OF CERTIORARI**

The Solicitor General, on behalf of Donna E. Shalala, Secretary of Health and Human Services, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

**OPINIONS BELOW**

The opinion of the court of appeals (App., infra, 1a-\_\_) is reported at 152 F.3d 1115. The opinion of the district court (App., infra, \_\_-\_\_) is reported at 946 F. Supp. 747.

**JURISDICTION**

The judgment of the court of appeals was entered on August 12, 1998. A petition for rehearing and suggestion for rehearing en banc was denied on November 12, 1998. App., infra, \_\_. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

The Ninth Circuit in this case affirmed a nationwide injunction

that prescribes additional terms that the Secretary of Health and Human Services must include, and must enforce, in the contracts she enters into with Health Maintenance Organizations and similar "managed care" providers (collectively HMOs) under 42 U.S.C. 1395mm.

Affirming that injunction, the Ninth Circuit in this case held that (1) when a contracting HMO contests an enrollee's claim for medical services and denies her request for medical services, it engages in "state action" and that, as a result, its decision must meet the requirements of due process; and (2) that the procedural mechanisms previously imposed on HMOs by the Secretary did not provide enrollees with the process that was their constitutional due. Before the Ninth Circuit decided this case, however, Congress superseded the provision of the Medicare Act that prompted the district court to enter the injunction (42 U.S.C. 1392mm) by enacting a wholly new statutory framework (Medicare Part C) which provides Medicare beneficiaries who choose to enroll in HMOs with dramatically greater procedural safeguards, protections, and review mechanisms. Moreover, to implement the new statute, the Secretary has since promulgated new regulations that provide still greater safeguards for the Medicare beneficiary community. Because those intervening legislative and regulatory changes alter the fundamental nature of the current dispute and render it moot, we respectfully request that the Court vacate the judgment of the courts below and remand the case to the district court for consideration of the intervening legislative and regulatory reforms. In addition, because of the close relationship between the decision below and the issues before the Court in American Manufacturers Mutual Insurance Company v. Sullivan, et al., No. 97-2000 (argued Jan. 19, 1999), we respectfully request that the

petition in any event be held pending decision in that case and that the petition also be disposed as appropriate in light of the Court's decision in Sullivan.

1. The Medicare program, established under Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., pays for covered medical care for eligible aged and disabled persons. For many years, Medicare operated in a manner similar to fee-for-service medical insurance. Under fee-for-service arrangements, the beneficiary first obtains needed medical care. The beneficiary or his health care provider then submits a claim for reimbursement to the Medicare program. Claims would then be reviewed by processing agents known as "fiscal intermediaries" or "carriers" -- private companies that, act under contract as the Secretary's fiscal agent to evaluate claims and determine whether payment is authorized by the Medicare statute. Where the fiscal intermediary or carrier approves the claim, it is paid by the federal government out of the Medicare Trust Funds established in the Treasury. This traditional payment system is governed under Medicare Part A if the payment is for covered care furnished by hospitals and other institutions, and by Part B with respect to supplemental medical insurance for covered physician services and certain other medical benefits.

In 1982, Congress added a provision to the Medicare Act to permit beneficiaries to obtain covered services in a fundamentally different way -- by enrolling in a private healthcare plan such as a Health Maintenance Organization or other managed care provider (HMO). See Pub. L. No. 97-248, § 114(a), codified at 42 U.S.C. 1395mm (1994).

(Section 1395mm has now been superseded by new Medicare Part C and the new "Medicare + Choice" program, as discussed in greater detail

below.) . HMOs usually consist of a network of health-care providers and institutions, and thus are able to offer their enrollees with "one-stop shopping" for health services. While a patient using a fee-for-service health plan normally chooses his own physician and then submits a bill for reimbursement, patients using HMOs generally must use a physician or hospital that has an agreement with (i.e., that participates in the provider network pertaining to his or her HMO. Because HMOs often operate efficiently and are able to obtain discounts for medical services from participating providers, they can offer their enrollees a more comprehensive package of services -- including extras like coverage for prescriptions -- at the same or even lower cost.

To permit Medicare beneficiaries to obtain HMO coverage at government expense, Section 1395mm authorized the Secretary to enter into contracts with qualified HMOs under which contracting HMOs would make their plans available to Medicare beneficiaries. Medicare beneficiaries thus would have the option of continuing traditional Medicare coverage or instead having the Secretary purchase private coverage for them from a participating HMO. Two types of HMO contracts were authorized. First, the Secretary could enter into a cost-based contract, under which the Secretary would compensate the HMO on a fee-for-service basis for services actually rendered to the enrollee. See 42 U.S.C. 1395mm(h); 42 C.F.R. 417.530-417.576.

Second, the Secretary could enter into contracts that provided the HMO with a flat-rate, monthly capitation payment -- that is, a monthly payment for each Medicare beneficiary that chose to enroll with the HMO -- in return for which the HMO was required to provide each enrollee with the full range of services covered by Medicare.

42 U.S.C. § 1395mm(g). Under the latter type of contract, the HMO rather than the Secretary bears the risks of increased patient needs, as the monthly payments from the government are not adjusted based on services actually used. Instead, if the cost of providing required services to enrolled beneficiaries exceeds the aggregate payments from the Secretary, the HMO bears the loss. Conversely, if the cost of providing services is less than the aggregate payments from the Secretary, the HMO turns a profit. This case concerns only patients enrolled in such risk-bearing HMOs, i.e., HMOs that have entered into contracts pursuant to 42 U.S.C. 1395mm(g), under which they bear the risks of increasing costs.

Placing the risk of increased patient need gives HMOs an incentive to provide preventative healthcare that can help avoid costly procedures later on. It also eliminates the incentive to over-utilize expensive medical treatments, an unfortunate feature of fee-for-service systems. When healthcare providers are paid for each treatment rendered, as under a fee-for-service system, the provider may come to view each procedure as a source of profit for itself, rather than as a net cost to society and the healthcare system as a whole; hence the incentives for over-utilization. Where the healthcare provider must internalize the cost of each treatment, as under the flat-rate, capitated arrangements contemplated by Section 1395mm(g), that incentive disappears. Finally, because beneficiaries are free to dis-enroll from an HMO at any time (at the end of the month in which they make such a request), and either go back to fee-for-service coverage, or switch to another participating HMO in the area, 42 C.F.R. 417.461 (1997), participating HMOs must compete for Medicare enrollees. That

competition for enrollees forces HMOs to pass through, to the enrollees, benefits of their cost savings in the form of better or more comprehensive services; the HMO receives payments from the government only if Medicare beneficiaries choose to enroll with its plan, and continues receiving payments only if they stay enrolled.

Nonetheless, some health care experts and patient advocates point out that flat-rate capitation arrangements may create economic incentives for HMOs to cut costs by improperly restricting access to necessary medical care. See generally Stayn, Securing Access To Care In Health Maintenance Organizations: Toward A Uniform Model Of Grievance and Appeal Procedures, 94 Col L. Rev. 1674 (1994). Consistent with that concern, 42 U.S.C. 1395mm required HMOs to provide "meaningful procedures for hearing and resolving grievances" between itself and enrolled members. 42 U.S.C. 1394mm(c)(5)(A): The Secretary's former regulations provided that, when an HMO denied a request for services, it had to give the enrollee notice of the decision, including the reasons for the denial and information about reconsideration rights, within 60 days. 42 C.F.R. §§ 417.608-417.612 (1995).

In the event the enrollee was dissatisfied with the HMO's decision, the enrollee could bring the matter before the Secretary or her agents for resolution. See 42 U.S.C. 1395mm(c)(5)(B). The Secretary's regulations provided that any adverse HMO decision, after reconsideration, would be turned over to HCFA (or its agent) for review, and that the member would have the right to present evidence in person as well as in writing. 42 C.F.R. §§ 417.614-417.626 (1995).

Finally, any member aggrieved by HCFA's or its agent's decision could, subject to relatively low amount in controversy requirements,

seek a hearing before an Administrative Law Judge (ALJ), review before the ALJ Appeals Council, and then judicial review. 42 C.F.R. §§ 417.630-417.636 (1995). Neither the statute nor the regulations, however, provided an expedited decision mechanism for cases involving urgent medical needs. See 63 Fed. Reg. 23,369 (noting that deficiency in the former regulations).

2. Respondents are the named representatives of a nationwide class of individuals covered by Medicare who chose to enroll in risk-based HMOs under Section 1395mm. They alleged that the HMOs were not providing legally adequate notice and appeal rights with respect to adverse coverage decisions. More effective procedures, they asserted, were required by Section 1395mm(c)(5)(A). They further claimed that initial HMO decisions concerning coverage constitute "state action" affecting constitutionally protected property interests in Medicare benefits and services and that, as a result, their procedures and processes must meet the strictures of the Due Process Clause. Those procedures and processes, respondents asserted, were constitutionally inadequate.

a. After certifying respondents as the representatives of a nationwide class, the district court granted their motion for partial summary judgment. App., infra, at \_\_. The challenged HMO decisions, the court concluded, constitute "state action" attributable to the federal government and that, consequently, the notice and appeal rights provided by HMOs must comport with the Due Process Clause. App., infra, at \_\_. The court further held that the decision-making procedures then in effect did not afford plaintiffs the process that was their constitutional due under Mathews v. Eldridge, 424 U.S. 319 (1976). In particular, the

district court faulted the forms of notice used by HMOs, see App., infra, at \_\_\_-\_\_\_; the claimant's inability to present evidence, or have his physician present evidence, to the HMO for purposes of reconsideration, App., infra, at \_\_\_-\_\_\_; and delays in decisionmaking with respect to patients needing immediate medical care, App., infra, at \_\_\_-\_\_\_.

The district court therefore imposed a mandatory injunction that created detailed notice and hearing requirements. The injunction commands the Secretary to require that HMOs provide a written notice of any decision that "denies, terminates or reduces services or treatment" within five days of an oral or written request for that care unless "exceptional circumstances" warrant additional time. App., infra, at \_\_\_. The notice must be printed in 12-point type, explain the basis of the decision, and advise beneficiaries of their appeal rights. App., infra, at \_\_\_. The injunction also requires that HMOs honor reconsideration requests, and permit "informal, in-person communication" between the beneficiary and the decision-maker. App., infra, at \_\_\_. If a doctor asserts (or other evidence suggests) that services are urgently needed, the HMO must resolve the reconsideration request within three working days. Finally, where "acute care services" are at issue, the HMO must provide a hearing before denying the request; it cannot discontinue those services (or decline payment therefor) until after the initial decision and the reconsideration process is completed. App., infra, at \_\_\_.<sup>1</sup>

---

<sup>1</sup> The injunction also requires the Secretary to ensure that HMOs do not prevent health professionals (such as HMO doctors) from assisting members in obtaining evidence for the appeals process, and bars the Secretary from contracting with any HMO that, in any

The injunction further requires the Secretary to undertake enforcement actions against HMOs that do not substantially comply with these requirements. In particular, the Secretary is required to monitor and investigate compliance with all requirements, and is barred from contracting with, or renewing a contract with, a deficient HMO. App., infra, at \_\_\_\_\_. The order specifies that the district court will retain jurisdiction over the case for a three-year period, and permits respondents to return to the court for additional relief if implementation of the required appeal and grievance procedures does not redress their claimed injuries. App., infra, at \_\_\_\_\_.

b. The Secretary moved the district court to stay its injunction pending appeal, and the district court granted the motion.

App., infra, at \_\_\_\_\_. In seeking the stay, the Secretary pointed out that on April 30, 1997 -- just after the district court entered its injunction -- the Secretary had issued new HMO appeal regulations in interim final form. The Secretary noted that the regulations made several significant changes in notice and appeal procedures.

60 Fed. Reg. 23,368. Among other things, the new regulations provided a new procedure for expedited review in appropriate cases:

Although HMOs would have 60 days within which to make determinations on an ordinary requests, they would have only 72 hours to make decisions where delay could seriously jeopardize the beneficiary's life, health, or functioning. See id. at 23,370-23,371; see also id. at 23,375 (adding 47 C.F.R. 417.608 and 417.609). The district court concluded that a stay was warranted in light of these regulatory

---

single instance, has retaliated against a doctor who aids a beneficiary in the appeal process. App., infra, at \_\_\_\_\_.

modifications, reasoning that "the hardships faced by the Plaintiffs outweighs those of the Defendant, but that the entire case may become largely moot if the Secretary's attestations regarding rule changes are implemented without delay." App., infra, at \_\_\_.

3. The Secretary appealed. While the appeal was pending, Congress (on August 5, 1997) overhauled Medicare's statutory and regulatory structure with respect to HMOs as part of the Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 4001-4003, 111 Stat. 270 (the Act).

a. To replace Section 1395mm, the Act creates an entirely new Part to the Medicare Act -- Part C -- and establishes the "Medicare + Choice" program. "Medicare + Choice" is designed to offer beneficiaries a widely expanded choice of alternative health insurance arrangements to traditional Medicare coverage. These options include participation in traditional, privately-run fee-for-service plans, HMOs, and other private managed care organizations at government expense, as well as new medical savings account plans. See 111 Stat. 276 (to be codified at 42 U.S.C. 1395w-21(a)(2)). See also H.R. Rep. No. 217, 105th Cong., 1st Sess., 585 (1997).

The new law directs the Secretary to implement that program by establishing a process through which Medicare beneficiaries can, at their option, have the Secretary acquire coverage for them through participating private HMOs and other healthcare organizations, 11 Stat. 278 (to be codified at 42 U.S.C. 1395w-21(c)(1)); by creating mechanisms for providing information concerning those the various options and benefits, including comparisons of plan options and additional available benefits, to the Medicare-eligible members of

the public, id. 278-280 (to be codified at 42 U.S.C. 1395w-21(d)); and by developing procedures for approval of all marketing materials and forms to be used by participating HMOs and healthcare providers, id. at 285 (to be codified at 42 U.S.C. 1395w-21(h)). To encourage the participation of multiple healthcare providers and thereby maximize the available options for Medicare beneficiaries, the statute revamps the methodology for determining monthly capitation payments. See 111 Stat. 299-308 (to be codified at 42 U.S.C. 1395w-23). Healthcare providers cannot accept Medicare beneficiaries as enrollees under the program, and may not receive any payment under it, absent a valid "Medicare + Choice" contract with the Secretary. See 111 Stat. 319 (creating new Section 1857(a), to be codified at 42 U.S.C. 1395w-27).

Most important for present purposes, the Act also provides a new and greatly enhanced statutory framework -- an entire Section entitled "Benefits and Beneficiary Protections" -- to govern such issues as quality assurance, disputes over coverage, grievances and appeals. See 111 Stat. 286 (to be codified at 42 U.S.C. 1395w-22(g)).

As before, the private healthcare organization must in the first instance determine for itself whether or not it the requested treatment is covered (just as it would with respect to non-medicare enrollees). But, as a condition of participation, the organization must provide all medicare enrollees with a clear, understandable statement concerning its decision on a timely basis. Ibid. (to be codified at 42 U.S.C. 1395w-22(g)(1)). The organization must provide for reconsideration upon request and, where the basis for denial is lack of medical necessity, the reconsideration decision must be made by a physician -- other than the individual who made

the initial coverage determination -- who has "appropriate expertise in the [relevant] field of medicine." Ibid. (to be codified at 42 U.S.C. 1395w-22(g)(2)). Although the statute normally permits some delay in the issuance of initial decisions and reconsideration decisions (it provides no deadline for the former, and requires the latter to be issued within 60 days), it requires participating healthcare organizations to reach decisions on an expedited basis, that is "no later than 72 hours [after] receipt of the request for the determination or reconsideration," where expedition is appropriate. Id. at 293-294 (to be codified at 42 U.S.C. 1395w-22(g)(3)).

In addition, all private healthcare organization decisions that deny coverage in whole or in part on reconsideration are subject to review by a neutral, independent entity selected by the Secretary.

Id. at 294 (to be codified at 42 U.S.C. 1395w-22(g)(4)). The enrollee has the right to be heard and present relevant evidence.

Ibid. Any enrollee dissatisfied with the result of that independent reviewer's decision may seek a hearing before an ALJ if the amount in controversy exceeds \$100.00, and judicial review if the amount exceeds \$1,000.00. 111 Stat. 294 (to be codified at 42 U.S.C. 1395w-22(g)(5)). HMOs and other healthcare organizations participating in the program are strictly prohibited from interfering with the efforts of healthcare professionals from providing advise to beneficiaries. See 111 Stat. 294 (to be codified at 42 U.S.C. 1395w-22(j)(3)).

New Medicare Part C also provides the Secretary with substantial enforcement authority, including the ability to impose monetary penalties and to terminate contracts with participating healthcare

organizations that fail to comply with statutory or regulatory requirements. See 111 Stat. 324-325 (adding new Section 1857(g) and (h), to be codified at 42 U.S.C. 1394w-27(g) and (h)). The new procedures also provide the Secretary with substantial flexibility in exercising her enforcement authority. Although the district court and the court of appeals read Section 1395mm(c) as barring the Secretary from contracting with, or renewing a contract with, any HMO that failed substantially to comply with Medicare requirements, see App., infra, at 19a, \_\_\_ (citing 42 U.S.C. 1395mm(c)), the new statute omits the language upon which those courts relied, and nowhere suggests that termination is a mandatory penalty for non-compliance.<sup>2</sup>

---

<sup>2</sup> Section 1395mm(c) provided that "[t]he Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection \* \* \*." (emphasis added). The new law merely provides that the Secretary's contracts with healthcare organizations under the Medicare + Choice program "shall provide that the organization agrees to comply with applicable requirements and standards of [Part C] and the terms and conditions of payment as provided for in [Part C]." 111 Stat. 319 (new Section 1857(a), to be codified at 42 U.S.C. 1395w-27(a)).

Finally, the new law eliminates the Secretary's authority to contract with HMOs under Section 1395mm -- the principal statutory provision at issue in the district court -- as of January 1, 1999, subject to limited exceptions. 111 Stat. 328 (adding new subsection (k) (1) to Section 1395mm, to be codified at 42 U.S.C. 1395mm(k) (1)).<sup>3</sup>

The Department of Health and Human Services advises that all of the HMO contracts entered into under Section 1395mm expired effective January 1, 1999. As a result, Section 1395mm, as far as both Medicare beneficiaries and relevant participating HMOs are concerned, is now without effect.<sup>4</sup>

b. On June 26, 1998 -- while the appeal to the Ninth Circuit was still pending -- the Secretary issued interim final regulations implementing new Medicare Part C and the Medicare + Choice program.

See 63 Fed. Reg. 34,968 (June 26, 1998). Some portions of the regulations went into effect on July 27, 1998, before the court of appeals issued its decision. Other provisions, including regulations implementing the amended appeal and grievance procedures, took effect on January 1, 1999, at the beginning of the

---

<sup>3</sup> New Subsection (k) (1) of Section 1395mm states that, "on or after the date standards for the Medicare + Choice organizations and plans are first established \* \* \* the Secretary shall not enter into any risk-sharing contracts under this Section," and further provides that "for any contract year beginning on or after January 1, 1999, the Secretary shall not renew any such contract." 111 Stat. 328 (creating new 42 U.S.C. 1395mm(k) (1)).

<sup>4</sup> There is one exception relating to a contract with a New Jersey HMO that is currently in liquidation. The Secretary advises that, as soon as the limited number of Medicare beneficiaries enrolled in that program can be moved to a new healthcare provider or to the traditional Medicare program -- and in no event later than March 1, 1999 -- the contract under Section 1395mm with that HMO will be terminated as well.

contracting cycle for HMOs and other managed care providers participating in Medicare + Choice. See 63 Fed. Reg. 52,610 (Oct. 1, 1998); 63 Fed. Reg. 34,968, 34,969, 34,976 (June 26, 1998).

Building on the statute's enhanced protections for Medicare beneficiaries who choose for private HMO coverage, the Secretary's regulations require participating HMOs to issue prompt initial decisions and reconsideration decisions in both urgent and non-urgent cases. Although the Act provides no deadline for initial HMO decisions, the Secretary's new regulations require that, even in non-urgent cases, the HMO must make an initial coverage decision "as expeditiously as the [beneficiary's] health condition requires, but no later than 14 calendar days after the date the organization receives the request." 63 Fed. Reg. 35,108 (June 26, 1998) (adding 42 C.F.R. 422.568(a)). And while the Act sets 60 days as the time limit for resolution of reconsideration requests, the Secretary's regulations reduce that period to 30 days, 63 Fed. Reg. 35,110 (adding 42 C.F.R. 422.590(a)(2)). The regulations, moreover, require HMOs to give anyone seeking reconsideration "a reasonable opportunity to present evidence and allegations of fact or law, related to the dispute, in person as well as in writing." 63 Fed. Reg. 35,110 (adding 47 C.F.R. 422.586).

Where there is a need for expedition, the initial and reconsideration decisions each must be made within 72 hours of the relevant request. See 63 Fed. Reg. 35,108-35109 (adding 42 C.F.R. 422.572 pertaining to initial decisions); 63 Fed. Reg. 35,110 (adding 42 C.F.R. 422.590(d) pertaining to reconsideration). And, where an enrollee is receiving authorized in-patient hospital care, the HMO cannot decide that the care is unnecessary absent concurrence

of the physician responsible for the in-patient treatment. 63 Fed. Reg. 35,110 (adding 47 C.F.R. 422.620(b)). Even then, the enrollee can seek immediate review from an independent peer review organization, and the care cannot be discontinued until that organization issues its decision. Id. at 35,110-35,111 (adding 47 C.F.R. 422.622).

In the event a reconsideration request is denied in whole or part, any unresolved issues must be adjudicated by an independent outside review organization that acts, under contract, as an adjudicatory agent for HCFA. 63 Fed. Reg. 35,111 (adding 47 C.F.R. 422.592); 111 Stat. 294 (to be codified at 42 U.S.C. 1395w-22(g)(4)).

If the amount in controversy is over \$100, any party to the decision by the outside adjudicatory agent -- except the HMO -- may seek a hearing before an ALJ. 63 Fed. Reg. 35,110 (adding 47 C.F.R. 422.600); 111 Stat. 294 (to be codified at 42 U.S.C. 1395w-22(g)(5)).

As required by the Act, the ALJ's decision is subject to review by the Departmental Appeals Board (DAB) and, if the amount in controversy exceeds \$1,000, the DAB's decision is subject to judicial review. Ibid. (adding 47 C.F.R. 422.608, 422.612); 111 Stat. 294 (to be codified at 42 U.S.C. 1395w-22(g)(5)).<sup>5</sup>

---

<sup>5</sup> The statute and regulations also provide mechanisms for monitoring and enforcing HMO compliance with grievance and appeal requirements. The statute, for example, requires HMOs to establish and maintain provisions for monitoring and evaluating both clinical and administrative aspects of health plan operations, and implementing regulations make clear that these "quality assurance" programs must include evaluation of the grievance and appeal process.

See 111 Stat. 291 (adding new Section 1852(e), to be codified at 42 U.S.C. 1395w-22(e)); 63 Fed. Reg. 35,082 (adding 42 C.F.R. 422.152(c)(I)(ii)). In addition, the regulations make it clear that the Secretary may treat an HMO's failure to comply substantially with appeal and grievance provisions as a ground for terminating its Medicare contract. 63 Fed. Reg. 35,104 (adding 42 C.F.R.

---

422.510) .

4. On August 12, 1998 -- after enactment of new Medicare Part C and the "Medicare + Choice" program, and after the Secretary's issuance of new implementing regulations -- the court of appeals affirmed the judgment of the district court. The court of appeals declined to remand the case for reconsideration in light of the new statutory provision and the ensuring regulatory reform. See App., infra, at \_\_\_\_\_. Instead, the court of appeals addressed the case as if the Secretary's prior regulations, and the prior statute, were in place.<sup>6</sup>

Beginning with the question of "state action," the court of appeals held that a private HMO's initial decision to decline coverage for a requested treatment constitutes "state action." The court explained that, to establish government action, the plaintiff must show that "'there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself.'" App., infra, at 8a (quoting Blum v. Yaretsky, 457 U.S. 991, 1004 (1982)). It further noted that, while government regulation is not by itself sufficient to attribute private action to the government, "[g]overnment action exists if there is a symbiotic relationship with a high degree of interdependence between the private and public parties such that they are 'joint participant[s] in the challenged activity.'" App., infra, at 8a-9a (quoting Burton v. Wilmington

---

<sup>6</sup> The statutory amendments were enacted shortly before the government filed its reply brief in the court of appeals. The government accordingly advised the Court that the statute would eventually modify the requirements for HMO grievance and appeal procedures, but that it had not yet taken effect and therefore did not, at that time, bear on the issues presented. See Gov't C.A. Reply Br. 10 n.9.

Parking Authority, 365 U.S. 715, 725 (1961)).

Applying those standards, the court held that "HMOs and the federal government are essentially engaged as joint participants to provide Medicare services such that the actions of HMOs in denying medical services to Medicare beneficiaries and in failing to provide adequate notice may be fairly attributed to the federal government."

App., infra, at 9a. The Secretary, the Ninth Circuit reasoned, "extensively regulates the provision of Medicare services by HMOs"; the HMOs must "comply with all federal laws and regulations"; the Secretary pays HMOs "for each enrolled Medicare beneficiary (regardless of the services provided)"; and the "federal government has created the legal framework -- the standards and enforcement mechanisms -- within which HMOs" must operate. App., infra, at 9a-10.

The court of appeals rejected the Secretary's argument that HMO coverage decisions are quintessentially private decisions, made without government compulsion or influence. In Blum v. Yaretsky, 477 U.S. 991 (1982), the Secretary noted, this Court held that private physicians who decide whether treatment is medically necessary -- a judgment that ultimately determined whether those treatments would be covered by the government -- are not state actors because such medical aid professional judgments are the type that physicians ordinarily must make. Here, the Secretary pointed out, the coverage determinations are the sort of decision that HMOs and insurers regularly make, whether or not the enrollee is a Medicare beneficiary, and regardless of who happened to have paid for the coverage. See App., infra, at 10a-11a. The court of appeals distinguished Blum, stating that, in that case, the decisions were "medical judgment[s]"

made by private parties according to professional standards that are not established by the State." Here, the court of appeals held, "the decisions in the case at hand are more accurately described as coverage decisions" that constitute "interpretations of the Medicare statute" rather "than merely medical judgments \* \* \*." App., infra, at 11a.

Turning to the due process question, the court of appeals held that, under the balancing test established by Mathews v. Eldridge, 424 U.S. 319 (1976), the process HMOs provided to Medicare beneficiaries under Section 1395mm and the Secretary's pre-April 1998 regulations was less than their constitutional due. App., infra, at 12a-18a. It reasoned that: (1) the beneficiaries had a substantial interest in Medicare coverage, (2) the previously employed notices of adverse decisions created a substantial risk of erroneous deprivation by failing to state the reasons for the coverage denial and by failing to apprise beneficiaries of their appeal rights, and (3) the Secretary had failed to demonstrate that the additional procedures sought by plaintiffs would be unduly burdensome. Ibid.

The court of appeals also rejected the Secretary's challenge to the nature and scope of the injunctive remedy. Because Congress had delegated implementation of Section 1395mm to the Secretary -- and because it was the Secretary's implementation of that provision that the district court had found to be statutorily and constitutionally wanting -- the Secretary argued that the district court should have remanded the matter to her for an expedited rulemaking to cure the identified ills; and she disputed the appropriateness of the district court's three-year injunction, which

prescribed detailed deadline, notice, hearing, and proceeding requirements. The cases upon which the Secretary relied, the Ninth held, were distinguishable. App., infra, at 18a.

5. The Secretary sought rehearing and rehearing en banc. The petition noted that the new statute and implementing regulations contain substantially different and much more detailed hearing and grievance procedures than those considered in the panel's decision. It asserted that the court's holding, by effectively "constitutionalizing" HMO decisions, impaired the ability of Congress and the Secretary to tailor procedural safeguards to the complex and varied relations between HMOs and their patients. And it urged the court of appeals to either rehear the case or to vacate the injunction and remand the matter to the district court with instructions to consider the new statute and implementing regulations. The court of appeals denied the petition. App., infra, at \_\_\_\_.

#### DISCUSSION

Affirming the district court's issuance of a detailed and highly prescriptive nationwide injunction, the Ninth Circuit in this case held (1) that Health Maintenance Organizations and similar healthcare organizations (HMOs) constitute "state actors" when they decide to deny and dispute claims for treatment made by Medicare beneficiary enrollees and (2) that the HMO procedures formerly required by the Secretary under 42 U.S.C. 1395mm were insufficient to meet the requirements of due process. The court of appeals' decision thus raises the same issues this Court will be addressing in American Manufacturers Mutual Insurance Company v. Sullivan, et al., No. 97-2000 (argued Jan. 19, 1999), and the petition should be held

pending the Court's decision in that case. Moreover, shortly after the district court ruled in this case and issued the injunction, Congress completely revamped Medicare's treatment of HMOs by enacting an entirely new Part of the Medicare Act -- Medicare Part C -- and introducing the new Medicare + Choice program. New Medicare Part C and the Medicare + Choice program, as implemented by the Secretary, provide dramatically greater procedural protections for beneficiaries who choose to enroll in HMOs, thereby eliminating the grievances that prompted the request for judicial relief, and deprive 42 U.S.C. 1395mm, upon which the district court and the court of appeals passed and relied, of future effect. As a result, the current dispute is moot. Accordingly, we also ask that, once this Court issues its decision in Sullivan, it vacate the judgments of the court of appeals and the district court and remand the case to the district court for consideration of the intervening change of law and, if appropriate, the decision in Sullivan.

**A. This Case Should Be Held Pending, And Disposed In Light Of, This Court's Decision In American Manufacturers Mutual Insurance Company v. Sullivan, et al., No. 97-2000 (argued Jan. 19, 1999).**

The state action and due process issues presented by this case are similar (if not identical) to the issues before the Court in American Manufacturers Mutual Insurance Company v. Sullivan, et al., No. 97-2000 (argued Jan. 19, 1999).

Sullivan concerns a constitutional challenge to the payment procedures established by Pennsylvania's Workers' Compensation Act, Pa. Stat. Ann., tit. 77, § 531(5), (6) (West Supp. 1998) (77 Pa. Stat.). That statute establishes an exclusive system of no-fault liability for work-related injuries, under which employers or the

insurers must pay "for reasonable surgical and medical services" for any employee disabled on the job "within thirty (30) days of receipt of [the] bills." 77 Pa. Stat. § 531(1)(i), (5) (Supp. 1998); 77 Pa. Stat. §§ 431, 481(a), 501 (Supp. 1998). If the "employer or insurer disputes the reasonableness or necessity of the treatment provided" for a covered injury, however, it may defer payment -- that is refuse to pay for the treatment -- and file a request for "utilization review." Id. §§ 531(5), (6)(i); 34 Pa. Code § 127.208(e). The dispute is then resolved by a neutral "utilization review organization" and, if appropriate, through a hearing before a workers' compensation judge.

1. The first question before the Court in Sullivan is whether workers' compensation insurers, when they choose to withhold payment for medical treatment pending a challenge to the "necess[ity] or reasonable[ness]" of the treatment under Pa. Code § 531(5), (6), are engaged in "state action." Answering that question in the affirmative, the Court of Appeals for the Third Circuit reasoned that workers' compensation is "a complex and interwoven regulatory web enlisting the Bureau, the employers, and the insurance companies." Barnett v. Sullivan, 139 F.3d 158, 168 (3d Cir. 1998).

Because the State "extensively regulates and controls the" system and the insurers participating therein "provid[e] public benefits which honor State entitlements," the court concluded that the insurers "become an arm of the State, fulfilling a uniquely governmental obligation under an entirely state-created, self-contained public benefit system." Ibid. That reasoning is very similar to the reasoning employed by the Ninth Circuit in this case. See App, infra, 9a-10 (reasoning that "HMOs and the federal

government are essentially engaged as joint participants to provide Medicare services" because (1) the "Secretary extensively regulates the provision of Medicare services by HMOs"; (2) HMOs must "comply with all federal laws and regulations"; Secretary pays HMOs "for each enrolled Medicare beneficiary (regardless of the services provided)"; and (3) the "federal government has created the legal framework -- the standards and enforcement mechanisms -- within which HMOs" must operate). Indeed, lead counsel in this case filed an amicus brief in this Court in Sullivan, emphasizing the potential impact of the Court's decision in Sullivan on the Medicare program and on the result the Ninth Circuit reached below.<sup>7</sup>

Moreover, petitioners' and their amici's arguments in favor of reversal in Sullivan apply with equal force here. In particular, the Sullivan petitioners identify three factors that this Court has examined in its state action cases -- whether the private actor's decision is the product of governmental compulsion or influence, whether the private actor exercises a traditionally exclusive state power, and whether the government has some involvement that uniquely aggravates the injury. Pet. Br. \_\_\_-\_\_\_; U.S. Br. \_\_\_-\_\_\_. With respect to the first factor, they argue that the initial decision by a worker's compensation insurer to withhold payment and dispute a claim cannot be fairly attributed to the State under a "significant encouragement"

---

<sup>7</sup> See Br. Amici Curiae Of the American Association of Retired Persons, The Center For Medicare Advocacy, Inc., et al, at 7 (emphasizing that "the Medicare program is aggressively encouraging increased beneficiary participation in private managed care structures" and concluding that "[t]he evolution in the administration of government benefit programs thus renders the state action determination important to a rapidly expanding number of individuals."); id. at 4 (identifying amici's involvement in this case as a basis for their interest in Sullivan).

theory because the State does not make any effort to influence the insurers' decision; the initial decision on whether to pay or dispute the claim is the insurers' and the insurers' alone. Pet Br. 20-21 (quoting Blum v. Yaretsky, 457 U.S. 991, 1004-1005 (1982)). The same is true of the HMO's decision to deny a Medicare beneficiary's claim for a particular service. When an HMO decides whether to cover a requested service or to dispute it instead, it makes that determination without governmental participation. Like an insurer confronted with a claim for payment, it makes its determination based on its own expertise and its own assessment of the relevant circumstances and governing law.

Second, the Sullivan petitioners argue that the insurers' decisions to withhold payment cannot be considered the exercise of a power "traditionally exclusively reserved to the State." Pet. Br. 18 (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 352 (1974)). To the contrary, they argue, the insurers' decision involves the sort of uniquely private decision that insurers of all varieties make on a regular basis: whether to pay a bill submitted for payment, or instead to withhold payment and dispute the bill.

Precisely the same is true with respect to HMO coverage decisions under the Medicare Act. When an HMO decides whether or not to cover a request for treatment, it does not act as an agent of the government or exercise governmental authority to adjudicate a dispute; it is not expected to act in the government's interest; and it does not distribute Treasury or governmental funds. Instead, the HMO decides whether it, as a self-interested private actor, believes that it is legally (or perhaps morally) obligated to cover -- and therefore should approve -- the service, or whether it should contest the claim

instead. That is precisely the sort of decision HMOs and insurers must make on a daily basis with respect to any enrollee, whether or not the enrollee is a Medicare beneficiary. And if an HMO participating in Medicare does choose to provide the treatment rather than contest it -- like the insurers in Sullivan -- must bear the cost itself.

Indeed, the substantive coverage decisions made by HMOs and the decisions made by the insurers in Sullivan are virtually indistinguishable. In Sullivan, the statute requires the insurer to cover the treatment if it is "reasonable or necessary." Pa. Stat. Ann. § 531(5), (6)(1) (Supp. 1998); 34 Pa. Code § 127.208(e). Likewise, the Medicare statute generally covers medical treatments that are "reasonable and necessary." 42 U.S.C. 1395y(a). An HMO's decision on reasonableness and necessity no more constitutes a delegated "interpretation of the Medicare statute," App., infra, 11a, than a Pennsylvania Workers' Compensation insurers' view of "reasonable[ness] or necess[ity]" constitutes an adjudication of Pennsylvania law. See Blum, 457 U.S. at \_\_. Moreover, in neither case does the private actor's view of its own obligations conclusively resolve the matter. To the contrary, under both the Pennsylvania Workers' Compensation Act and the Medicare program, only the decision of a true governmental authority, acting in its capacity as neutral arbitrator of the dispute, can finally resolve the matter and leave the parties without further recourse.. See 42 C.F.R. §§ 417.614-417.626-417.636 (providing for automatic review of adverse organization reconsideration decisions by agent of the Secretary and, in appropriate cases, a hearing before an ALJ and judicial

review); see also 42 U.S.C. 1395mm(c) (5) (B) (same).<sup>8</sup>

Finally, the Sullivan petitioners and their amici contend that the Third Circuit erred in relying on the "rather vague generalization," Blum, 457 U.S. at 1010, that the system "inextricably entangles the insurance companies in a partnership" that makes the government "a joint participant in the challenged activity," Burton v. Wilmington Parking Auth., 365 U.S. 715, 725 (1961), and on the heavily regulated nature of the industry. See Pet. Br. 22-25, 26-29; U.S. Br. 17-20. Unlike Burton and similar cases, neither Sullivan nor this case involve the sort of dignitary injury or stigma, such that which results from racial discrimination, that can be "uniquely aggravated" by governmental endorsement or even passive involvement. And, the governmental regulation of the industry in this case is neither qualitatively nor quantitatively different than the regulation of workers' compensation insurers at issue in Sullivan.

---

<sup>8</sup> Of course, when the government or its agents does enter a final and conclusive determination, it is engaging in state action. But the fact that the government participates in the process by adjudicating claims -- that is as a neutral arbitrator of disputes -- serves to underscore the fact that the HMO's decision is quintessentially private. Indeed, an HMO decision to deny a claim in the first instance is indistinguishable from the decision of private civil litigant or a private insurer, confronted with potential liability, to contest the claim and subject itself to the adjudicative process. Civil litigants and insurers always have the option of either allowing the claim (and resolving the dispute) or instead denying it and thereby requiring the claimant to invoke the dispute resolution machinery established by the government. Yet "a private party's decision to defer payment of a potential debt" and to litigate the issue instead "has never, to our knowledge, been considered 'state action' under the Fourteenth Amendment." U.S. Br. at \_\_\_.

Indeed, if the insurer conduct in Sullivan does not constitute state action, it would seem to follow a fortiori that the HMO decisions at issue here do not constitute government conduct either. One of the primary reasons given by the Third Circuit for finding state action is the involuntary and mandatory nature of the system; workers cannot "opt out" of workers' compensation and rely on their tort remedies instead. See Sullivan, 159 F.3d at 169 (likening workers' compensation claimants to "prisoners" of the Workers' Compensation scheme); Br. Resp. 33 (similar argument). In contrast, Medicare beneficiaries always have been permitted to "opt out" of private HMO coverage and select traditional Medicare fee-for-service benefits instead. See pp. \_\_\_-\_\_\_, supra.<sup>9</sup>

2. The second issue in Sullivan, whether Pennsylvania's workers' compensation regime is consistent with the requirements

---

<sup>9</sup> One other difference between this case and Sullivan is that, in this case, the government pays for coverage, whereas in Sullivan both private and public employers purchase insurance. It is hard to see why that distinction would make a difference. As explained in our amicus brief in Sullivan (at 18), neither "a private insurer's satisfaction of a claim with its own funds" nor its "decision to defer payment pending review of a disputed claim" is properly attributed to the State even if "the State pays for the underlying insurance policy," because "individual payment determinations are made by, and the financial consequences of those decisions are borne by, the private insurer and not the State. See Blum, 457 U.S. at 1011 (rejecting contention that decisions made by physicians and nursing homes are attributable to the State, despite state 'subsidization of the operating and capital costs of the facilities' and coverage for 'the medical expenses of more than 90% of the patients')." For similar reasons, insurers who provide health benefits to government employees under the Federal Employee Health Benefits Act, 5 U.S.C. \_\_\_, do not become "state actors" simply because the government pays for the coverage. Indeed, if the rule were otherwise, the fact that the government pays physicians and hospitals directly under Medicare Parts A and B might be thought to convert those clearly private actors into government actors.

of due process, likewise resembles the due process and remedial questions decided by the Ninth Circuit and the district court below.

Among other things, the district court apparently thought it appropriate to require, in cases involving "acute care services," the HMO to pay for services until after both the initial determination and the reconsideration decisions were made. App., infra, at \_\_\_.

One of the questions before this Court in Sullivan is whether due process requires workers' compensation the insurers likewise to continue paying for medical services until after some sort of outside review has taken place. See U.S. Br: \_\_\_-\_\_\_. While the Secretary does not dispute the desirability of such a requirement in appropriate circumstances -- the Secretary's new regulations implementing Medicare Part C provide for precisely such a procedure in cases involving in-patient hospital care, see pp. \_\_\_-\_\_\_ -- the fact that this Court may pass on whether such a procedure is constitutionally required in Sullivan is another reason to hold the petition pending the Court's decision there. Moreover, the Secretary believes that the Ninth Circuit and the district court fundamentally erred in imposing judicial requirements rather than remanding to the Secretary -- especially given the new legislation -- so that appropriate procedures could be tailored and refined through a participatory and fully public rulemaking process through the more cumbersome and less public judicial process.

**B. Because This Case Became Moot Pending Review, The Court In Any Event Should Vacate the Lower Court's Judgments And Remand The Case to the District Court For Consideration Of Intervening Statutory and Regulatory Changes**

Even absent the obvious similarities between the Ninth Circuit's decision in this case and the Sullivan decision under review, the

Ninth Circuit's decision ordinarily would warrant review in this Court. It declares unconstitutional the Secretary's implementation of a federal statutory mandate; it affirms a nationwide injunction requiring the Secretary to impose certain procedures on participating HMOs, denying the Secretary of the ability to design and tailor the procedures herself in the first instance; it constitutionalizes the conduct of otherwise private actors; and it may have a substantial impact on an extensive and increasing an important federal program.

1. On August 5, 1997, however, Congress comprehensively reformed this area of law -- creating a new Medicare Part C and establishing the new "Medicare + Choice" program -- and thereby rendered this case moot. See Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 4001-4003, 111 Stat. 270 (the Act). At the time the district court ruled, the governing statute provided only that Medicare HMOs must provide "meaningful procedures for hearing and resolving grievances \* \* \* ." 42 U.S.C. 1395mm(c)(5)(A) (1994). Neither the statute nor the regulations promulgated thereunder specified the precise circumstances under which notices of adverse decisions would be required; the content of such notices; the extent to which enrollees could present evidence or argument to the HMO on reconsideration; the identity and qualifications of HMO reconsideration decisionmakers; or the time within which reconsideration decisions had to be rendered. In the view of the district court and the court of appeals, the practices that prevailed under that regulatory scheme did not afford plaintiffs constitutionally adequate notice or a constitutionally sufficient opportunity to be heard. To remedy these alleged deficiencies, the

district court imposed and the Ninth Circuit affirmed a detailed and highly prescriptive injunction specifying the form, content, and timing of HMO notices, and regulating the subject of beneficiary appeal rights.

The new statute and the Secretary's regulations promulgated thereunder, however, dramatically expand the procedural and substantive protections afforded to Medicare HMO enrollees. See pp. \_\_\_-\_\_\_, supra. Indeed, Medicare Part C creates a whole new Section of the Medicare Act entitled "Benefits and Beneficiary Protections."

111 Stat. 286 (to be codified at 42 U.S.C. 1395w-22(g)). Those provisions and the Secretary's regulations thereunder require all HMOs denying requested services to provide enrollees with a clear, understandable statement concerning adverse decisions on a timely basis. Ibid. (to be codified at 42 U.S.C. 1395w-22(g)(1)). The notice must be provided within 14 days of a request in ordinary cases, and within 72 hours where expedition is appropriate. Id. at 293-294 (to be codified at 42 U.S.C. 1395w-22(g)(3)); 63 Fed. Reg. 35,108-109 (June 26, 1998) (adding 47 C.F.R. 422.568(a) and 42 C.F.R. 422.572). The statute and regulations require that reconsideration decisions be made by a qualified physician other than the one who made the initial decision. 63 Fed. Reg. \_\_\_\_\_ (adding 47 C.F.R. \_\_\_\_\_, \_\_\_\_\_). They provide beneficiaries with the right to present evidence on to the decisionmaker on reconsideration. 63 Fed. Reg. \_\_\_\_\_ (adding 47 C.F.R. \_\_\_\_\_, \_\_\_\_\_). And they require that reconsideration decisions be issued 30 days ordinarily, and within 72 hours in expedited cases. 63 Fed. Reg. \_\_\_\_\_ (adding 47 C.F.R. \_\_\_\_\_, \_\_\_\_\_). Moreover, all disputed reconsideration decisions are subject to prompt and appropriate review by the Secretary and her

agents. Id. at 294 (to be codified at 42 U.S.C. 1395w-22(g)(4); 63 Fed. Reg. \_\_\_\_\_ (adding 47 C.F.R. \_\_\_\_\_)).

As a result of that sweeping change in federal law and Medicare policy, the practices of which plaintiffs complained and which precipitated the district court's exercise of its remedial power have been superseded through enactment of a dramatically different statutory and regulatory scheme.<sup>10</sup> No court has passed on the constitutional sufficiency of these new procedures. As a result, the law has "been sufficiently altered" pending appeal "so as to present a substantially different controversy than the one the [lower courts] originally decided." Northeastern Florida Chapter of Associated General Contractors v. City of Jacksonville, 508 U.S. 656, 662 n.3 (1993); see also id. at 670-671 (O'Connor, J., dissenting). Under such circumstances, it has been this Court's consistent practice to declare the case moot, vacate the judgments below, and remand the matter to the district court for such further proceedings as are appropriate. "[I]n instances where the mootness

---

<sup>10</sup> These new provisions address many areas covered by the district court injunction, but they take a fundamentally different approach to several key issues. Unlike the district court, which required that detailed written notices be provided within five days even where the beneficiary's health is not in imminent jeopardy, Congress specified no specific time frame in such cases, see H. Conf. Rep. No. 105-217, 105th Cong, 1st Sess. 65 (1997) (noting that decision-making deadlines in non-urgent cases should be resolved by the Secretary after appropriate rulemaking and public consultation), and the Secretary selected a 14-day deadline. 63 Fed. Reg. \_\_\_\_\_ (adding 47 C.F.R. \_\_\_\_\_). Moreover, while the Secretary has required certain in-patient hospital services to continue during the pendency of an administrative appeal, she did not extend similar requirements to a broad, unspecified range of "acute care" services. Compare with App., infra, at \_\_, with 63 Fed. Reg. \_\_\_\_\_ (adding 47 C.F.R. \_\_\_\_\_).

is attributable to a change in the legal framework governing the case, and where the plaintiff may have some residual claim under the new framework that was understandably not asserted previously, our practice is to vacate the judgment and remand for further proceedings in which the parties may, if necessary, amend their pleadings or develop the record more fully." Lewis v. Continental Bank Corp., 494 U.S. 472, 492 (1992); see, e.g., Department of the Treasury v. Galioto, 477 U.S. 556, 559-560 (1986) (vacating judgment and remanding to district court because a "new enactment significantly alter[ed] the posture of the case" by removing the concerns that prompted injunctive relief in district court); Calhoun v. Latimer, 377 U.S. 263 (per curiam) ("vacat[ing] the judgment and remand[ing] the cause to the District Court for further proceedings" through which that court could consider "the nature and effect" of a supervening change in policy).

2. The Court should follow that settled practice here. It is now well established that "[a]n injunction can issue only after the plaintiff has established that the conduct sought to be enjoined is illegal and that the defendant, if not enjoined, will engage in such conduct." United Transportation Union v. The State Bar of Michigan, 401 U.S. 576, 584 (1971). Here, no apparent basis for injunctive relief -- the only relief granted -- remains. The allegedly unlawful practices and regulations have been erased by subsequent legislative and regulatory changes. As a result, the claim for injunctive relief is moot, and no longer a proper matter for further review. See Princeton University v. Schmid, 455 U.S. 100, 103 (1982) (per curiam) (where "the regulation at issue is no longer in force" and the "lower court's opinion" does not "pass on the validity of

the revised regulation," the "case 'has lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract questions of law."); see also Associated General Contractors, 508 U.S. at 663 n.3 (prior cases considered moot where "the statutes at issue \* \* \* were changed substantially, and \* \* \* there was therefore no basis for concluding that the challenged conduct was being repeated."). Indeed, the district court in this very case itself anticipated that, given subsequent legislation and regulatory changes, "the entire case may become largely moot." App., infra, at \_\_. And just that has occurred.

Respondents, of course, may argue that even the new statutory and regulatory structure is constitutionally inadequate. See, e.g., Calhoun, supra. Even setting aside the implausibility of such a claim, it remains true that the nature of the dispute has been fundamentally altered by the intervening change in law. Indeed, the district court's decision is specifically addressed to, and rules only on, the claims of Medicare beneficiaries enrolled in HMOs with risk contracts under 42 U.S.C. §1395mm. See Memorandum Order on Class Certification, App., infra, at \_\_ (limiting the class to persons who were "enrolled in Medicare risk-based health maintenance organizations or competitive medical plans during the three years prior to the filing of the lawsuit"). And the district court's analysis focused exclusively on the appeal provisions the Secretary provided under Section 1395mm, App., infra, at 33a-38a, as did the analysis of the court of appeals, App., infra, at \_\_-\_\_. New Section 1395mm(k)(1)(B), however, provides that the Secretary cannot renew

Section 1395mm contracts after January 1, 1999.<sup>11</sup> And, as of January 1, 1999, all of the Secretary's Section 1395mm contracts expired, and no such contracts now remain in place.<sup>12</sup> As a result, the actual "case or controversy" the district court and the Ninth Circuit adjudicated, like the Section 1395mm risk-contracts that precipitated the dispute, has ceased to exist.

---

<sup>11</sup> Cost-based contracts under section 1395mm(h), which are not at issue in this case, are permitted to continue until the end of 2001. 42 U.S.C. § 1395mm(h) (5) (B). If the HMOs in which respondents are or were enrolled still contract with Medicare, they now do so as "Medicare+Choice" organizations under the new "Part C" of the Medicare statute, the provisions of which have not been addressed by the court of appeals or the district court.

<sup>12</sup> One HMO that became insolvent and is now being operated by the state of New Jersey had its section 1395mm contract "extended" (as distinct from "renewed") in order to permit enrollees time to make arrangements for their health coverage. We expect that this temporary extension to expire on February 28, and that as of March 1, 1999, there will be no more enrollees under a section 1395mm risk contract.

The fundamental change in the regulatory and legal regime also eliminates the district court's and the court of appeals' rationale for the highly prescriptive injunctive relief imposed in this case.

Justifying the decision to bar the Secretary from renewing HMO risk contracts or entering into new contracts with any HMO that violated the procedural requirements imposed by the district court's order, the district court and court of appeals alike relied Section 1395mm(c) (1)'s declaration that "[t]he Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection \* \* \*." App., infra, at \_\_ (court of appeals); id. at 52a (district court); see also id. at 53a (justifying notice requirements by declaring that the Secretary's failure to require impose them in her HMO contracts "violates of 42 U.S.C. § 1395mm(c) (1)."); id. at 54a (declaring that failure of Secretary to require certain hearing procedures in HMO contracts "violates of 42 U.S.C. § 1395mm(c) (1)."). The new statute, however, omits the prohibitory language upon which those courts relied, and nowhere suggests that termination and non-renewal are mandatory penalties for HMO non-compliance.<sup>13</sup> In fact, the new statute strongly suggests that the Secretary has flexibility in responding to non-compliance, as it provides the Secretary with a range of options and sanctions. See 111 Stat. 324-325 (adding new

---

<sup>13</sup> Section 1395mm(c) provided that "[t]he Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection \* \* \*." The new law merely provides that the Secretary's contracts with healthcare organizations under the Medicare + Choice program "shall provide that the organization agrees to comply with applicable requirements and standards of [Part C] and the terms and conditions of payment as provided for in [Part C]." 111 Stat. 319 (new Section 1857(a), to be codified at 42 U.S.C. 1395w-27(a)).

Section 1857(g) and (h), to be codified at 42 U.S.C. 1394w-27(g) and (h)).

3. Following settled practice in dealing with moot cases here would likewise further the interests underlying the practice. Here, through no fault of the Secretary's, the case became moot pending this Court's review; the matter was simply overtaken by a comprehensive legislative reform. In such a circumstance, the Secretary ought not be bound by a judgment that she cannot appeal.

See United States v. Munsingwear, 340 U.S. 36, 40 (1951). That is especially true given the present circumstances. The ruling's below address an issue of substantial national importance, as respondent's lead counsel has already conceded in filings with this Court. See Br. Amici Curiae Of the American Association of Retired Persons, The Center For Medicare Advocacy, Inc., et al, in Sullivan, supra, at 7 (emphasizing that, because "the Medicare program" increasingly involves "beneficiary participation in private managed care structures," the state action issue is increasingly "important to a rapidly expanding number of individuals."). And the ruling, despite the mootness of the actual controversy, threatens to have continuing repercussions for an important federal program: HMOs may well be deterred from participating in the new program by the Ninth Circuit's constitutional holding.

In far less compelling circumstances, this Court has unhesitatingly concluded that it was appropriate to vacate the judgments below and remand the matter to the district court for further proceedings in light of intervening events. Thus, in McLeod v. General Electric, 385 U.S. 533, 535 (1967) (per curiam), this Court declined the review the standard under which a preliminary

injunction had been issued under Section 10(j) of the National Labor Relations Act because, after the lower courts passed on the issue, a "supervening event" -- a new labor agreement -- had drawn into question "the appropriateness of injunctive relief" vel non. Given that change, the Court determined that the proper resolution was to "set aside the judgment of the Court of Appeals with direction to enter a new judgment setting aside the order of the District Court and remanding to that court for such further proceedings as may be appropriate in light of the supervening event." Similarly, in Calhoun v. Latimer, 377 U.S. 263, 265 (1964) (per curiam), the Court determined that the school board's adoption of a new policy while the case was pending on review had substantially altered the nature of the controversy; the Court therefore "vacate[d] the judgment and remand[ed] the cause to the District Court for further proceedings."

Id. at 264; cf. Burlington Truck Lines v. United States, 371 U.S. 156, 172 (1962) (when confronted with intervening facts, court of appeals should not review administrative agency decision but should vacate order and remand to agency for further consideration in light of changed conditions). Here, the new statute enacted by Congress and the Secretary's new regulations promulgated thereunder likewise fundamentally alter not only the relevant legal framework and the nature of the dispute between the parties. Accordingly, a similar order vacating the lower court judgments, and remanding the matter to the district court for consideration of those intervening developments, is appropriate in this case as well.<sup>14</sup>

---

<sup>14</sup> It is no answer to suggest that the "state action" question remains "live" under the new statute, even if changed facts alter the due process analysis of the lower courts. This court reviews judgments, not statements in opinions. Chevron U.S.A. Inc. v.

**CONCLUSION**

The Court should hold the petition pending decision in American Manufacturers Mutual Insurance Company v. Sullivan, et al., No. 97-2000 (argued Jan. 19, 1999). Once the Court issues its decision in Sullivan, it should grant the petition, vacate the judgment below as moot, and remand to the court of appeals with instructions to set aside the district court judgment and to remand the matter to the district court for consideration of intervening statutory and regulatory changes and, to the extent appropriate, for reconsideration in light of this Court's decision in Sullivan.

Respectfully submitted.

---

Natural Resources Defense Council, Inc., 467 U.S. 837, 842 (1984). In this case, the judgment of the district court commands the Secretary to impose certain procedures on participating HMOs. It should go without saying that the change in procedures mandated by the new statute dramatically affects the propriety of that judgment. After all, if the new procedures are constitutional, and no court has determined that are not, then that judgment simply could not be sustained. Moreover, it would ill serve the cause of judicial economy for this Court to pass on a state action question unnecessarily where the district court may, on remand, be able to avoid that question through a fact-bound determination that, even if there were state action, then new procedures would provide respondents with the process that is their due.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Sean P. Maloney ( CN=Sean P. Maloney/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:25-JAN-1999 12:37:27.00

SUBJECT: The President's Trip to MO

TO: James T. Heimbach ( CN=James T. Heimbach/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: David R. Goodfriend ( CN=David R. Goodfriend/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: June Shih ( CN=June Shih/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Amy Weiss ( CN=Amy Weiss/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Beth A. Viola ( CN=Beth A. Viola/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

TO: Marjorie Tarmey ( CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Catherine R. Pacific ( CN=Catherine R. Pacific/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Joshua S. Gottheimer ( CN=Joshua S. Gottheimer/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Fred DuVal ( CN=Fred DuVal/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Charles M. Brain ( CN=Charles M. Brain/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Paul E. Begala ( CN=Paul E. Begala/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Janet Murguia ( CN=Janet Murguia/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Maria E. Soto ( CN=Maria E. Soto/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Ryland M. Willis ( CN=Ryland M. Willis/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Julianne B. Corbett ( CN=Julianne B. Corbett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jonathan Orszag ( CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Cecily C. Williams ( CN=Cecily C. Williams/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Dorian V. Weaver ( CN=Dorian V. Weaver/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Michael Waldman ( CN=Michael Waldman/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Barry J. Toiv ( CN=Barry J. Toiv/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Stephanie S. Streett ( CN=Stephanie S. Streett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Todd Stern ( CN=Todd Stern/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Laura D. Schwartz ( CN=Laura D. Schwartz/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: John Podesta ( CN=John Podesta/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jennifer M. Palmieri ( CN=Jennifer M. Palmieri/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Mary Morrison ( CN=Mary Morrison/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Minyon Moore ( CN=Minyon Moore/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Megan C. Moloney ( CN=Megan C. Moloney/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Andrew J. Mayock ( CN=Andrew J. Mayock/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Bruce R. Lindsey ( CN=Bruce R. Lindsey/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Christopher J. Lavery ( CN=Christopher J. Lavery/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Karin Kullman ( CN=Karin Kullman/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Phu D. Huynh ( CN=Phu D. Huynh/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Laura A. Graham ( CN=Laura A. Graham/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Anne M. Edwards ( CN=Anne M. Edwards/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Brenda B. Costello ( CN=Brenda B. Costello/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Carolyn E. Cleveland ( CN=Carolyn E. Cleveland/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Debra D. Bird ( CN=Debra D. Bird/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Kris M Balderston ( CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Bridget T. Leininger ( CN=Bridget T. Leininger/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Paul D. Glastris ( CN=Paul D. Glastris/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Lowell A. Weiss ( CN=Lowell A. Weiss/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Wesley P. Warren ( CN=Wesley P. Warren/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

TO: Karen Tramontano ( CN=Karen Tramontano/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Steve Ricchetti ( CN=Steve Ricchetti/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: George T. Frampton ( CN=George T. Frampton/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

TO: Dominique L. Cano ( CN=Dominique L. Cano/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Sidney Blumenthal ( CN=Sidney Blumenthal/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Malcolm R. Lee ( CN=Malcolm R. Lee/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Lawrence J. Stein ( CN=Lawrence J. Stein/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Robert S. Kapla ( CN=Robert S. Kapla/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

TO: Craig Hughes ( CN=Craig Hughes/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Phillip Caplan ( CN=Phillip Caplan/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jon P. Jennings ( CN=Jon P. Jennings/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Paul J. Weinstein Jr. ( CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Christopher Wayne ( CN=Christopher Wayne/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Michael V. Terrell ( CN=Michael V. Terrell/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

TO: Jordan Tamagni ( CN=Jordan Tamagni/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Aviva Steinberg ( CN=Aviva Steinberg/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jake Siewert ( CN=Jake Siewert/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Dan K. Rosenthal ( CN=Dan K. Rosenthal/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Simeona F. Pasquil ( CN=Simeona F. Pasquil/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elizabeth R. Newman ( CN=Elizabeth R. Newman/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Linda L. Moore ( CN=Linda L. Moore/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Anne E. McGuire ( CN=Anne E. McGuire/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Joseph P. Lockhart ( CN=Joseph P. Lockhart/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Ann F. Lewis ( CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Sara M. Latham ( CN=Sara M. Latham/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Kirk T. Hanlin ( CN=Kirk T. Hanlin/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Cynthia M. Jasso-Rotunno ( CN=Cynthia M. Jasso-Rotunno/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Nancy V. Hernreich ( CN=Nancy V. Hernreich/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Paul K. Engskov ( CN=Paul K. Engskov/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Jose Cerda III ( CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Barbara A. Barclay ( CN=Barbara A. Barclay/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Brenda M. Anders ( CN=Brenda M. Anders/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Tomorrow, the President will travel to St. Louis, Missouri, to meet with Pope John Paul II and welcome him to the United States. Deadlines for the President's trip book are as follows:

MO Background Memos: DUE TODAY AT 6:00 P.M.

- Political Memo
- CEQ Hot Issues
- Cabinet Affairs Hot Issues
- Accomplishments

MO Event Memos: DUE TODAY AT 6:00 P.M.

- Arrival Ceremony
- Meeting

Please call or e-mail me if you have any questions. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jennifer M. Palmieri ( CN=Jennifer M. Palmieri/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:25-JAN-1999 12:54:58.00

SUBJECT: Welfare TV

TO: Karin Kullman ( CN=Karin Kullman/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

FYI

----- Forwarded by Jennifer M. Palmieri/WHO/EOP on  
01/25/99 12:54 PM -----

Mark D. Neschis

01/25/99 10:35:27 AM

Record Type: Record

To: Joseph P. Lockhart/WHO/EOP, Jennifer M. Palmieri/WHO/EOP

cc: Heather M. Riley/WHO/EOP

Subject: Welfare TV

The President of Fleet Bank will be on the Fox News Channel later this afternoon to discuss his role in today's Welfare event.

thanks

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Nicole R. Rabner ( CN=Nicole R. Rabner/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:25-JAN-1999 13:11:08.00

SUBJECT: VP to announce Head Start numbers

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Jennifer L. Klein ( CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

FYI, it looks as if the VP will host a small Roosevelt Room event tomorrow afternoon to announce our budget increase for Head Start -- \$607 million for FY 2000 to serve 42,000 new children (35,000 3- and 4-year olds, and 7,000 0-3 year olds), bringing Head Start enrollment to a projected 877,000, as well as new \$ for Head Start quality.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jose Cerda III ( CN=Jose Cerda III/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 15:33:39.00

SUBJECT: For 4pm leg. affairs meeting...jc3

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Leanne A. Shimabukuro ( CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

Legislative Outreach for Crime Bill II:

1. Initial outreach and heads up to Senate/House Dems (ongoing).
2. First draft of Crime Bill II to circulate internally and bounce off Hill (by 2/8).
3. Key legislative decisions prior to Crime Bill II introduction (2/8 to 2/19)
  - A. Omnibus package vs. series of bills
  - B. If Omnibus, what to include...
    - International Crime Bill (in/out, inclusion of provisions already rejected on Hill);
    - VAWA II (in/out, House/Senate version, certain controversial provisions);
    - Hate Crimes (in/out);
    - Terrorism provisions (in/out);
    - gun provisions (in/out, let advocates push separate bill); and
    - CBC issues (racial profiling, crack sentencing, etc.).
4. Additional Hill outreach (2/22-26)
  - Any discussions w/Republicans?
5. Introduction of Crime Package (3/1).
6. Events/meetings to promote key Crime Bill II appropriations (3/1 to 6/1).
  - COPS II
  - Zero Tolerance Drug Supervision
  - Gun Enforcement
  - Prevention/Afterschool

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ann F. Lewis ( CN=Ann F. Lewis/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:25-JAN-1999 15:33:55.00

SUBJECT: House suggestion

TO: Christopher C. Jennings ( CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Douglas B. Sosnik ( CN=Douglas B. Sosnik/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Stacie Spector ( CN=Stacie Spector/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Lawrence J. Stein ( CN=Lawrence J. Stein/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Stephanie S. Streett ( CN=Stephanie S. Streett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Laura Nichols of Gephardt's staff called to say that they expect to be in next week and were we thinking of an event ? We discussed Wednesday as possible. Patients Bill of Rights and Minum Wage have been introduced; PBoFR seems the best bet .

What do we think ? Want to look for another Lazarus ?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 16:06:44.00

SUBJECT: esea strategy

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

Not exactly final, but it should get you through the meeting. The key think for you to keep in mind is that most of the activities described here are underway already. The initial challenge we face is to make sure that we have enough internal communications within ED and between ED and WH to make sure these are all on message and coordinated. You, Bruce and I need to discuss how to make sure this happens in my absence.

#### ESEA Reauthorization Strategy

1. Complete work on bill in time for March 15 transmittal  
continue to complete major policy decisions -- particularly with respect to teacher quality/program consolidation  
implement joint OMB/DPC/ED expedited review/approval of proposal  
legislative language
2. Continue Consultations with Hill Democrats  
Riley/ED has taken lead on overall consultations with Committee Democrats, especially Kennedy and Clay. This should continue, with more WH participation on priority policy issues, as we move forward. Staff level discussions should now occur weekly.  
Riley will testify next week before Senate committee.  
Help Dem□,s see how our approach to accountability and other program proposals strengthen our hand in coming battles over block grants and choice. This is essential to keeping Dem□,s on board with our approach.  
WH/ED need to reach out beyond committee Dems, to build stronger support in Caucus for SOTU accountability proposals in particular
3. Intensify Work with education, civil rights and business groups  
Now that initial rounds of consultation on overall approach to reauthorization have concluded, begin working with education, business and civil rights groups on design of key accountability and programmatic proposals. We need reasonable level of support from education and civil rights groups to keep Dem□,s on our side. Business groups and local school board critical to making it difficult for Republicans to gain ground by attacking our proposal as a federal power grab.  
As consultations proceed, we need to line up endorsements from key groups and from individual education, business and civil rights leaders.
4. Keep Message focused on Accountability and Responsibility  
We need events for POTUS to put accountability proposals in proper light -- as helping rather than punishing disadvantaged students, and as leading and supporting state and local accountability efforts, rather than usurping them.  
POTUS needs to balance events with an accountability message with events that play up opportunity -- class size reduction, school modernization, teacher excellence, in order to keep education groups and hill Dem□,s in

our camp.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 16:06:44.00

SUBJECT: slight revision

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

In the last section, the heading should be to keep message on accountability and opportunity.

#### ESEA Reauthorization Strategy

1. Complete work on bill in time for March 15 transmittal  
continue to complete major policy decisions -- particularly with respect to teacher quality/program consolidation  
implement joint OMB/DPC/ED expedited review/approval of proposal  
legislative language
2. Continue Consultations with Hill Democrats  
Riley/ED has taken lead on overall consultations with Committee Democrats, especially Kennedy and Clay. This should continue, with more WH participation on priority policy issues, as we move forward. Staff level discussions should now occur weekly.  
Riley will testify next week before Senate committee.  
Help Dem□,s see how our approach to accountability and other program proposals strengthen our hand in coming battles over block grants and choice. This is essential to keeping Dem□,s on board with our approach.  
WH/ED need to reach out beyond committee Dems, to build stronger support in Caucus for SOTU accountability proposals in particular
3. Intensify Work with education, civil rights and business groups  
Now that initial rounds of consultation on overall approach to reauthorization have concluded, begin working with education, business and civil rights groups on design of key accountability and programmatic proposals. We need reasonable level of support from education and civil rights groups to keep Dem□,s on our side. Business groups and local school board critical to making it difficult for Republicans to gain ground by attacking our proposal as a federal power grab.  
As consultations proceed, we need to line up endorsements from key groups and from individual education, business and civil rights leaders.
4. Keep Message focused on Accountability/Responsibility and Opportunity  
We need events for POTUS to put accountability proposals in proper light -- as helping rather than punishing disadvantaged students, and as leading and supporting state and local accountability efforts, rather than usurping them.  
POTUS needs to balance events with an accountability message with events that play up opportunity -- class size reduction, school modernization, teacher excellence, in order to keep education groups and hill Dem□,s in our camp.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 16:51:08.00

SUBJECT: From this week's Legal Times

TO: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

President Bill Clinton's announcement that the Justice Department was going to file suit against the big tobacco companies may have taken the public -- and the industry -- by surprise. But it was not news at Justice, where officials have been quietly plotting strategy for a fresh federal assault on tobacco for months.

The DOJ task force that will determine how and when to proceed is not fully formed, and few details about the mission have leaked.

But department officials have been quietly outlining the government's legal strategy against the industry -- and the plans won't make the job of tobacco industry lawyers any easier.

Two Justice officials confirm that the department is weighing whether to pursue punitive damages against the industry alongside compensatory claims -- a move that would be designed to punish the tobacco industry with steep additional monetary payouts. The companies have already agreed to pay a total of \$246 billion as part of major settlement agreements with all 50 states; federal claims could exceed that.

Moreover, according to the two Justice officials, who ask not to be named, the department is considering a plan to sign on to suits filed by individuals in several different jurisdictions simultaneously, thus enabling Justice to wage war against tobacco with distinct claims and in front of a number of different federal judges.

This move would immunize the department from being shut out by the unfavorable rulings of a single judge or jury. The DOJ is also weighing the possibility of filing one massive suit against the tobacco companies, which would leave the department vulnerable to that problem.

Officials have not ruled out reaching some form of settlement with the industry, or asking Congress for new legislation aimed at tobacco. Still, litigation

appears the likely course.

"There is an unprecedented liability that we believe is owed to the U.S. Treasury," claims DOJ spokeswoman Chris Watney. "We've reviewed the facts and the law, and we're determined that there are appropriate grounds to recover from the tobacco industry."

Department officials are saying publicly that they will not demand that the government be reimbursed for Medicaid expenditures for smoking-related illnesses -- the claim that all 50 states settled on with the industry.

Rather, these officials say the tobacco industry's conduct may have fallen afoul of several different statutes pertaining to government-provided health care.

Specifically, they tout two federal statutes as the most likely basis for claims -- the Medical Care Recovery Act, which allows recovery from those who commit a wrongful act that causes the federal government to pay health care benefits, and the Medicare Secondary Payer Act, which in some circumstances allows the United States to recover for injury done to Medicare recipients.

And, as Attorney General Janet Reno suggested last week during her weekly press briefing, the department might utilize statutes that provide relief for military personnel and Native Americans.

But while the statutory mechanisms the government may use to pursue Big Tobacco have been discussed, additional details are now coming to light:

The task force, which officials say will have about 20 lawyers, is being pulled together by Frank Hunger, assistant attorney general for the Civil Division, and three of his deputies -- Philip Bartz, Donald Remy, and William Schultz, who are in charge of the division's federal programs branch, torts branch, and appellate staff, respectively. It is not yet clear who will run the task force.

The group will be composed mainly, but not exclusively, of lawyers from the DOJ's Civil, Criminal, and Antitrust divisions. Attorneys from the Department of Health and Human Services and the Food and Drug Administration may also be part of the group, these sources say.

While Justice officials are reluctant to speculate about their timetable, one says the task force could finish its work within

three to nine months.

Justice officials say they have been debating for four years about whether to sue tobacco companies. Their decision to move forward was made easier when Congress last year killed comprehensive legislation that would have forced tobacco companies to settle with the feds.

"There's always been a healthy debate as to how, when, where, or whether we should proceed," says one Justice official, who adds that internal deliberations picked up considerable speed in the last several months.

In December, Reno made the decision, and last week, in his State of the Union address, President Clinton announced the plan, bolstering the hopes of anti-tobacco activists -- and walloping an already defensive tobacco industry.

"Clearly, politics is driving this apparent federal lawsuit," says tobacco industry spokesman Steve Duchesne, a director at the public relations firm BSMG Worldwide. "What you're seeing is another frivolous attempt to extract money from these companies."

Matthew Myers, general counsel to the D.C.-based Campaign for Tobacco-Free Kids, says industry claims of politicization are flat wrong. "I don't think there's any question that the Justice Department made a legal decision and not a political one," he says. "What's at stake here is the industry playing Russian roulette with their finances."

Bartz referred a call to Watney. Remy, Schultz, and Hunger, who is leaving the department at the end of the month, decline comment.

#### MUSICAL CHAIRS

The churning continues in the office of Deputy Attorney General Eric Holder Jr.

Holder announced Jan. 22 that Gary Grindler, who has been counselor to the attorney general, will take over as Holder's new principal associate deputy -- a vacancy created by the announcement last week that Robert Litt will be stepping down. Litt leaves at the end of January; Grindler takes over Feb. 1.

The post is a crucial one; the principal associate deputy is often a key adviser to both the deputy and the attorney general. And the person in that job plays a critical role in helping to manage the department -- which has not been Holder's strong suit, according to some department critics.

Grindler is a former assistant U.S. attorney who

served in both the Southern District of New York and the Northern District of Georgia. He also did a three-year stint in Main Justice's Civil Division, and worked at Atlanta's Powell, Goldstein, Frazer & Murphy.

Meanwhile, Associate Deputy Attorney General DeMaurice Smith recently left Holder's office to return to the office of the U.S. attorney for the District of Columbia, according to a source familiar with the department. Smith, who handled oversight of the U.S. Parole Commission and the Bureau of Prisons, among other agencies, while in Holder's shop, is a special counsel, helping to steer the U.S. attorney's community prosecution unit.

Eileen Mayer, another associate deputy AG, will be leaving Holder's office soon, these sources say. Mayer, who worked with Holder when he was U.S. attorney for the District of Columbia, will be joining the Treasury Department's Financial Crime Enforcement Network.

Finally, Jonathan Schwartz, an associate deputy who has been handling drug policy work, among other duties, will be leaving his post temporarily to teach at Harvard University's John F. Kennedy School of Government.

Officials in Holder's office stress that the moves do not represent a mass exodus; taken individually, each of the changes is easily explainable, they say, and on the whole the office is functioning smoothly.

One DOJ official, however, welcomes the opportunity for a realignment of Holder's management team.

A few of the changes, says the official, are designed "to build on the strengths of the office" and at the same time to "shore up what are perceived to be some management difficulties there."

#### MORE HANDS ON BOARD

Overwhelmed with merger reviews, the Justice Department's Antitrust Division plans to ask Congress for a 10 percent to 20 percent increase in staff, including 70 or 80 more lawyers.

"We are clearly stretched," says division chief Joel Klein. "We do need a significant increase in our staff."

Word at the department is that officials were thwarted in their efforts last year to boost antitrust staffing beyond the president's recommendation by Republican Sen. Slade Gorton, according to two sources. Gorton happens to represent

Washington, home state of the Microsoft Corp. -- which is in the midst of a high-profile, hard-fought battle with Klein and the Antitrust Division here in U.S. District Court.

But Gorton's office denied playing any role in cutting the division's budget last year. "We weren't quite sure where that rumor came from," a spokeswoman said.

In seeking additional funding, the division does have some compelling evidence to marshal.

The number of mergers requiring antitrust review under the Hart-Scott-Rodino Act has tripled since 1991. The Antitrust Division and the Federal Trade Commission handled a record 4,728 merger filings in the year ending Sept. 30, 1998, a 28 percent increase over the year before.

Klein says he will seek to add 100 to 150 new positions to the 850 now allotted the division. The division currently has about 350 lawyers.

"In the meantime, we are focusing all our energies on the important mergers, and we certainly will not neglect important matters," Klein says.

One of the most important matters is Microsoft. Klein frequently attends the trial, and has a sizable contingent of lawyers tied up on the case. Nearly half of the lawyers in the division's Western regional office in San Francisco -- nine out of 20 attorneys -- are in Washington working full time on the case.

The division also is looking at America Online Inc.'s planned purchase of the Netscape Communications Corp., and it recently asked those companies for more information about their respective businesses. Microsoft is pointing to the AOL-Netscape deal as proof that there is competition in the browser market and thus no basis for the government's antitrust allegations against it.

The FTC, meanwhile, is reviewing the \$80 billion merger of the Exxon Corp. and the Mobil Corp. FTC Chairman Robert Pitofsky says he has enough staff for now, but would have to seek an increase if the merger pace continues to rise at the current rate.

Claudia MacLachlan contributed to this article. She is a free-lance writer covering the Microsoft trial for American Lawyer Media Inc.

----- Forwarded by Bruce N. Reed/OPD/EOP on 01/25/99  
04:41 PM -----

Cynthia A. Rice

01/22/99 06:19:26 PM

Record Type: Record

To: BRUCE N. (Pager) #REED, Bruce N. Reed/OPD/EOP

cc: 4697 @ WHCA

Subject: Chafee staffer is Amy Dunathan. CR

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Karin Kullman ( CN=Karin Kullman/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:25-JAN-1999 17:45:52.00

SUBJECT: Thursday's Employment Initiative Event

TO: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

While this is mainly an NEC event, I wanted to give you all a download on Thursday's event because of our interest in the literacy portion of it.

The event will take place from approximately 9:45am - 10:30am (15 min. tour, 30 min. remarks).

The location has not been confirmed as of yet. Right now it looks like there are two options: 1)Academy of Hope -- located in Columbia Heights, DC. The building is a former church (the church donated the building) and currently houses a program for job skills training (computer training, GED classes, etc.). OR 2)a new training site, partnership between SEIU and Georgetown University, a spin-off of a training program at Johns Hopkins.

Program: Sec. Herman will not be able to attend, so they will probably have another Labor Dept. rep. on the program, a real person tbd, and the POTUS. Possibility of having Mayor Williams and/or Cong. Norton also.

This is as far as they've gone for now. Let me know if you have any questions, or need me to look into anything specific. Thanks!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas L. Freedman ( CN=Thomas L. Freedman/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:25-JAN-1999 19:30:16.00

SUBJECT: Minor a.m. meeting news

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

1. NYT may run a listeria story tomorrow. USDA press input to the story e-mailed below.

2. Sally may bring up 2 things we've worked on a bit w/NEC: a. USDA is testifying tomorrow morning on ag. concentration issues which is especially relevant to the pork price crisis. Rather than testify about recommendations, USDA will give a statistical report, saving announcements for the POTUS/Podesta. Also, pork prices have improved. b. NEC wants to do a deputies meeting on financial consumer issues, it involves a little of Chris' health stuff, and some consumer moves we've supported in FTC/FCC.

----- Forwarded by Thomas L. Freedman/OPD/EOP on 01/25/99  
07:22 PM -----

ANDY SOLOMON <ANDY.SOLOMON @ usda.gov>  
01/25/99 05:01:14 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Eric.Olsen @ usda.gov (Receipt Notification Requested)  
cc: Elizabeth.Gaston @ dchqexsl.hqnet.usda.gov (Receipt Notification Requested) , Linda.Swacina @ dchqexsl.hqnet.usda.gov (Receipt Notification Requested)  
Subject: NYT recall story

Date: 01/25/1999 05:02 pm (Monday)  
From: ANDY SOLOMON  
To: Freedman, Tom; Olsen, Eric  
CC: Gaston, Elizabeth; Swacina, Linda  
Subject: NYT recall story

M. Burros is working on story about the increase in listeria-related recalls.

Kaye Wachsmuth talked to her this afternoon and pointed out that PulseNet has enabled us to better identify related illnesses and connect them to specific product. She also said these recalls are causing us to re-evaluate our listeria testing effort to ensure that we are doing all we

can.

Andy Solomon  
USDA, Office of Communications  
(202) 720-4623

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Eli G. Attie ( CN=Eli G. Attie/O=OVP [ UNKNOWN ] )

CREATION DATE/TIME:25-JAN-1999 20:08:42.00

SUBJECT: Desperately seeking deliverables...

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

Elena -- I had called before because we're looking for any solid  
announcements for the week POTUS is away -- especially 2/10, 2/11, and  
2/12...

Any DPC thoughts/ideas would be greatly appreciated, as always...