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Kagan
COS
page 3
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THE WHITE HOUSE
WASHINGTON

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October 31, 1997

MEMORANDUM FOR THE PRESIDENT

THE PRESIDENT HAS SEEN
11-4-97

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Education -- National Testing Initiative: As you may know, Rep. Obey announced a compromise testing provision for the Labor-HHS Appropriations bill last Wednesday, with the support of Rep. Porter and Sens. Specter and Harkin. The provision allowed development of the tests to continue, but prohibited their implementation without congressional authorization. The provision also prohibited the use of the tests for high stakes purposes, such as promotion decisions. We had informed Obey and the other conferees in advance that this proposal would be unacceptable to us, and we immediately warned of a veto. (With help from Sens. Bingaman, Kennedy, and Dorgan, we enlisted 37 Senators to sign a letter expressing support for such a veto.) At the same time, Rep. Goodling and his conservative supporters denounced the compromise proposal because it permits continued development of the tests. The conferees have so far refused to make changes to their testing provision, but because of the continuing controversy on this issue, they have not yet filed a conference report.

We are now working closely with John Hilley and others to engage Speaker Gingrich and Sen. Lott in discussion about a number of compromise proposals, either to go into the conference report or to break the impasse after a veto. These compromise ideas include: (1) limiting participation in the test to 50 percent of the nation's fourth and eighth grade students in the first two years of implementation; (2) appropriating money for NAGB to link existing standardized tests to the national tests, so that a state or school district can compare the performance of individual students to national standards without having to administer the national test; and (3) prohibiting the development of national tests in other subjects and grades without congressional authorization.

2. Education -- Charter Schools and Vouchers: The House passed a special rule on Friday linking the bipartisan Riggs-Roemer charter schools bill with the HELP voucher bill, also sponsored by Rep. Riggs. The rule, which passed 214 to 198, provides that the House will separately vote on the two bills, but automatically join them if they both pass. Earlier this week, OMB issued a SAP warning that if the charter bill were amended to include the voucher provisions, senior advisors would recommend a veto. Further House action is scheduled for Tuesday.

3. Health -- Kyl Amendment and Nancy-Ann Min DeParle's Confirmation: Republicans are refusing to confirm Nancy-Ann Min DeParle to be Administrator of HCFA until we reach an accommodation with them on a proposal offered by Sen. Kyl to modify the Medicare

11-4-97

provisions of the Balanced Budget Act. Under the Act, physicians may enter into private contracts with Medicare eligible individuals, but only if they waive the right to receive any Medicare reimbursements (for those patients or any others) for two years. Sen. Kyl wishes to allow physicians to enter into these private contracts without forfeiting their ability to receive Medicare payments for their treatment of other Medicare beneficiaries. The issue is very complicated. Sen. Kyl argues that the public would benefit from a system enabling wealthy patients to assume their own medical costs. But our Democratic base and most advocacy organizations believe that the Kyl Amendment's encouragement of private contracting would reduce the access of non-wealthy Medicare beneficiaries to the best doctors -- and in areas with a physician shortage, to any doctors at all. The Amendment also might create opportunities for fraud, as doctors try to bill both private individuals and the Medicare program for delivery of the same services. Whatever the merits, we and HHS think that we should refuse to consider, or even testify about, the Kyl proposal until Nancy-Ann is confirmed. To do otherwise would only reward this kind of hostage-taking.

4. Health -- NIH Ground Breaking and Cancer Trials Initiative: The Vice President will join Secretary Shalala on Tuesday to dedicate a new building for clinical research on the NIH campus that will be named for Senator Mark Hatfield -- a longstanding advocate of NIH during his years as Senate Appropriations Chair. We are currently working with NIH and HHS on an appropriate announcement for the Vice President to make at this event. We have decided not to announce the Medicare cancer clinical trials initiative that you and Chris recently discussed, both because we are still reviewing cost estimates and because we think you should highlight this initiative at an event focused on the war against cancer. Parenthetically, because 80 percent of men with prostate cancer are over 65, the NCI has indicated that coverage of these clinical trials will represent a major contribution to the effort to diagnose, treat, and eventually cure prostate cancer.

5. Health -- Kassebaum-Kennedy Implementation: We have convened an interagency group (HHS, Treasury, and Labor) to follow up on recent reports that insurance companies are giving incentives to insurance agents not to enroll high-risk individuals. HHS has no sure way of determining the extent of the problem, but state insurance commissioners believe that recent publicity has served to curtail these practices. We are nonetheless pushing HHS to take administrative action to ensure nationwide compliance with the law. In response to our entreaties, HHS is reviewing its authority to send a notice to all states (1) interpreting the law to prohibit this insurance company practice; (2) advising states to enforce the law accordingly; and (3) emphasizing our commitment to enforce the law ourselves if the states fail to do so, through the back-up enforcement authority the statute provides.

6. Tobacco -- Medicaid Letter: We reached an agreement with HHS and the Justice Department last week on a letter to be sent to all 50 states regarding the federal government's claim to certain monies received from settlements between states and the tobacco industry. The letter, which is scheduled to be sent on Monday, lays down the legal marker that the Justice Department and HHS felt was needed to prevent any waiver of the federal government's rights. But the letter has a non-threatening tone and explicitly recognizes that forthcoming national legislation may well address the distribution of tobacco funds between the federal and state governments. In preparation

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*Chiles view is that we should have our Man of
Matter if it were if dictated by state to expand
health coverage - what about this?*

for the letter's release, we met with the Florida Deputy Attorney General and staff from Governor Chiles' office. The meeting went surprisingly well, with the Florida representatives indicating that they would not object to a low-profile letter that simply states our view of current law. We will roll out the release of this letter carefully, including by giving advance notice to the NGA, APWA, and appropriate Members of Congress.

7. Immigration -- Central Americans: House and Senate conferees are continuing to discuss a legislative package designed to provide relief for certain Central Americans from the suspension of deportation provisions of the 1996 immigration law. Two key issues remain uncertain. First, the Senate -- particularly Chairman Abraham -- opposes the House proposal to eliminate the unskilled worker category (10,000 visas annually) as a tradeoff for providing relief to Central Americans. The Senate is considering a counter proposal to reduce the annual number of unskilled worker visas and diversity visas by 5,000 each. (The diversity category provides 50,000 visas each year for individuals from underrepresented countries. The category is mostly used by nationals from Africa and Europe.) Second, some Members are now seeking to expand the final legislation to cover other illegal immigrants. Abraham is proposing special treatment for certain individuals from former Communist bloc countries. And as you know, the CBC is pushing to extend the legislation to the Guantanamo Haitians. We have prepared a letter from you urging that Congress provide the same relief to the Haitians as it does to most Central Americans. We are talking with the legislative affairs office about timing issues, but think we probably should send this letter on Monday or Tuesday.

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8. Crime -- Surplus Military Weapons: The CJS Appropriations Conference Report may include a provision to allow the importation of certain surplus military weapons. Years ago, the U.S. government gave or sold at very low cost millions of these weapons to foreign governments as a form of military assistance. We have repeatedly opposed their importation because their low cost and ease of conversion to fully automatic weapons make them attractive to criminals. We successfully fought a similar provision in the Treasury-Postal Appropriations bill. The language we have seen for the CJS conference report is more limited in scope than the Treasury-Postal version; the provision would allow the importation of nearly one million M1 Garand rifles, but retain the bar against M1 carbines and .45 caliber semiautomatic pistols. We are working with John Hilley and Rahm to try to remove this provision.

9. Crime -- COPS Program: The COPS Office announced on Thursday \$62 million in grants to fund 1,000 new police officers. The funds will add community police officers in 47 states, bringing the total number of police officers funded by the Clinton COPS Program to 65,000.

10. Welfare -- New Regulations: We expect to publish regulations within the next few weeks for both the \$3 billion welfare-to-work program included in the Balanced Budget Act and the Temporary Assistance for Needy Families program established by the welfare law. The regulations for the \$3 billion program are straightforward and should provoke little comment. The TANF regulations are both more complicated and more significant, involving a number of issues that will determine the meaning and efficacy (or lack thereof) of the law's work requirements. We hope that

THE PRESIDENT HAS SEEN
11-4-97

we can release both sets of regulations on November 17th, the day you are scheduled to dedicate Cessna's new welfare-to-work facility in Wichita.

In our conversations with HHS on the TANF regulations, we have insisted on holding states accountable for outcomes -- particularly in putting welfare recipients to work -- while maintaining state flexibility in designing and implementing welfare reform efforts. Most important, we are seeking to ensure that states do not circumvent the work participation rates -- either by segregating their hardest-to-employ cases in separate state programs that are not subject to work requirements or time limits (but that count towards the state's maintenance of effort), or by arbitrarily reclassifying families with parents living in the home as "child only" cases in order to avoid work rates and time limits (the law rightfully exempts child-only families from such requirements to avoid burdening grandparents and other non-parent caregivers). Relatedly, we are trying to discourage states from maintaining waivers that have less stringent work requirements than the new law has, by limiting the ability of any state that does so to get high performance bonuses, caseload reduction credits, and breaks on penalties. Finally, we are trying to structure a penalty system that is firm, fair, and credible -- that will give states a "second chance" to come into compliance with work and other requirements, but will impose penalties if they still fail to do so. Depending on how our discussions with HHS go, we may give you a decision memo on certain specific issues in the regulation within the next week or two.

11. Welfare -- Domestic Violence Amendment and Regulations: As you know, Sen. Murray long has advocated a proposal that would allow states to exclude victims of domestic violence in calculating whether they have met the law's work rates and time-limit requirements. This week, the conferees voted not to include her amendment in the Labor-HHS bill. DPC, OMB, and HHS all have had serious reservations about Sen. Murray's approach on the ground that it would give states a way to escape the welfare law's work rules and time limits, while failing to provide victims of domestic violence with the services they need to become self-sufficient. The draft TANF regulations discussed above take a different and better approach. The regulations will authorize HHS to excuse states from penalties if they fail to meet the work rates because they have given waivers to victims of domestic violence, so long as the exemptions are temporary and the state also provides services to help these women become self-sufficient. We are still discussing with HHS the issue of excusing states from penalties attached to the 5-year time limit; we hope to develop a middle ground approach at the staff level.

12. Welfare -- Welfare Indicators Report: HHS has prepared the first annual report on Indicators of Welfare Dependence, required by a 1994 law authored by Senator Moynihan, and plans to send it to the Hill next week. The report reflects the advice of a bipartisan advisory board created by the law, which includes state welfare directors (Gary Stangler, Gerald Miller, Eloise Anderson), researchers (Judy Gueron, Marvin Kosters, Kristin Moore) and advocates (Bob Greenstein, Wade Horn). The law required HHS and the advisory board to develop a definition of welfare dependence and to track, through an annual report, changes in the incidence of dependence. This report defines a family as "dependent on welfare" if more than 50 percent of its total yearly income comes from TANF, food stamps, or SSI and this income is not associated with work (i.e., no one in the family

is working in a subsidized or unsubsidized job at the same time). This first annual report shows that 4.8 percent of Americans were dependent on welfare in 1993 (the most recent year for which the data were available).