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THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
5/1-98

May 8, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

**1. Tobacco -- Senate Activity:** As you know, we are beginning discussions with Sens. McCain and Hollings this week, with the goal of getting improvements to their bill into a manager's amendment before the bill goes to the Senate floor on May 18. We will meet with Senate staff over the weekend, and Erskine will begin to meet with the two Senators on Tuesday. We will primarily seek to ensure sufficient public health spending and to improve the bill's lookback penalty, environmental tobacco smoke, and antitrust provisions. In return, we can offer cover on liability protections, some concessions on non-health-related spending, changes to the bill's international provisions (in particular, lifting the regulatory restrictions on companies operating abroad, as your economic and foreign policy agencies favor), certain limitations on attorneys' fees (the current bill has none), and a provision to adjust the industry's payments in the first five years to the exact volume of cigarettes sold in the country (the current bill uses an estimated, and potentially faulty, volume adjustment).

As we enter these discussions, much of the Republican Caucus is deeply angry over even the current version of the McCain bill. Sen. Hatch is leading the charge for a bill that looks much more like the June 20th settlement. (We recently heard that Sen. Feinstein is working closely with him, but have not yet confirmed this rumor.) Sen. Nickles is still pressing hard for a "skinny" bill, with no liability protections, but also no (or little) price increase or penalties. He is responsible for a Republican Policy Committee report that will appear next week, charging that the true 25-year cost of the McCain bill is about \$700 billion. Nickles' efforts may get a further boost from a Joint Tax Committee analysis, also expected next week, which may conclude that the McCain bill will lead to a price increase of as much as \$2 per pack, instead of the \$1.10 estimated by Treasury and OMB. In general, the Republicans have been greatly buoyed by the tobacco industry's ads, which they believe to be significantly affecting public opinion. Only Sen. Lott is keeping the McCain bill afloat amidst substantial Caucus opposition.

On the Democratic side, a bloc of Senators, led by Conrad and Kennedy, continue to demand a more substantial price increase (\$1.50 over three years), uncapped and heavily company-specific lookback provisions, and the elimination (or at least diminution) of liability protections. These Senators, however, do not have the votes to increase the price of the bill significantly on the floor; they are likely to lose a number of Democrats (perhaps including Ford, Hollings, Robb, Feinstein, Torricelli, and Breaux) and will not pick up many Republicans.

Perhaps for this reason, Kennedy and Conrad appear somewhat more willing to compromise than they did a few weeks ago.

**2. Tobacco -- House Activity:** Reps. Hansen, Meehan, and Waxman announced on Wednesday that they will introduce bipartisan, comprehensive tobacco legislation this week. They expect more than 100 Members, including about 10-12 Republicans, to co-sponsor the legislation. The bill has everything Drs. Koop and Kessler could wish for, and they have strongly endorsed it. The bill would raise the price of cigarettes by \$1.50 over three years, set very high youth smoking reduction targets (80 percent in ten years, as compared to 60 percent in McCain), impose exceptionally stringent company-specific look back penalties for manufacturers that fail to meet the targets, provide full FDA authority to regulate tobacco under the existing drug and device title, and put in place strong protections against environmental tobacco smoke. The proposal would raise more than \$500 billion over 25 years, with 10 percent of the revenues going to public health programs (cessation, prevention, counteradvertising, etc.), 35 percent going to the states, and 55 percent going to federal debt reduction. The proposal does not provide any assistance to tobacco farmers.

**3. Tobacco -- Minnesota Settlement:** As you know, Minnesota entered into a settlement with the tobacco industry yesterday, just hours before its suit was to be sent to a jury. Under the terms of the settlement, Minnesota will receive \$6.1 billion over 25 years, approximately 50 percent more than it would have received under the June 20th settlement and 50 percent more on a per capita basis than Mississippi, Texas, or Florida. Computed on a national scale, this amount would work out to somewhat over \$500 billion, approximately the estimated cost of the McCain bill. The industry will pay another \$469 million to Blue Cross/Blue Shield of Minnesota and also agreed to (1) cease advertising targeted to youth, as well as all billboard advertising and distribution of non-tobacco merchandise (e.g., jackets, caps, bags) in the state, (2) shut down the Council for Tobacco Research, (3) stop payments for tobacco placement in movies, and (4) instruct retailers across the nation to move cigarettes behind counters. Attorney General Humphrey rightly said that the "industry surrendered on our terms." Reports in newspapers today indicated that the jurors in the case might not have arrived at such a substantial verdict.

**4. Crime -- Uniform Crime Report:** The FBI will release next weekend (May 16) its preliminary estimate of the number of crimes reported to law enforcement agencies in 1997. These figures indicate that crime is down 4 percent from the previous year -- and down for the 6th year in a row. A significant decline in the number of murders and robberies (9 percent each) helped fuel an overall drop of 5 percent in violent crime; property crime fell 4 percent. All regions of the country and cities of all sizes reported declines in the number of serious crimes.

**5. Crime -- COPS Program:** The COPS Office announced on Thursday grants of \$32.8 million to hire 463 officers and deputies in 138 law enforcement agencies. These grants bring the total number of officers funded under the COPS Program to over 73,000.

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**6. Health -- Genetic Discrimination:** Sen. Jeffords indicated last week that he would introduce a bipartisan bill, probably with Sen. Dodd, to prohibit insurers from gaining access to or improperly using genetic information. As you recall, you have challenged Congress to enact legislation of this kind, applicable to insurers and employers alike. We will send a witness to testify at the hearing Sen. Jeffords will hold on this subject the week after next. We still face an uphill fight, but Sen. Jeffords' sudden activity on the genetic discrimination issue significantly increases the chances of getting legislation this year, whether as a free standing measure, part of a patients' bill of rights bill, or part of a medical records/privacy initiative.

**7. Health -- Medicare and Abortion Coverage:** We may soon face a dispute regarding Medicare coverage of abortion services. Medicare currently reimburses disabled Medicare beneficiaries who have abortions. The Catholic Health Association (CHA) recently asked HHS whether a managed care risk plan must certify that it would cover abortions in order to participate in the Medicare program. Senator Nickles also has pressed HHS on this issue, as well as on the broader question of whether the Hyde Amendment prohibits Medicare from paying for abortions altogether.

HHS's preliminary view is that the Hyde Amendment does not apply to the Medicare program, but that some accommodation can be made for religiously-affiliated health plans. Under HHS's proposal, such a plan would not need to provide abortion services, but would be charged for the cost of any abortion provided to a member of the plan by an outside physician. (The physician would bill Medicare directly, and Medicare would transfer the cost to the health plan.) We have had a fairly positive discussion of this approach with CHA, but Sen. Nickles has indicated that he views the proposal as insufficient. He is reportedly drafting a bill that would simply apply the Hyde Amendment to the Medicare program. (Ironically, because the Hyde amendment has a rape or incest exception, this solution would not fully solve the problem of a health plan that does not want to provide any abortion services for religious reasons.) A working group involving DPC, Counsel's office, OMB, and HHS is examining this issue, and we will present you soon with an options memo.

**8. Welfare -- Federal Hiring Initiative:** The federal agencies continue to make good progress on their commitments to hire welfare recipients. The total number of hires increased by 22 percent last month, from 3,688 in March to 4,494 in April. The Treasury Department alone hired almost 400 people last month; it already has hired more than double its commitment through the year 2000.

**9. Welfare -- Illegal Aliens' Eligibility for Benefits:** HHS is getting ready to publish its interpretation of the provision in the welfare law stating that illegal aliens are not eligible for "federal public benefits." Under HHS's interpretation, illegal aliens are ineligible for a host of services, including child care, low-income heating assistance, and Community Service Block Grant benefits; illegal aliens, however, may continue to receive services at community health clinics and benefits under the Maternal and Child Health Block Grant and the Older Americans Act. Some Republicans, including Lamar Smith and Pete Wilson, will argue that HHS is

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flouting Congressional intent by ruling that illegal aliens may receive some publicly funded services. The Justice Department and Counsel's Office, however, are comfortable with HHS's legal standard, which focuses on the nature of the eligibility criteria generally used for a service. Advocates should be pleased with HHS's interpretation, especially because it ensures that illegal aliens will have access to community health clinics.

The welfare law also requires that any program classified as providing a "federal public benefit" verify the immigration status of all applicants, including U.S. citizens. The INS will issue a regulation soon to implement this requirement, which inevitably will impose a burden on social service programs.



**10. Child Care -- Democratic Working Group:** House Democrats have formed a Child Care Working Group led by Rep. Fazio to draft a comprehensive child care bill that can be introduced within the next few weeks. We are meeting with the Members and staff next week to review their bill, but we expect it to include most of the elements of your proposal (including subsidies for low-income families, tax credits for families and businesses, quality improvements, and after-school programs), as well as a tax credit to help parents who stay at home. The group is not particularly anxious to pass this (or any other) child care legislation; they readily concede their desire to set a "high bar" that the Republicans cannot reach, so they can use child care as an issue in the election campaign. In any event, we will continue to work with these Members and try to use the introduction of their bill to generate new momentum for child care legislation.