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July 2, 1998 - DPC Weekly Report

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN
7-7-98

July 2, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. **Tobacco -- Legislative Strategy Update:** We and Larry Stein believe that we should proceed along two fronts in our effort to get tobacco legislation back on track. On the first track, we must try to bring increased pressure to bear on Senator Lott to pass a comprehensive bill. To this end, we have worked with the public health community (which is generally demoralized and weak) on various grassroots activities over the congressional recess. We also have worked with Senator Daschle's office on a strategy for continuing to force votes on tobacco legislation on the Senate floor. Our preferred approach (which we think we can persuade Sen. Daschle to adopt) is to offer a tobacco amendment that makes no spending decisions (and so refutes somewhat the "tax-and-spend" argument) and therefore is not subject to a point of order (and so requires only 50 votes). Democrats could offer this amendment on either the VA-HUD appropriations bill or the product liability bill this week. We do not expect this amendment to win, but hope that it will make Lott recalculate the costs of killing comprehensive legislation. On the second track, we should explore with Lott and other Republicans what they need to support comprehensive legislation and whether a new deal is in reach. We will discuss with Erskine as soon as he comes back how to proceed with this part of our strategy.

2. **Tobacco -- Executive Orders:** We are also working on additional executive actions on tobacco to keep the pressure on Congress over the coming weeks. As you know, your announcement of a new HHS survey of youth tobacco use received a very favorable response. We are now completing a directive to HHS and DOJ to make the recently released tobacco documents more accessible to the public health community, the scientific community, litigants, and the general public. Although these documents are currently available on the Internet, no one can make effective use of them because they have not been organized in any comprehensible manner. The directive will require the departments to (1) create a user-friendly database and/or index of the documents and make this database and/or index widely available, and (2) require scientific analysis of the documents for information advancing public health goals. We are also exploring directives to (1) produce counteradvertisements on youth smoking for use by states and serve as a clearinghouse for state-produced counteradvertisements; (2) ban underage smoking on federal property and deny filming privileges on federal property for movies that portray youth smoking; (3) require strict enforcement of a Goals 2000 provision to ban smoking in facilities receiving federal funds to

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provide children's health care, day care, education, or library services; and/or (4) require OSHA to issue within a year a standard protecting workers from environmental tobacco smoke.

3. Health Care -- HIPAA Enforcement: You are scheduled to announce on Tuesday that the federal government will take additional action against insurers who are circumventing the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Earlier this year, we received a number of troubling reports that insurers were giving financial incentives to agents to avoid or delay enrolling Americans with pre-existing conditions, in contravention of the intent of HIPAA. Although the number of reports has declined since you directed HCFA to send guidance to insurers in March, insurer misconduct of this kind may still be a problem. To help ensure full compliance with HIPAA, you will direct the Office of Personnel Management (OPM) to take all appropriate action -- up to and including termination of a participating health plan from the Federal Employees' Health Benefit Plan (FEHBP) -- if the agency determines that a plan is engaging in insurance practices that are inconsistent with the letter or spirit of HIPAA. FEHBP, which contracts with 350 carriers and has 9 million enrollees, also will require health plans to certify that they are abiding by HIPAA before they can participate in the program. You also will direct HCFA to report any abuses they discover to OPM, and you will announce that the National Association of Insurance Commissioners has agreed to report any violations of HIPAA to OPM.

4. Health Care -- CBO Cost Estimates of Patients' Bill of Rights: The Congressional Budget Office (CBO) is expected to release on Thursday estimates of the cost of the Dingell/Ganske/Kennedy patients' bill of rights legislation. We anticipate that the CBO will project that this legislation will increase premiums by about 4 percent for the average employee, which amounts to about \$7 a month (a cost that will be split between employers and employees). We are working on a positive roll-out strategy for this estimate to buttress our claim that the benefits of such legislation are more than worth the modest costs. Opponents of this legislation will try and use the estimates to argue that the patients' bill of rights will increase health care costs and the number of uninsured. Assuming we are successful at portraying these costs as moderate, the primary outstanding issue on patients' bill of rights legislation will concern the appropriate enforcement mechanism. We will send you an options memo soon on how best to position the Administration on this issue.

5. Health Care -- Report on Low-Income Medicare Beneficiaries: Families USA will release a report early this week showing that over 3 million low-income Medicare beneficiaries are eligible for but not enrolled in the Qualified Medicare Beneficiary (QMB) program. The QMB program pays Medicare copayments and deductibles for beneficiaries below 100 percent of poverty and pays premiums for beneficiaries below 135 percent of poverty. (Prior to last year's Balanced Budget Act, premium assistance went to beneficiaries below 120 percent of poverty). Many beneficiaries, however, are not aware of this assistance or have difficulty applying for it. To respond to this problem, we are preparing a multi-faceted effort by SSA and HCFA to enroll eligible beneficiaries in QMB by: (1) encouraging simple

mail-in applications; (2) posting information about QMB in SSA offices; (3) including information about QMB in the pamphlets going to all Medicare beneficiaries this fall, and in annual cost-of-living-adjustment (COLA) notices received by Social Security beneficiaries; and (4) creating a new task force to find other ways to enroll eligible beneficiaries. We are preparing to announce these measures just around the time the Families USA report is issued.

6. Health Care -- Medicare Handbook: Secretary Shalala decided recently not to release this year's version of the Medicare handbook, which was supposed to inform beneficiaries of their new program options. The draft of the handbook that the Secretary received was unintelligible, and the Secretary decided that it would confuse beneficiaries. The Secretary instead instructed HCFA to send beneficiaries a short pamphlet providing basic information on the new choices and making clear that beneficiaries can remain in fee-for-service plans. Senator Breaux and Congressman Thomas sharply criticized the Secretary's decision, but advocates generally supported it on the ground that the handbook as written would have misled beneficiaries.

7. Health Care -- Catholic Health Plans and Medicare: We have reached agreement with the Catholic Health Association (CHA) on a way to allow Catholic health plans to become Medicare contractees even though they will not provide abortion services. Under this approach, Catholic health plans will disclose that they do not cover abortion services and Medicare will reduce payment to the plans by a small amount. (Beneficiaries of Catholic plans needing an abortion can go to fee-for-service providers.) We are meeting with HHS to determine whether to implement this plan through new legislation or administrative action; we should conclude this matter in a few weeks.

8. Health Care -- FDA Commissioner Nomination: We are working with Senator Domenici to introduce Jane Henney to as many Senators as possible. In meetings last week, most Senators appeared open to her candidacy. Senator Coats, who is expected to be the lead Republican on the Labor committee for this confirmation, expressed discomfort with Henney's link to Senator Kennedy and David Kessler, but also acknowledged that ~~Doc Bowen~~, President Reagan's HHS Secretary, strongly supports the nomination. We will continue to work with Domenici on this nomination, and to try to secure a hearing date before the August recess; right now, we are cautiously optimistic about Henney's prospects.

9. Crime -- Youth Handgun Safety: You are scheduled to participate in an event on Wednesday that will focus on keeping firearms out of the hands of children. You will announce a final Treasury Department regulation requiring all federally licensed gun dealers to display signs (17" by 22" in size) warning prospective gun purchasers that: (1) misuse of handguns is a leading contributor to juvenile violence and fatalities; (2) safely storing and securing firearms will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives; (3) federal law prohibits, except in certain limited circumstances, anyone under 18 from knowingly possessing a handgun, or anyone from transferring a handgun to persons under 18; and (4) a knowing violation of the prohibition against

transferring a handgun to a juvenile is, under certain circumstances, punishable by up to 10 years in prison. You also will endorse in principle Child Access Prevention (CAP) legislation introduced by Senators Durbin and Chafee to impose legal liability on adults who allow juveniles access to firearms. We are working with the Justice Department and staff from Durbin's and Chafee's offices to improve this legislation by carefully defining the standard of liability and toughening the penalties for violating it.

10. Drugs -- National Anti-Drug Media Campaign: You are scheduled to announce on Thursday that the national anti-drug youth media campaign -- currently a pilot project in 12 cities -- is now going nationwide. New television ads will appear during prime time on all the major networks that night; new radio ads will begin to air in the top 100 markets; full-page print ads will run in 25 major newspapers; specialized spots with targeted anti-drug messages will appear in 75 media markets reaching approximately 80 percent of the population; a new web site will open on the internet; and a national 800-number, featured in all of the new ads, will become operational. Your comments at the announcement will be linked by satellite to five regional events and 200 community watch parties.

11. Drugs -- Drug Courts and Arrestee Data: You are currently scheduled to make two drug-related announcements in your radio address next week. First, you will release new Drug Use Forecasting (DUF) data from the Justice Department showing that the number of arrestees testing positive for most drugs -- and especially for cocaine and crack -- is down in most cities, but that the number testing positive for methamphetamines is climbing (after falling substantially last year) in key Western and Midwestern cities. Second, you will announce \$27 million in Justice Department grants to implement and enhance drug court initiatives in 150 cities across the nation. We also are exploring a new policy announcement to promote coerced abstinence programs.

12. Civil Rights -- EEOC and Fair Housing Initiatives: We have been working with the EEOC, Congressional staff, and civil rights leaders to try to maximize funding for the Commission while avoiding a rider prohibiting the EEOC from using its funds to hire employment testers. Some months ago, Speaker Gingrich testified that he would support your proposed increase in funding for the EEOC conditioned on a number of "reforms," the most controversial of which relates to the use of testers. The EEOC in fact has no plans to hire testers with FY99 money, but wants to avoid a rider, which will be difficult to remove in future years. We are exploring whether a letter from the EEOC committing not to use FY99 money to employ testers would enable us to avoid a rider and secure a significant funding increase. The civil rights community supports this strategy so long as we do nothing to signal that testing is an illegitimate tool for civil rights enforcement. Ironically, the House VA-HUD appropriations subcommittee mark-up includes \$7.5 million (we requested \$10 million) to fund your proposal for a nationwide program using testing to measure housing discrimination and facilitate enforcement actions against those who violate fair housing laws.

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13. Welfare Reform/Housing -- Welfare-to-Work Housing Vouchers: The House Appropriations Committee included \$100 million in the VA/HUD appropriations bill for 17,700 welfare-to-work housing vouchers. Although this appropriation is only one-third of our request, it is more than double the Senate committee level of \$40 million for 7,000 vouchers, and represents significant progress for this new Administration initiative. The House language on how to distribute and use the funds is virtually identical to our proposal, whereas the Senate establishes a narrower demonstration program. We are continuing to push for our full request.

14. Welfare Reform/Community Empowerment -- Individual Development Accounts: The Coats/Harkin IDA demonstration program was included in the Human Services Reauthorization bill passed unanimously out of the Senate Labor and Human Resources Committee last week. The bill authorizes \$100 million over four years to provide matching funds for low-income individuals who save to buy a home, pursue higher education, or start a small business. It is not clear whether the House will include a similar program in its Human Services Reauthorization bill, which will be marked up after the recess. The DPC and NEC have worked with staff for Senators Coats and Harkin to improve their legislation, and we are exploring an appropriate time and place to announce your support for the IDA program.

15. Abortion -- RU-486: Just prior to recess, the House passed an amendment to the agriculture appropriations bill that would prohibit the use of FDA funds for the testing or approval of RU-486. The amendment, which passed by a vote of 223-202, represents the first time that Congress has interfered with the drug approval process at the FDA. In response to press inquiries about this vote, we criticized Congress for restricting scientific research that can offer women the safest possible medical choices. We are reaching out to the pharmaceutical industry and scientific community during this recess to minimize chances that the Senate will pass a similar amendment.

16. Education -- Ed-Flex: Just prior to Congressional recess, Senators Frist and Wyden introduced a new bill, strongly supported by the NGA, to extend Ed-Flex to all fifty states. The bill is generally constructive, but it does not incorporate all the accountability measures of the current Ed-Flex program -- e.g., a requirement that states have standards and assessments in place and that they submit a statewide reform plan to the Secretary. We will work with Frist, Wyden, and the NGA to improve the bill's accountability provisions. In the worst-case scenario, the Education Department can send up an alternative Ed-Flex bill.

17. Education -- Education Block Grant: Also just prior to the Congressional recess, the House Education and the Workforce Committee passed a block grant bill by a straight party-line vote to consolidate 31 federal education programs, including Goals 2000, Eisenhower grants, technology literacy grants, afterschool grants, and school-to-work grants. The bill also would expand Ed-Flex to all fifty states, but in a way that fails to link increased

flexibility to real accountability for high standards. Secretary Riley sent a letter to Rep. Goodling indicating that he would recommend a veto.

18. Children and Families -- Head Start Reauthorization: The Senate Labor and Human Resources Committee unanimously approved the Human Services Reauthorization bill, which would reauthorize Head Start, the Low-Income Home Energy Assistance Program, and the Community Services Block Grant programs, while establishing a new demonstration program for Individual Development Accounts (see above). Sponsored by Chairman Jeffords and Senators Kennedy, Coats, and Dodd, the bill included most of the Administration's priorities, including an increase in the new Early Head Start program over the next five years. The bill will be named after Senator Coats, who is retiring this year. We will be working with the bipartisan sponsors of the bill to secure full Senate approval as quickly as possible. In the House, there are danger signals: the Education and the Workforce Committee may schedule a mark-up on the legislation in July, but Subcommittee Chairman Riggs has indicated an interest in attaching several highly controversial measures to the bill, such as Head Start vouchers.