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Mar. 6, 99 - DPC Weekly Report

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3-7-99

THE WHITE HOUSE

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March 6, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Tobacco -- Medicaid Recoupment: The Senate Appropriations Committee decided Thursday to amend the supplemental appropriations bill by adding Senator Hutchison's legislation to waive all federal claims to tobacco settlement funds received by the states. Before the markup, Senator Roth objected to the Appropriations Committee taking up the Hutchison bill, noting that this action would "bypass the jurisdiction of the Finance Committee" and that the bill "has enormous ramifications for the Medicaid program and should be thoughtfully considered through the committee process." He noted that the amendment was not paid for and urged the committee, if it felt compelled to act, to prevent recoupment only in 1999 or 2000 to give the Finance Committee time to act. Senator Stevens apparently asked Hutchison to withdraw her amendment in deference to Roth's objection, but she refused to do so. In the event, the amendment passed by voice vote, with only Senators Harkin, Durbin, and Specter speaking against it. The committee rejected an alternative amendment proposed by Harkin to waive federal claims in exchange for a commitment by the states to dedicate 25 percent of the settlement funds to tobacco control programs.

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For some time now, we have been working with Senator Daschle and others to develop an alternative to the Hutchison bill -- essentially a menu of permissible state uses -- that could attract significant support; we have found, however, that many Senators, including a fair number of Democrats, are under great pressure from state officials to resist any restrictions on use of the money. As a freestanding piece of legislation, the Hutchison bill now has 40 co-sponsors, including nine Democrats (although some of the Democrats say they would be willing to accept an alternative along the lines we have suggested if it gave the states sufficient flexibility over spending). One possible approach to the current situation is to urge the NGA to negotiate an alternative bill with us right now for inclusion on the supplemental; although the NGA believes it has a very strong hand in Congress, it might accept this offer both because it wants immediate use of the money and because it fears a presidential veto. This approach, however, could anger some anti-tobacco Democrats (especially in the House), who still hold out the hope that we can use the recoupment issue as a vehicle for broader tobacco legislation. We are continuing to discuss options with John, Larry, and Jack and diverse people on the Hill (of course, all this is complicated by the other issues raised by the supplemental) and hope to have a recommendation for you shortly.

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2. Tobacco -- New Evidence on Tobacco Use: Two new studies show that cigarette sales declined sharply in Alaska and Oregon after the states increased tobacco taxes. Alaska tripled its tax from $.29 to $1.00 a pack in October 1997, raising the retail price of cigarettes by 39 percent. A study conducted by the state found that tobacco sales declined 17 percent the next year, without any apparent upsurge in smuggling or crime. Oregon raised its tax by $.30 per pack in February 1997, increasing cigarette prices by 16 percent; it also devoted 10 percent of the proceeds to tobacco prevention programs. A study conducted by the CDC and Oregon Health Division found that tobacco sales fell 11.3 percent as a result. The study noted that this decline was far larger than expected given the size of the price increase, and attributed the additional drop to expanded prevention activities. Most studies have found that every 10 percent increase in price reduces overall smoking by about 4 percent (while reducing youth smoking by about 7 percent) -- essentially the effect found in Alaska. According to this model, the 16 percent price increase in Oregon should have resulted in a 6.3 percent decline in consumption -- far less than the 11.3 percent decline actually achieved. The difference, according to the study, resulted from the state's expenditure of $8.5 million a year to fund community-based tobacco-use prevention coalitions in every county, a statewide public awareness and education campaign, comprehensive school-based programs, tribal tobacco-use prevention programs, multicultural outreach and education, and a quitters' help line providing smoking cessation support. These findings bolster the rationale for ensuring that states use at least part of their settlement money on tobacco prevention.

This could be the voice of the Education Legislation

3. Education -- Ed-Flex Legislation: As you know, the Senate will vote Monday afternoon on a cloture petition filed by Senator Lott to bring the Ed-Flex debate to an end and cut off consideration of the Kennedy-Murray class size amendment. Before the class size issue came to the fore, Democrats succeeded in strengthening the accountability provisions of the bill and providing additional protections for very high-poverty schools. The last (and most) significant issue is class size. (Although Democrats have offered other amendments, including some on dropout prevention and afterschool programs, Senator Daschle is trying hard to focus the message and debate on class size, lest Democrats appear simply obstructionist.) Secretary Riley and Senators Daschle, Kennedy, and Murray held a press conference Friday to urge the Republican Leadership to allow an up-or-down vote on a class size amendment; we released a statement from you at that event, and your radio address this weekend will serve to amplify this message. Secretary Riley and Bruce have met several times with the major education groups, which are now working hard to put pressure on Republicans. The Vice President probably will make a statement prior to the cloture vote on Monday, either at the White House or in a meeting on the Hill that Daschle, Kennedy, and Murray are holding with education groups.

4. Education -- Individuals with Disabilities Education Act (IDEA): We and Secretary Riley agreed to postpone issuance of the Education Department's new IDEA regulation until this coming Friday to give us more time to conduct outreach to Governors and other state officials. Bruce and the Secretary will participate in a conference call with Governors Carper, Leavitt, and Dean (and possibly others) this Tuesday. The postponement also should prevent any dovetailing of the regulation with the current Ed-Flex debate. Even without the regulation as a

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catalyst, Republicans may second-degree Democratic amendments (including on class size) with proposals to increase support to the states for special education programs.

In a decision that may further exacerbate the simmering IDEA controversy, the Supreme court held 7-2 last week that the statute requires school districts to provide children with any health services necessary for the children to attend school, as long as the services need not be administered by a doctor. The case involved a quadriplegic student who needs assistance during the day to clear his tracheotomy tube and maintain his ventilator. The Justice Department filed an amicus brief on the side of the student, setting out the Education Department's longstanding interpretation of the statute. The costs of this decision to local school districts may not be exorbitant: only a couple of thousand students across the country need the kind of "high-end" health services involved in this case; fewer than 20,000 need any kind of health services covered by this decision; and Medicaid appropriately covers many of these students and services. The decision, however, may fuel growing public concerns about the costs of complying with IDEA. At the same time, it may intensify worries among Congressional authorizers that states are inappropriately tapping into Medicaid (e.g., for non-health services) to pay for special education programs. At a meeting at the White House yesterday, HHS and the Education Department agreed to release a joint letter explaining the scope of the decision and noting the potential for -- but also the limits of -- Medicaid funding.

Good!

5. Health Care -- Regulation on Over-the-Counter Drugs: The Vice President will join Secretary Shalala and FDA Commissioner Henney on Thursday to unveil a new FDA regulation requiring that labels on over-the-counter drug products have a standardized format and large print, which will assist consumers to understand product warnings and comply with dosage guidance. Both consumer advocates and physician and other provider groups will praise this regulation, and even product manufacturers will acknowledge its usefulness. Studies indicate that people often have difficulty determining the correct dosage of over-the-counter medications, and that many of the elderly, who use significantly more over-the-counter drugs than others, have trouble reading the small type on product labels. This regulation will be an effective step toward preventing the thousands of hospitalizations each year caused by misuse of over-the-counter medications.

6. Health Care -- Medicare Commission: Senators Kennedy and Rockefeller and Congressmen Dingell and McDermott were pleased with the meeting on the Medicare Commission that you had with them on Thursday -- particularly with your understanding of the shortcomings of the Breaux plan and your commitment to inform them of any alternative Administration proposal. As you no doubt could tell from the meeting, base Democrats will express strong opposition to virtually anything that comes out of the Commission.

Laura Tyson and Stuart Altman held another meeting on Friday with Senator Breaux, Congressman Thomas, and a number of other Republicans to discuss compromise options. Because it now seems impossible to reach agreement on any detailed plan, Breaux and Thomas tried to convince Stuart and Laura to vote for a report that suggests agreement on a set of general

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propositions. Laura and Stuart rejected this approach for fear that Republicans would draft flawed legislation, ostensibly based on the report, and portray Laura and Stuart as having endorsed it. But Laura and Stuart are considering two other options. The first option is to vote for the Commission report (thus giving the Commission the 11 votes necessary to issue it), but insist on detailing in the report their objections to the Commission's proposal and their recommendations for making it acceptable. The second option is to vote against the Commission report, but issue a public statement (because Commission rules do not allow for minority views) that explains why they chose to vote against the proposal and outlines the approach to Medicare reform that they believe is desirable. Laura (and to some extent Stuart) are leaning toward the first option; they believe this option is more likely to provide momentum for Medicare reform, which they see as their first priority. Both Laura and Stuart understand, however, that the press will focus on the Commission's ability to report out premium support and other controversial reforms, and will overlook or minimize their detailed objections. For this reason, they have made no final decisions and wish to discuss these options further next week.

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we should try to make the call

7. Crime -- Community Prosecutors: Deputy Attorney General Holder plans to use his morning press availability on Thursday to highlight the community prosecutors portion of your 21st Century crime bill, which we plan to send up to the Hill later this month. As you know, your FY 2000 budget includes $1 billion over the next five years for this proposed new program to hire and train community prosecutors. As the former U.S. Attorney for the District of Columbia, Holder helped to launch one of the first successful community prosecution programs, and he is personally committed to building public and congressional support for this initiative. On a related note, in testimony before the House Committee on Government Reform on Wednesday, Mayor Giuliani expressed support for community prosecution programs.

we must get ahead of this soon

8. Crime -- Police Brutality: We and Chuck Ruff are sending you a separate memo this weekend detailing a proposed course of action and set of policy initiatives to address the issue of police misconduct. As you may have seen in Saturday's newspapers, the U.S. Commission on Civil Rights voted 3-2 to investigate police practices and police-community relations in New York and other, as yet unspecified cities.

9. Crime -- VAWA Decision: As you may also have seen in the paper today, the en banc Court of Appeals for the Fourth Circuit invalidated the part of the Violence Against Women Act that permits victims of rape and domestic violence to sue their attackers for violating their civil rights. The Court held that neither the Commerce Clause nor the Fourteenth Amendment gave Congress the authority to pass the law: in the Court's view, "such a statute . . . simply cannot be reconciled with the principles of limited Federal Government upon which this nation is founded." The ruling means that in Virginia, Maryland, West Virginia, and the Carolinas, victims of rape and domestic violence will be able to sue their attackers only under state tort laws and in state courts. We and Chuck will talk with the Justice Department about filing a cert petition to seek Supreme Court review.

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10. Welfare Reform -- Cuts in TANF Block Grant: As you know, the Senate Appropriations Committee last week proposed paying for part of the emergency supplemental by cutting $350 million in TANF block grant funding in FY 1999. (Of course, there are also numerous other objectionable offsets in the bill.) Although the bill would restore the cut in later years, this provision would establish a precedent of raiding TANF to pay for other measures. The governors will oppose the cut strongly, claiming it breaks Congress's commitment in 1996 to provide five years of full block grant funding. Some in Congress will defend the cut by pointing to unobligated balances in the TANF program. State data compiled by HHS (but not yet released) show that in FY 1998, states spent or obligated 84 percent of the $16.5 billion TANF block grant, leaving $2.7 billion or 16 percent unobligated. There is considerable state variation -- 19 states have obligated all their FY 98 funds, while 12 states account for three-quarters of the unobligated balances. We will provide you with a more complete report on these trends in a separate memo. For now, we note only that unobligated balances may result from sensible decisions by states to put off allocation of some TANF funds until they fully implement their welfare reform programs and/or they begin to experience an economic downturn. We are fearful that agreeing to cuts in TANF will undercut welfare-to-work efforts just as work requirements increase and the caseloads become more concentrated with the hardest-to-employ recipients.

not sure exp. w. right of state portion of tobacco

11. Immigration -- Report on Declining Use of Public Benefits: The Urban Institute will issue a report on Monday showing that between 1994 and 1997, use of public benefits by noncitizen families declined more than use of such benefits by citizen families. The study found that receipt of cash benefits (AFDC/TANF, SSI, and state-funded general assistance) by noncitizens declined 35 percent, while use by citizens declined only 15 percent. Similarly, the study found that use of Medicaid and Food Stamps declined 22 and 30 percent, respectively, among noncitizens, but only 7 and 21 percent among citizens. The report concludes that because most legal immigrants were still eligible for federal and/or state benefits through 1997, the difference in take-up rates was due to the welfare law's "chilling effect" -- i.e., misunderstandings about new eligibility rules and/or fear that receipt of benefits would adversely affect immigration status. We have been working closely with the Department of Justice and HHS on these issues, and we expect to issue guidance this month on the use by noncitizens of public benefits. The guidance will include a resolution of the "public charge" issue -- i.e., the question of when the receipt of public benefits renders a noncitizen a "public charge," so as to affect his or her ability to reenter the country -- that we expect immigrant advocates to greet warmly. In addition, of course, we will continue to press for our budget proposals to restore additional health, nutrition, and disability benefits to vulnerable legal immigrants.

12. Civil Rights -- Report on Paired Testing: The Urban Institute also issued a report last week on the usefulness of paired testing to combat discriminatory practices. As you know, "paired testing" programs use two individuals similar in all relevant characteristics except racial or ethnic background to check for discrimination. Paired testing is now used primarily in the housing area, and your budget includes $7.5 million to expand HUD's current testing program. The Urban Institute report recommends extending the use of paired testing in other settings, such as the workplace. The EEOC conducted a pilot project two years ago on paired testing in the

employment context, but is still in the process of evaluating the data. When Republicans objected to the pilot project during last year's appropriations battles, the EEOC agreed not to do any testing this year -- which it was not planning to do anyway, given the unfinished evaluation -- in exchange for significantly increased funding for its general activities. We expect to face this issue again in this year's appropriations bill.