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Mar. 13, 99 - DPC Weekly Report

THE WHITE HOUSE
WASHINGTON

March 13, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

*We need a
Strategy on this*
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1. Education -- Ed-Flex/Class Size/Special Education: Both the Senate and the House approved Ed-Flex legislation last week, the former by a 98-1 vote (with Senator Wellstone the lone dissenter) and the latter by a 330-90 vote. The House bill is clean, because the Rules Committee held all amendments on class size, special education, and other issues to be non-germane. The Senate bill, however, includes a provision to permit school districts to fund special education services out of the funds appropriated last year (and any future funds) to hire teachers and reduce class size. This provision, which attracted the votes of every Republican and six Democrats (all from rural states without class size problems), essentially trumped the Murray-Kennedy amendment to provide a six-year authorization for our class size program, which went down on a party-line vote. Because we saw the special education provision as a politically clever way to gut your class size initiative, we counseled the Democrats against entering into a time agreement that would allow it to come to a vote. Senator Kennedy, however, insisted on making a deal with the Republicans in order to get a vote on his amendment, and Senator Daschle went along for fear of appearing to obstruct the Ed-Flex legislation.

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After the Senate vote, we issued a statement from you reiterating your support for ed-flex, but sharply criticizing the Republican measure to undermine class size reduction. In addition, Secretary Riley urged Senators Jeffords, Frist, and Wyden to remove this provision from the bill lest it kill Ed-Flex legislation. (Bruce repeated this message to Governor Carper, although it is not clear how much influence the governors will have in the conference committee discussions.) Meanwhile, Senators Daschle, Kennedy, and Murray are trying to get at least 34 Senators to sign a letter calling for a veto if the conference fails to remove the Republican special ed/class size provision. We will talk with John and Larry again on Monday about whether and when to issue a veto statement on the Senate bill in its current form.

The debate in the Senate made clear that we and the Hill Democrats are vulnerable on the special education issue. With more and more local and state officials demanding that the federal government live up to its "commitment" to fund 40 percent of mandated special education services -- a commitment which is really no more than a statutory *cap* on federal funding -- we will face over and over again the argument that we should fully fund special education before beginning any new education initiatives, such as class size or school construction. We are exploring whether we can persuade members of Congress to set aside state tobacco settlement

funds for special education in exchange for waiving the federal claim to this money. (Of course, Governors would respond to this proposal by saying that we are using *their* money to make good on *our* promise to provide special education funding.) We are also discussing with OMB whether we have other ways to pay for more special education spending, but as you know our options with respect to any non-defense discretionary spending increases are unpleasant and limited.

2. Education -- Charter School Conference: The Education Department will hold its second national charter school conference next week. Secretary Riley will address the conference, and you will make remarks by videotape. The Department will release guidance at the conference regarding the eligibility of schools for federal start-up funds. The guidance notes that funds cannot go to for-profit organizations directly holding charters, but can go to non-profit charter school boards that contract out management services to for-profit firms. Similarly, the guidance states that although private schools converted directly into charter schools are not eligible for funds, private schools may become eligible if they shut down and then reopen as public charter schools open to all students, without any preference for those previously enrolled in the private school. Finally, the guidance states that to receive funding, any charter school that has more applicants than spaces must use a lottery, except that (1) the school can impose minimum eligibility requirements for the lottery so long as they are consistent with the federal charter school law and all civil rights laws and are "reasonably necessary" to achieve the educational mission of the school, and (2) the school can exempt from the lottery students attending the school at the time it became a charter (assuming the school was public, not private), siblings of students already attending the school, and a limited number of children of the charter school's founders. The Department is now working on additional guidance that will address issues relating to civil rights and religion; we will work closely with the department on this next round of guidance.

3. Health Care -- Medicare Commission: The Medicare Commission is expected to take a final vote Tuesday, although Senator Breaux has not yet distributed paper so no one knows exactly what the members will be voting on. The report probably will include a general endorsement of a premium support policy, an increase in the eligibility age to 67 (without any policy to ensure that this step does not increase the number of uninsured), a limited prescription drug benefit, and vague language about the need for additional revenues for the Medicare program. Laura Tyson and Stuart Altman are still struggling over whether to support the report while commenting on the aspects they believe to be flawed. Laura sent a draft document to Breaux on Thursday that she implied she could accept; the document essentially adopted the perspective of Breaux and the Republicans, but framed their proposals in very broad terms and outlined her own and Altman's criticisms. Breaux apparently liked this draft, but Congressman Thomas rejected it on the ground that it had too few specifics. The base Democrats remain opposed to a reform proposal along the lines the Commission is considering.

4. Health Care -- Patients' Bill of Rights: The Senate Labor Committee has scheduled a markup next week of the Republican Leadership version of the Patients' Bill of Rights. This bill is flawed in several respects: it includes no adequate mechanism to enforce the patient

protections; it fails to set out the standards and criteria that reviewers in the independent appeals process should use to judge the appropriateness of an HMO's medical decision; and it applies only to self-insured plans, thus relegating the 80 million Americans enrolled in insured plans to state law protections. We will meet with Senator Kennedy's staff on Monday to discuss an amendment strategy.

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5. Health Care -- HCFA Proposal on Medicare Home Health Surveys: The Washington Post reported last week on a proposal by HCFA to require home health providers to collect data from patients about their physical and mental health and other characteristics, such as their living arrangements. HCFA argues that this data is necessary to (1) develop performance reports for each provider in an effort to improve home health quality, and (2) make the risk adjustment calculations contemplated by the new prospective payment system for home health agencies. HCFA also states that they have numerous safeguards in place to prevent dissemination or use of this data for nonauthorized purposes. We are now reviewing the HCFA proposal to determine if it is consistent with our broader policy on the privacy of medical records.

6. Health Care -- Amicus Brief in Disabilities Case: The Department of Justice will file an amicus brief in the Supreme Court Monday that supports the position of disability advocates in a case involving the right to receive care in "integrated" (i.e., community-based) settings. Two mentally retarded Medicaid enrollees brought suit against the State of Georgia, arguing that their placement in an institution violated the ADA requirement to provide services in the "most integrated setting." The State argued that its placement decision was appropriate under a provision of the statute that allows states to disregard this requirement in cases where compliance would cause excessive expense or fundamentally alter the state program. The Justice Department's brief adopts a relatively narrow interpretation of this provision, although not so narrow as that urged by the disabilities community. We believe this filing puts us in approximately the right position. The number of states signing on to Georgia's brief has dropped from 20 to 12 in the last few weeks, as a result of growing pressure from the disabilities community.

7. Health Care -- Address to Firefighters on Bioterrorism: In an address to the International Association of Firefighters on Monday, you will announce actions to involve firefighters and other emergency response personnel in the Administration's plans to combat bioterrorism and chemical weapons attacks. These actions include: investing an additional \$11 million in FY99 to establish rapid medical response teams trained to respond to a biological or chemical weapons emergency; awarding \$21 million in grants to help communities train emergency personnel, including firefighters, to respond to bioterrorist attacks; and providing \$73.5 million in grants to communities to purchase communications and protective equipment for emergency response personnel handling biological and chemical attacks.

8. Health Care -- Nursing Homes Announcement: The Vice President is tentatively scheduled to meet on Tuesday with advocates for the elderly and representatives of the nursing

home industry to discuss the challenges of improving the quality of patient care. At this meeting, the Vice President will unveil new efforts to improve nursing home quality including: new authority for the Department of Justice to impose criminal penalties on nursing homes that have committed repeated and egregious violations of law; new civil monetary penalties of up to \$10,000 for other serious violations; and a new \$2.5 million educational campaign to prevent elder abuse and neglect in nursing homes. The Vice President also will highlight the proposals in your FY 2000 budget to implement and enforce standards for nursing homes, including a new investment of over \$100 million dollars dedicated to monitoring and improving nursing home quality. This event is designed to preempt the release of reports by the GAO and HHS Inspector General criticizing the Administration's enforcement record, which the Senate Aging Committee intends to release next week.

9. Crime -- Directive on Firearms Enforcement: We are preparing a directive for you to sign, possibly before your press conference on Friday, instructing Secretary Rubin and Attorney General Reno to develop a national strategy to strengthen the enforcement and prosecution of federal firearms laws. As you know, the NRA repeatedly has called for the extension of Richmond, Virginia's Project Exile, under which the U.S. Attorney prosecutes all firearms offenses in federal court. Senator Hatch may also propose a Project Exile-type initiative in his crime bill (see below). Your proposed directive will incorporate aspects of Project Exile, but will be broader in scope. It will provide for the timely prosecution of gun criminals at both the federal and the state level; increased efforts to trace crime guns, identify illegal gun markets, and target gun "hot spots"; and coordinated law enforcement efforts to ensure that gun dealers comply with applicable city, state, and federal laws. We could release this directive in conjunction with a new Justice Department report, *Promising Strategies to Reduce Gun Violence*, which details more than 50 examples of local strategies and partnerships that are reducing gun violence across the country. These include: comprehensive violence reduction programs that focus on guns; efforts to deter illegal gun possession through consensual searches and the aggressive seizure of firearms; targeted enforcement in gun "hot spots"; increased surveillance of probationers; school-based prevention programs; and special youth gun courts.

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10. Crime -- Prison and Jail Population: The Justice Department will release on Sunday its mid-1998 report on prison and jail inmates. The report shows that a total of 1.8 million persons -- or one out of every 150 U.S. residents -- were incarcerated in the nation's prisons and jails. The prison population (totaling 1.27 million) increased 4.8 percent from the previous year, a fair bit less than the average annual increase of 6.9 percent since 1990. States with the largest increases in prison population were: ND (19.5 percent), MT (18.3 percent), and HI (13.6 percent). States with the largest decreases were: the District of Columbia (10.9 percent), ID (3.6 percent), and WY (3 percent). The jail population (totaling 592,000) increased 4.5 percent from the previous year, slightly less than the average annual growth rate of 4.9 percent since 1990. Local jails were filled to 97 percent of capacity, the same as last year and lower than in 1990, when they operated at 4 percent over capacity.

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11. Crime -- Hatch Crime Bill: We learned last week that Senator Hatch may introduce a crime bill as early as next week. Reports on the bill are sketchy, but it may include: (1) a version of the COPS program, but with stricter accountability provisions; (2) an authorization for the Local Law Enforcement Block Grant; (3) an expansion of the DeWine/Leahy law enforcement technology grants program; (4) the juvenile crime bill Hatch pushed last year; (5) an expansion of Project Exile to prosecute more gun crimes in federal courts; (6) a ban on the sale of alcohol over the Internet; (7) a reauthorization of the Violence Against Women Act; and (8) a sense of the Senate resolution on the rights of crime victims. You are tentatively scheduled to unveil your 21st Century Crime Bill on March 31.

Drugs -- Medical Marijuana: At ONDCP's request, the Institute of Medicine (IOM) will release a study Wednesday on the medicinal use of marijuana. The study finds that although cannabinoid drugs (primarily THC) have potential therapeutic value for controlling pain and nausea and stimulating appetite, smoked marijuana is a crude THC delivery system that also delivers harmful substances. In particular, the report notes that marijuana smoke is an important risk factor in respiratory disease. (The report does *not* say marijuana acts as a gateway drug or that its medicinal use would increase use among the general population.) Because of the health risks associated with smoking, the report concludes that smoked marijuana generally should not be recommended for medicinal use. The report, however, makes two important exceptions. First, the report approves the use of limited clinical trials of smoked medical marijuana in order to develop a nonsmoked cannabinoid delivery system. Second, the report approves the short-term use (less than six months) of smoked marijuana under medical supervision for patients with debilitating symptoms (chronic pain, vomiting) who have documentation that all other approved medications have failed to provide relief.

Children and Families -- Child Care: The House Ways and Means Subcommittee on Human Resources will hold a hearing on child care next week -- the first hearing on the issue since we introduced our child care initiative last year. Administration officials will lead off the hearing testimony. Prior to the hearing, Congressman Cardin, the Subcommittee's ranking Democrat, will introduce a child care bill based largely on the Administration's proposals. In the Senate, a group of mostly moderate Republicans, including Senators Chafee, Snowe, and Hatch, will reintroduce their child care bill from last year, which overlaps with ours to a significant extent.