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FG006-21

DPC Weekly Report (Mar 15 - Mar 19, 1999)

3-22-99

THE WHITE HOUSE  
WASHINGTON

March 20, 1999

## MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena KaganSUBJECT: DPC Weekly ReportCopied  
Reed  
Kagan  
Podesta

**1. Tobacco -- Recoupment Issue:** The Senate rejected, by a vote of 71-29, a Specter-Harkin amendment to the supplemental appropriations bill that would have allowed the states to retain all tobacco settlement funds in exchange for a commitment to use 20 percent of the funds to combat teen smoking and 30 percent to expand public health programs and/or assist tobacco farmers. The vote leaves intact a provision in the supplemental (offered by Senator Hutchison in committee) that would give up the federal share of the tobacco settlement without any commitment by the states. Those opposing the Specter-Harkin amendment included a number of normally anti-tobacco Democrats (such as Conrad, Leahy, and Kerry) who decided not to buck their governors on this issue. Senator Daschle is attempting to determine whether a watered-down version of the amendment (either requiring only the 20 percent set-aside for tobacco prevention programs or providing simply that the states spend 50 percent of the funds on some combination of tobacco prevention, farmer assistance, education, public health, or children) would garner greater Democratic support. (Note that seven Republicans voted for Specter-Harkin, so the amendment would have passed had all Democrats supported it.) Neither Daschle nor we, however, are very hopeful that he can find a formula to bring Democrats back on board. Our best hope now is that our demand for a clean bill will convince the conference committee to strip the recoupment provision from the supplemental, and that the governors, having lost this opportunity to resolve the issue, will decide to negotiate with us rather than await the next potential vehicle.

**2. Health Care -- Patients' Bill of Rights:** The Senate Labor Committee reported out patients' rights legislation on Thursday by a party-line vote. The legislation applies only to patients in self-insured plans, thus relegating the 80 million Americans in insured plans to state law protections; it omits crucial patient protections, such as access to specialists; it essentially allows HMOs to define what services count as medically necessary in the independent appeals process; and it lacks any adequate enforcement mechanism. Although some Republican Senators (particularly Chafee and Specter) may support some strengthening amendments on the floor, the odds of significantly improving the bill in the Senate are slight. (There is also a question about whether Senator Lott will bring the bill to the floor in the absence of a very constraining time agreement.) The House should pass a stronger bill (though probably not as strong as the Dingell version), setting up the possibility of some middle-ground compromise in conference if the legislation gets that far.

## THE PRESIDENT HAS SEEN

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**3. Health Care -- Medicare:** We are currently preparing options for your consideration on Medicare reform, so that you can put out your own plan as soon as possible. We will not be able to evaluate some questions fully until after March 30, when the Social Security/ Medicare trustees are scheduled to issue their annual report. We expect this report to push out the exhaustion date of the Medicare trust fund by a number of years (perhaps to 2012 or even later). Because these new numbers will make it easier to reach the goal of ensuring solvency until 2020 -- enabling the Republicans to claim the excess funds for tax cuts -- all your advisors agree that you should stop making reference to the year 2020 in articulating the goals of Medicare reform. But because we may want to tap into some of these excess funds ourselves -- in our case, for a more generous prescription drug benefit -- we also do not advise that you insist on adding 10 or 12 years to whatever the trustees announce as the new exhaustion date. For now, we all agree that you should simply demand that we dedicate 15 percent of the surplus (\$686 billion over 15 years) to Medicare. This formulation will allow us some latitude on the question whether all this money should go toward extending solvency or some could go to a drug benefit.

**4. Health Care -- Nursing Home Quality:** The Senate Aging Committee, chaired by Senator Grassley, released a GAO report last week -- and will release another next week -- criticizing HCFA's enforcement of nursing home quality standards. The reports state that HCFA often declines to investigate serious complaints and takes insufficient corrective action when it does find violations. The reports especially castigate HCFA for failing to enforce quality standards against repeat offenders. Although a nursing home quality initiative you unveiled last year is addressing some of these problems, we believe additional steps are necessary. We instructed HCFA last week to ensure investigations of serious complaints (i.e., those alleging harm to residents) within 10 working days, increase the minimum fine for facilities violating quality standards, and make it easier to impose larger fines. We are also working on a set of more far-reaching changes for inclusion in the new crime bill you will announce on April 1. The most important part of this package is a provision to give the Department of Justice new authority to impose criminal and civil penalties on individuals, facilities, chains, or management companies that engage in a pattern of conduct resulting in physical or mental harm to nursing home residents. Enactment of this provision will ensure that HCFA is not the sole federal entity with specific authority to bring enforcement actions against irresponsible nursing home operators.

**5. Health Care -- Nursing Home Resident Protection Act:** You are tentatively scheduled to have a signing ceremony next week for a bill to protect Medicaid patients in nursing homes that decide to withdraw from the Medicaid program. Under the legislation, these nursing homes can refuse additional Medicaid patients, but cannot evict current Medicaid patients.

**6. Health Care -- Medicaid Guidance:** At our request, HCFA will release on

Monday new guidance to states to ensure that individuals eligible for Medicaid -- especially children -- are enrolled as soon as they ask to apply. As you know, some state or local governments appear to be imposing waiting periods before issuing applications for Medicaid or determining eligibility for the program. This guidance makes clear that these delays violate the law and that welfare reform efforts (including diversion programs) cannot reduce access to the Medicaid program. We believe that advocates will applaud the guidance, while states will not seriously object to it.

✓ **7. Health Care -- Antibiotics in Animal Feed:** You recently asked about a report indicating that feeding antibiotics to livestock may increase the prevalence of antibiotic-resistant bacteria and thereby decrease our ability to cure infections in people. The FDA has become concerned about this problem and is planning to issue a draft regulation requiring manufacturers to test their antibiotic feed additives at regular intervals to see if they foster the growth of resistant bacteria. If the products are found to do so, the FDA will curtail their distribution or remove them from the market. The drug and agriculture industries will object to the draft regulation, arguing that antibiotic feed additives are necessary to produce affordable meat and poultry and are not dangerous to the people who consume these products. Public health advocates probably will say that the regulation does not go far enough, because it does not immediately eliminate or severely restrict the use of antibiotics in animal feed. The FDA should issue the draft regulation within a few weeks, with a formal NPRM several months away.

✓ **8. Health Care -- Stem Cell Research:** The next issue of *Science* will include a letter from 73 prominent scientists, including 67 Nobel Prize winners, supporting NIH's plans to fund stem cell research. This letter, which makes clear the scientific and medical potential of stem cell research, should help us to defeat legislation proposed by pro-life members of Congress to prohibit NIH from funding such experiments.

✓ **9. Education -- Ed-Flex/Class Size/Special Education:** The conference committee on the Ed-Flex bill is expected to get under way after the two-week congressional recess. When the House appoints conferees next week, Congressman Clay will offer a motion instructing House conferees to "insist that funds appropriated . . . for class size reduction" be used only for that purpose and that "additional funding should be appropriated" for special education. We have heard from several sources that Lott, Frist, Hastert, and Goodling all have said that they intend to take the class size/special ed provision out of the Ed-Flex bill in conference. We are not taking this outcome for granted, however, and we are continuing to work with the education groups to maintain pressure for deleting this provision.

✓ **10. Education -- University of California Admissions Policy:** The University of California Board of Regents yesterday approved, by a vote of 13 to 1, a plan to guarantee a place in one of the university system's eight undergraduate campuses for the top four percent of the students in each of the state's high schools. Although Governor Davis proposed this action as a way to increase diversity in the wake of the state's affirmative action prohibition,

it is not expected to have a dramatic effect on the racial composition of the university system. The plan will add about 3,600 students of all racial backgrounds to the current pool of eligible applicants, increasing the eligibility rate for African-Americans from 2.8 to 3.6 percent, for Hispanics from 3.8 to 4.7 percent, for whites from 12.7 to 14.4 percent, and for Asian Americans from 30 to 31.5 percent. The plan was based on a policy adopted in Texas that guarantees admission to the top 10 percent of every graduating class.

11. **Welfare Reform -- TANF Rule:** HHS, OMB, and we have reached consensus on the major issues in the final welfare regulation and expect to be able to release it in mid-April. While continuing to hold states generally accountable for work requirements, time limits, and maintenance of effort provisions, we have responded to their (and the advocates') pleas for additional flexibility. In particular, the final rule will allow states to use TANF funds to provide child care, transportation, job retention services, and other supports to non-welfare working families without triggering time limits or other TANF requirements. While many states have wanted to use TANF funds for these purposes to ensure that families coming off the rolls do not go back on, they have hesitated to do so for fear that such assistance would count toward the federal five-year time limit. The rule alleviates this fear by defining such supports for working families as "non-assistance," which is not subject to TANF requirements. The rule also treats work subsidies given to employers as "non-assistance," which we think will encourage more states to use them. (In 1997, only 1 percent of working welfare recipients were in subsidized jobs.) We expect a generally positive reaction to the regulation and are exploring appropriate announcement opportunities.

12. **Welfare Reform -- Cuts in TANF Funds Restored:** The Senate passed an amendment offered by Senator Stevens on Thursday to eliminate from the supplemental appropriations bill the \$350 million cut in TANF funds. As you know, our SAP opposed the TANF cut and Governors lobbied hard against it. Stevens substituted a change to HUD's Section 8 housing program which OMB assures us has no adverse programmatic impact: although the provision defers spending from FY 1999 to FY 2000, so many housing contracts straddle both years that this provision is little more than a change in accounting.