



**SENATE FINANCE COMMITTEE HEARING ON
THE NATIONAL GOVERNORS' ASSOCIATION'S
MEDICAID AND WELFARE REFORM PROPOSALS**

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INVITATION LETTER

WILLIAM V. ROTH, JR., DELAWARE, CHAIRMAN

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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

February 16, 1996

LINDY L. FALL, STAFF DIRECTOR AND CHIEF COUNSEL
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The Honorable Donna E. Shalala, Ph. D.
Secretary of Health and Human Services
615F Hubert H. Humphrey Building
200 Independence Avenue, S. W.
Washington, D. C. 20201

Dear Secretary Shalala:

This will confirm that you are scheduled to testify before the Senate Finance Committee on Wednesday, February 28, 1996, beginning at 10:00 a.m. in Room 215 Dirksen Senate Office Building. You will be the only witness at this hearing. I would appreciate you focusing your testimony on the Administration's view of the National Governors' Association (NGA) recent resolutions on "Restructuring Medicaid" and "Welfare Reform".

Please provide 150 copies of your testimony to the Senate Finance Committee, Room 219 Dirksen Senate Office Building by 10:00 a.m., Monday, February 26, 1996. The testimony should also be submitted on diskette in a format that can be read by personal computers (plain ASCII text is preferred; other formats will be accepted).

I look forward to seeing you at the hearing.

Sincerely,



William V. Roth, Jr.
Chairman

BRIEFING MEMO



Washington, D.C. 20201

TO: The Secretary

FROM: Assistant Secretary for Legislation

SUBJECT: Senate Finance Committee Hearing on the National Governors Association Resolutions Concerning Medicaid and Welfare Reform -- February 28, 1996, 10:00 a.m., 215 Dirksen -- BRIEFING

BACKGROUND AND LOGISTICS

As you know, you have been invited to testify **before the Senate Finance Committee on February 28, 1996 at 10:00 a.m.**, to present the Administration's views of the National Governors Association (NGA) resolutions on "Restructuring Medicaid" and "Welfare Reform". You will be the only witness to appear before the Committee on that day. The Committee heard testimony on the NGA resolutions February 22 from Governors Thompson, Miller, Carper, Chiles, Engler, and Romer. The Committee may hold an additional hearing on the NGA proposals February 29 to receive testimony from outside experts and academicians.

COMMITTEE HISTORY

Prior to 1993, the Finance Committee had a long and distinguished history of bipartisanship, particularly with respect to the Medicaid and welfare programs. The Committee's deliberations took on an increasingly partisan tone that year with the refusal of committee Republicans to help develop the omnibus deficit reduction package proposed by President Clinton. The Committee's consideration of health care legislation in 1994, and action on the Republican welfare, Medicaid, and tax packages last year, further divided the Committee along partisan lines.

In part, the increasing partisanship of the Committee is a reflection of the changing tenor of politics generally, and the historic debate now underway about the size, scope and role of the federal government. Some of the shift can be traced to the change in party control of the Senate in 1994, and the more recent transition from former Senator Packwood to Senator Roth as Chair. The changing Committee membership also has been a factor. Since the 1994 election, moderate Republican Senators Packwood, Durenberger, and Danforth have been replaced by more conservative Senators Pressler, D'Amato, Murkowski, Nickles, and Gramm.

Perhaps most important for the current debate, the Finance Committee is no longer the "final word" on legislation within the Committee's jurisdiction. The cooperation and tactics recently employed by those in the Senate's bipartisan center (epitomized now by the "Breaux-Chafee Group") have altered the balance of power on major issues like Medicaid and welfare reform.

MEDICAID

The Finance Committee's history on Medicaid in this Congress has been somewhat mixed. Republican Senators on the Finance Committee generally have fought hard for a block grant and an end to the Medicaid entitlement. The general Republican tone at the NGA hearing was supportive of those changes that accomplish these goals. Democrat Senators, by contrast, have fought hard to preserve the Medicaid entitlement and against changes to weaken the program. However, individual Senators have acted to blur the partisan lines. Senator Chafee has joined Democrats in objecting loudly to this approach. Virtually all Finance members have championed specific state interests, even in cases when they were contrary to the overall party line on Medicaid. For example, Senator Hatch has expressed strong interest in protecting coverage and funding for Native Americans. Senator Moynihan has focused intently on increasing the matching rate for New York. Senator Breaux is ever mindful of Louisiana's DSH problems.

Finance Committee members of both parties also have stressed overarching national policy concerns. Senator Hatch, for example, has raised questions about the constitutionality of the NGA proposal ending the federal right of action. Senator Conrad has criticized the repeal of limits on provider donations and taxes. Senator Roth has stressed the inextricable link between Medicaid reform and welfare reform. Finally, Finance Committee members have traditionally valued bipartisanship and the more senior members of the committee have made a point of highlighting this positive characteristic of the NGA plan.

WELFARE REFORM

As you know, the Finance Committee maintains jurisdiction over all welfare-related programs authorized under the Social Security Act. Committee members and staff -- particularly Senator Moynihan -- are among the most knowledgeable in the Congress on welfare reform issues. Several members and staff participated in the development and passage of the Family Support Act in 1988, and Committee members were deeply involved in the process that led to passage of bipartisan welfare legislation in the Senate last fall. Among Committee Democrats, only Senators Moynihan, Bradley and Mosley-Braun opposed the Senate-passed measure. All Committee Democrats except Senator Baucus opposed the final conference report for H.R. 4. All Committee Republicans supported both the Senate-passed bill and the conference measure, although Senator Chafee expressed ongoing concerns about

various elements of these bills. Senators Breaux and Chafee, both Committee members, remain central to the effort by pro-reform Senate moderates to secure final legislation with greater resources, stronger state accountability, and stronger protections for children.

During the February 22 hearing on the NGA resolutions, Senators Roth, Chafee, Hatch, Simpson, Gramm, Nickles, Rockefeller, Breaux and Conrad were in attendance. To varying degrees, each Senator applauded the bipartisanship of the Governors' actions and indicated that their efforts were helpful to the ongoing welfare reform process. On specific issues, Chairman Roth raised concerns about the reduction in federal savings relative to the conference report, but expressed comfort with the notion of giving the Governors broad flexibility with little federal oversight or control. Senators Breaux, Chafee and Conrad raised concerns that the Governors were calling for additional federal funds, while proposing to reduce the state maintenance of effort and matching requirements for child care and the contingency fund. Senators Rockefeller and Chafee raised questions about the proposed NGA block grant for child protective services. Senator Chafee also expressed concern about the Governors' silence on cuts in services to legal immigrants and the implications of NGA's Medicaid proposals for welfare recipients.

Please find attached a series of draft summaries of the likely questions and concerns of Committee members. We will update this material for you early next week.

Attachments

SENATOR WILLIAM V. ROTH (R-DE)

Senator Roth will attend the hearing. He chaired the entire February 22 Finance Committee hearing on the NGA proposal with the Governors.

MEDICAID: Senator Roth's concerns mostly focus on **state flexibility**. He wants states to have clear authority and criteria to set their own standards. For instance, he is concerned with the level of Secretarial discretion allowed under the **disability definition**. He would prefer that states determine their own definition of disability without any Secretarial involvement.

WELFARE REFORM: Senator Roth was a strong supporter of both the Senate-passed bill and the H.R. 4 conference agreement. He worked closely with Senator Lieberman last year to include a **performance bonus** provision in the Senate bill.

Senator Roth believes in providing states with **broad flexibility** to implement welfare reform with **little ongoing federal oversight or control**. During the February 22 hearing, he applauded the NGA proposal but raised concerns about the **reduction in federal savings** relative to the conference bill. He also indicated that he would do the best he could to move forward on reform legislation based on the NGA proposals.

In a related development, Senator Roth wrote to Majority Leader Dole this week to propose a **short-term extension of the debt limit until May 10**, and to propose that a long-term debt limit extension should be attached to subsequent entitlement reform or balanced budget legislation.

SENATOR ROBERT DOLE (R-KS)

Senator Dole may attend the hearing. He did not attend the Committee's February 22 hearing on the NGA proposal with the governors.

MEDICAID: As Majority Leader, Senator Dole was a key player in formulating the Republican's Medicaid reform proposal, as well as in the budget negotiations with the President. Although he has not been extremely vocal about his concerns with Medicaid reform-related issues, he is a strong supporter of the block grant approach. His ultimate approach on Medicaid will be contingent on the development of the presidential campaign. He is a career deal broker and would likely consider a range of Medicaid compromise proposals if they could lead to a larger deal on a balanced budget. To date he has given no indication of how the NGA proposal might affect any strategy for further consideration of Medicaid reform.

WELFARE: Majority Leader Dole led Republican welfare reform efforts in the Senate and the Conference Committee. After Senator Packwood's Finance Committee welfare bill ran into trouble with party factions, Senator Dole fashioned numerous compromises with Republicans and Democrats that concluded with the overwhelming bipartisan vote for HR 4 on the Senate floor. Similarly, Senator Dole guided HR 4 through the House-Senate Conference Committee and to the President's desk.

While Senator Dole has not announced his intentions regarding the NGA proposals, his presidential campaign and his support among key Republican governors will be central factors to Dole's welfare reform strategies for the remainder of the 104th Congress.

SENATOR JOHN CHAFEE (R-RI)

Senator Chafee is expected to attend the hearing. He attended the February 22 Committee hearing with the governors.

MEDICAID: Senator Chafee has been a strong and consistent supporter of Medicaid. He is not pleased with the NGA's proposal and suspects that it could fall apart once the details of the financing are specified. He disagrees particularly with the Governors' proposal to have 50 state definitions of disability and will invite your comments on this aspect of their plan at the hearing. He also disagrees with the NGA's proposal for "complete" flexibility on amount, duration and scope and will seek your comments on the importance of a benefits adequacy standard. Finally Senator Chafee will join other Republican and Democratic Senators in criticizing what he sees as a "raid" on the federal treasury (eg. repeal of limits on donations and taxes; ability to shift state-only costs into Medicaid, etc.)

While Senator Chafee opposed the Republican Medigiant plan, he ultimately voted for it as part of a larger, seven-year balanced budget plan. He has not yet said how he would vote on a Medigiant-like proposal if considered on its own or if coupled only with welfare reform.

WELFARE: Senator Chafee has been central to efforts in the Senate to develop bipartisan welfare reform legislation. While he accepts converting welfare from an entitlement to a block grant, Senator Chafee worked with moderate Republicans and Democrats to **maintain the child protection entitlements** and to improve HR 4 in the areas of **maintenance of effort, immigration and SSI**. He voted for the Senate version of HR 4 and reluctantly supported the conference version.

Since the President's veto of HR 4, Senators Chafee and Breaux have led the bipartisan group of moderates attempting to fashion a 7 year balanced budget plan. With regard to welfare, child protection remains key for him, and Senator Chafee may look to the Administration to oppose the NGA proposal to allow states an optional block grant in this area. He also may raise concerns about the inadequacy of the NGA maintenance of effort and state match proposals for the child care and contingency funds.

SENATOR CHARLES GRASSLEY (R-IA)

Senator Grassley is expected to attend the hearing. He did not attend the Finance Committee's February 22 hearing with the governors.

MEDICAID: Senator Grassley is still in the process of analyzing the NGA proposal. Historically, he has been concerned about the **budgetary impact of Medicaid**, and ways to get the program's finances under control. During the Finance Committee mark-up of reconciliation in the fall, Senator Grassley successfully offered an amendment that would make Medicaid a secondary payer to other federal health programs.

Senator Grassley is generally **supportive of block granting Medicaid**. He thinks a block grant would work in Iowa, although he is not certain it would work in every state. Finally, Grassley will probably ask a question or two regarding the **President's Medicaid proposal**.

The Senator's staff expressed concern with the following aspects of the NGA proposal: the elimination of cost reimbursement for rural health clinics; the weakening of the "guarantee" under the plan when compared to current law; repeal of the provider tax and donation limits; the uncertainty of the formula in the base year; and the plan's lack of spousal impoverishment protections.

WELFARE: Senator Grassley strongly supports enactment of welfare reform this year. He believes welfare reform should include strong **child support enforcement**, a **mandatory family cap**, strong provisions to **reduce teen pregnancy**, and a strong statement that marriage is a foundation of society. While championing Iowa's program of individual employment plans, Senator Grassley voted for the Senate and conference versions of HR 4.

Since Senator Grassley is still in the process of analyzing the NGA proposal, he has not formed strong views on its welfare provisions. He believes the governors tried to address the concerns expressed in the President's veto message on HR 4, and therefore is interested in the Administration's position on the NGA welfare proposal.

SENATOR ORRIN HATCH (R-UT)

Senator Hatch plans to attend the hearing. He attended the February 22nd Finance Committee hearing on the NGA proposal with the governors and asked pointed questions.

MEDICAID: Senator Hatch was a sponsor of the Balanced Budget Act and strongly believes that growth in entitlements must be reduced. He is not wedded to any one proposal on Medicaid as long as the final product reduces the **budget deficit** and provides more **state flexibility**.

The Senator is concerned about the NGA's lack of protections for FQHC's and for the **Indian Health Service**. He is also concerned that lack of a **Federal cause of action** may be unconstitutional and raised this at the February 22nd hearing. He believes that a balance needs to be struck between giving states more control over federal programs and maintaining some protection for beneficiaries.

Senator Hatch is in somewhat of a delicate situation, because Utah Governor Leavitt was deeply involved in the development of the NGA plan. Staff also noted that Senate Finance Republicans have not been involved in nor consulted about efforts to draft the NGA proposal.

WELFARE: To some degree, Senator Hatch joined with Republican moderates to improve the Senate welfare reform bill, in particular, to **increase child care funding** in the Senate bill. He voted for the Senate and conference versions of HR 4 and continues to work with the Breaux-Chafee group on a bipartisan compromise. Staff suggested that he is more likely to focus on Medicaid than on welfare at the Secretary's hearing.

Senator Hatch is interested in the child care aspects of the NGA proposal. While he supports the **additional funding for child care**, he is disappointed that the NGA would eliminate the **child care health and safety protections** that Senators Hatch and Dodd brokered with the NGA in 1990 and included in the Senate version of HR 4. He is also troubled that the NGA proposes no state match for these funds. He has overall concerns about the NGA proposals on **maintenance of effort and state match**. He has expressed interest in the fair and equitable standards provisions, but staff is unsure how far he is prepared to go in this area.

In addition, Senator Hatch has become particularly interested in **child protection** issues and opposes the NGA proposal to allow states to block grant these programs.

SENATOR ALAN SIMPSON (R-WY)

Senator Simpson will attend the hearing. During the Senate Finance hearing last week on the NGA proposal, Senator Simpson recognized the work of the NGA and also the Chafee/Breaux effort to develop a budget plan. Senator Simpson decried the efforts of advocacy groups to condemn the NGA proposal and to stop progress on a budget deal. The Senator asked the Governors how should the Senate and the Governors should confront the efforts of these advocacy groups.

MEDICAID: Senator Simpson is a member of the Senate Bipartisan group. The group, which contains moderate Democrats and Republicans, is working toward a budget agreement. Simpson has generally been more involved in Medicare (cost-sharing issues) than Medicaid.

Regarding the NGA proposal, Simpson is concerned with the **growth rate** (inflation factor) contained in the NGA proposal. As a deficit hawk, Simpson wants to better control Medicaid spending. Also, Simpson is worried about locking in Wyoming's low level of **DSH spending** (when compared to other states). Because the state is a "low-DSH state", Simpson is concerned that the NGA proposal makes permanent existing funding inequities.

WELFARE: The Senator is an overall supporter of HR 4. He joined with other Senate Republican moderates to improve HR 4 and voted for the Senate and conference versions of the bill.

Senator Simpson has played a key role on the immigration aspects of welfare reform. While Senator Simpson supports restricting legal immigrants eligibility for benefits by requiring sponsor deeming for 10 years, regardless of when a legal immigrant obtained citizenship. The Senator has concerns about the provisions of H.R. 4 that would bar most benefits to legal aliens. The Senator believes there should be a limited safety net for legal immigrants.

SENATOR LARRY PRESSLER (R-SD)

Senator Pressler is probably not going to attend the hearing, since his state's primary is the day before. He did not attend the Finance Committee's February 22 hearing with the governors.

MEDICAID: In the past, Senator Pressler has indicated a strong interest in block grants as a means of achieving comprehensive state reforms and avoiding contradictory interaction of various federal incentives. Although he has not stated publicly his reaction to the NGA proposal, he is likely to favor it. He is strongly in favor of maintaining tribal autonomy for Native Americans.

WELFARE: Senator Pressler has not been particularly active on welfare reform legislation. He has been concerned about the impact on Native Americans, has supported the more restrictive elements of the Republican proposals (family caps), and has voted for the Senate and conference versions of H.R. 4. He has expressed concern about implementing tough work requirements in a rural setting.

According to his staff, Senator Pressler has not yet reviewed the NGA welfare proposal nor expressed any public opinion about it. However, he is likely to support it.

SENATOR ALPHONSE D'AMATO (R-NY)

Senator D'Amato may not attend the hearing, since he is chairing the ongoing Whitewater hearings. He did not attend the February 22nd hearing with the governors.

MEDICAID: Senator D'Amato's primary concern is **raising the federal share of Medicaid payment in New York from 50 percent to 60 percent.** (The NGA proposal raises the federal share to a minimum of 60 percent.) Senator D'Amato has also raised concerns about the lengthy approval process for 1115 waivers in the past.

WELFARE: Senator D'Amato has not been very active in welfare reform, as he has been preoccupied with his positions as Chairman of the Senate Whitewater hearings and Chairman of the National Republican Senatorial Committee. He also is playing an active role in Senator Dole's presidential campaign.

Senator D'Amato supported both the Senate and conference versions of H.R. 4. During the debate on the Senate bill, D'Amato did vote against the Food Stamp block grant, the mandatory family cap, and the state prohibition on using federal funds for benefits to minors who have out-of-wedlock births.

Senator D'Amato is supportive of block grants and state flexibility. He is always concerned with providing maximum funding for New York.

SENATOR FRANK MURKOWSKI (R-AK)

Senator Murkowski may attend the hearing. He did not attend the Finance Committee's February 22 hearing with the governors.

MEDICAID: While he has expressed no opinion publicly about the NGA proposal, he is likely to be supportive. He generally favors block granting and state flexibility because of regional variations in need and in program implementation. His principal interest in the Medicaid debate has been to secure a separate tribal allocation for Native Americans. He is also committed to making sure that Alaska does not lose revenue in any new funding formula.

WELFARE: Like Senators from other rural states, he has doubts about rural villages being able to meet the federal requirements for work participation that were included in the House bill. Denying benefits to legal aliens also creates problems for Alaska. Because of its sparse population, its economic growth will require encouraging immigration.

He supports the family cap restriction and has voted for the Senate and conference versions of H.R. 4.

SENATOR DON NICKLES (R-OK)

Senator Nickles may attend the hearing. He did attend the Committee's February 22 hearing on the NGA proposal with the governors.

MEDICAID: Senator Nickles supported the Balanced Budget Act and strongly believes that the growth in entitlement programs must be significantly altered. He is in favor of block granting Medicaid and giving States maximum flexibility. He led the fight in opposing all of the Chafee amendments in the Finance Committee mark-up, including guaranteeing eligibility to certain populations and guaranteeing a minimum set of benefits.

WELFARE: Senator Nickles has not been active on welfare reform legislation. He supported the more restrictive elements of the Republican proposals -- mandatory family caps and benefit cut-offs for unwed teenagers -- and voted for the Senate and conference versions of HR 4. He did not ask any welfare-related questions at the governors' hearing, and his staff has not been responsive to FHS about his views on the NGA proposal.

SENATOR PHIL GRAMM (R-TX)

Senator Gramm may attend the hearing. Senator Gramm did attend the Finance Committee's February 22 hearing with the governors.

MEDICAID: Senator Gramm is clearly a budget hawk, and supportive of a block grant approach to reforming Medicaid. However, he has raised some concerns about the NGA proposal, especially the umbrella fund. At the Senate Finance Committee's February 22 hearing where the governors testified, he said "We now know what the fox in the henhouse wants."

WELFARE: Senator Gramm is the newest Republican addition to the Senate Finance Committee, filling Bob Packwood's seat. Gramm sponsored the Senate floor amendment to HR 4, which passed by a 50-49 vote, to eliminate 75 percent of HHS FTEs in those programs that are converted into the block grant. Senator Gramm voted for both the Senate and conference versions of H.R. 4.

Gramm supports many of the more conservative and restrictive aspects of welfare reform, including family caps and benefit cutoffs for teenagers.

SENATOR DANIEL PATRICK MOYNIHAN (D-NY)

The Senator plans to attend the hearing. He did not attend the February 22 Finance Committee hearing on the NGA proposal with the Governors because of travel problems.

MEDICAID: Senator Moynihan is inclined to support the NGA proposal. In particular, he will focus upon two areas: (1) the increase in the federal medical assistance percentage (FMAP) of the federal share of Medicaid funds and (2) the strength of the "guarantee" in the NGA proposal.

Moynihan supports the NGA provision that increases the FMAP to 60 percent. In fact, Governor Pataki's budget relies on the passage of this provision. Under this approach, New York and other states would increase their federal share of Medicaid dollars and decrease the state share.

Moynihan finds the "guarantee" contained in the NGA proposal strong enough to protect beneficiaries. He thinks it is comparable to an entitlement. Moynihan does not have a problem with the amount, duration, and scope limits -- benefit level determination should be left up to the State.

WELFARE: Senator Moynihan has been very active on welfare issues throughout his career, and was the lead Senate sponsor of the Administration's Work and Responsibility Act in the 103rd Congress. During this Congress, he has been the leading critic in the Senate of the Republican welfare reform proposals. He also has sharply criticized the Administration for not fighting strongly to retain the AFDC entitlement, and for concealing an analysis that detailed the effect of the various reform measures on child poverty.

During Senate debate on welfare reform last fall, Moynihan sponsored legislation to strengthen and expand the Family Support Act of 1988. His measure retained the entitlement and contained no time limits, increased federal funds and match rates under the JOBS program, provided states with new flexibility on asset and earned income disregards, and required teens to live at home and stay in school. The measure was defeated 41-56, with Democratic Senators Baucus, Bingaman, Harkin, Kohl, and Nunn voting no. While Moynihan was initially critical of the Daschle/Breaux/Mikulski substitute, he did support the measure on the Senate floor. This Democratic substitute included a 5-year time limit on cash assistance, something which Moynihan has criticized strongly throughout the debate.

SENATOR DANIEL PATRICK MOYNIHAN (D-NY)
(CONTINUED)

We expect Senator Moynihan to raise the following issues with you on February 28:

- 1) The numbers of **children affected by the 5 year time limit** (nationally and state-by state).
- 2) States have substantial **flexibility through waivers under current law**, the JOBS program has should be given a chance to work. In particular, his analysis of the MDRC findings indicate to him that the JOBS program is on the right track.
- 3) **Out-of-wedlock birth ratios** (nationally, key cities, racial mix, etc.).
- 4) The implications of the **OMB poverty analysis** and projections for a similar analysis under the NGA proposal.
- 5) The **proportion of children on AFDC in different cities**.

SENATOR MAX BAUCUS (D-MT)

Senator Baucus plans to attend the hearing. He did not attend the Finance Committee's February 22 hearing with the governors.

MEDICAID: Senator Baucus generally has supported the greatest possible state flexibility in implementing Medicaid, welfare and other federal programs, and prefers legislative proposals that encourage maximum experimentation among states.

In general, the Senator supports the NGA Medicaid proposals, but he may be receptive to some improvements in the definitions of eligibility. He also is interested in making sure that rural states like Montana have the option of maintaining the cost based reimbursement for federally qualified health centers. The Senator also may be skeptical of the NGA's proposed handling of the duration and scope of benefits -- a point of view he shares with Senator Chafee.

Senator Baucus has been supportive of the Breaux-Chafee efforts to develop a bipartisan Medicaid plan. While he has not directly participated in the discussions, he is likely to support any plan they may develop.

In addition, the Senator strongly supports maximum autonomy for Native American tribes.

The Senator is pleased that the Department still is considering Montana's Mental Health Access Plan waiver proposal. He probably will thank the Secretary for her courtesy in meeting with Governor Racicot on February 7. He may highlight the consultative waiver process as an example of how successful bipartisanship can be.

WELFARE: During Senate consideration of welfare reform, Senator Baucus primarily focused on state flexibility. He consistently voted for the Republican welfare reform proposals (HR 4) and against the Democratic alternatives.

Senator Baucus wants strong work requirements in any welfare proposal and would like education, including postsecondary education, to count toward the NGA's work requirements. Other concerns with the NGA proposal include the lack of state match for the new child care funds, how it deals with the tribe and the child nutrition elements. He generally opposes block-granting Food Stamps, but will accept making the block grant a state option.

SENATOR BILL BRADLEY (D-NJ)

Senator Bradley currently is on a book tour and may not return for the hearing. He did not attend the February 22 Finance Committee hearing on the NGA proposal with the governors.

MEDICAID: Senator Bradley is a member of the Senate bipartisan group which supports a Federal entitlement to Medicaid and a per capita cap. The group is still meeting, but having difficulty resolving many of the issues. Senator Bradley is close to the Administration on Medicaid. He believes the NGA proposal represents the governor's "Wish List". He believes that when Federal dollars are involved the Federal government must set the priorities.

WELFARE REFORM: Senator Bradley was one of the 12 Senators to vote against the Senate version of HR 4 and remains extremely skeptical about welfare reform proposals. From discussions with his staff, he is not likely to consider the NGA proposal a step forward, and fears that it will get worse upon the development of detailed legislative language.

Senator Bradley's key issues have been **child support enforcement**, and **fair and equitable standards and procedural protections**.

SENATOR DAVID PRYOR (D-AR)

Senator Pryor may attend the Finance hearing. However, there is an Aging Committee hearing which is being held at the same time. If Senator Pryor attends the hearing, the Senator will likely have more questions related to Medicaid than welfare.

MEDICAID: Senator Pryor has two primary (and longstanding) concerns with the Medicaid program -- the drug rebate program, and nursing home quality standards. During Senate Finance Committee consideration of reconciliation in the fall, he offered an amendment to maintain federal nursing home quality standards (which failed), and an amendment to maintain the Medicaid drug rebate program, which was accepted.

WELFARE: Senator Pryor's concerns relating to the NGA welfare proposals are related to child welfare, maintenance of effort, and other issues that were raised by Democratic Senators during the Senate Finance Committee hearing last week.

Consistent with his prominent role on agriculture issues, Senator Pryor has focused his attention on the Food Stamps and child nutrition aspects of the welfare reform legislation. He supported the Democratic alternatives to HR 4, but voted for final passage of the measure in the Senate.

SENATOR JAY ROCKEFELLER (D-WV)

Senator Rockefeller is expected to attend the hearing. He attended the February 22 Finance Committee hearing on the NGA proposal with the governors.

MEDICAID: Senator Rockefeller's staff indicates that while members of the Committee generally applaud the bipartisan nature of the NGA proposal, he has serious concerns about it. He is likely to focus on its weakness on **donations and taxes; the ability of managed care to yield significant Medicaid savings**, especially in light of the large number of beneficiaries governors' claim credit for shifting into managed care already; and the problems on **right of action**.

Senator Rockefeller also is likely to stress the importance of **adequacy of benefit standard** and to chide the governors for wanting flexibility without accountability. Democratic staff, however, may be open to alternative adequacy standards based, perhaps, on commercial insurance practices. He questions the NGA proposals on **comparability and statewideness**, especially related to the protections available to rural citizens. The ability of states to **shift costs** to the federal government under the NGA proposal concerns him especially after governors admitted they probably would be able to do so under the NGA language.

WELFARE: Senator Rockefeller has been an active participant in welfare reform. He has lead key to efforts to maintain the **child welfare entitlements and the family preservation program** and recently wrote to the President about his strong opposition to the NGA proposals in this area. He voted for the Senate version of HR 4 and is generally favorable toward enactment this year of welfare legislation acceptable to the President.

Senator Rockefeller is likely to ask about the Administration's position on the NGA child protection proposal and to seek a firm statement in opposition to it.

His staff also has expressed concern about the Senate Democratic involvement in on-going welfare reform efforts and whether the NGA and the White House will keep them sufficiently informed and involved. Senator Rockefeller may stress the importance of Democratic involvement if the outcome is to be truly bipartisan.

SENATOR JOHN BREAUX (D-LA)

The Senator plans to attend the hearing. He attended the February 22 Committee hearing on the NGA proposals.

MEDICAID: Senator Breaux has been a leader in the Senate moderates' attempt to reach a 7 year balanced budget agreement. He will be a central player in the negotiations over any ultimate Medicaid compromise. He is generally complimentary of the NGA effort, especially its constructive, bipartisan process. However, he has raised specific concerns over the elimination of coverage for poor teenagers and on the lack of an adequacy standard for benefits. He said last week he is not especially concerned about the NGA proposal for private right of action, though staff says this is mostly because this has not been a pressing issue for Louisiana. Senator Breaux has expressed ongoing concerns about problems specific to his state, particularly their financial concerns with Medicaid.

While the moderate Senators continue work on proposals to achieve a balanced budget in seven years, no new Medicaid proposals seem to be under consideration as a result of the NGA plan.

WELFARE REFORM: Senator Breaux has been one of the most influential moderates in the Senate on welfare reform. He was instrumental in developing the Daschle/Breaux/Mikulski substitute offered in the Senate last fall, which retained a conditional entitlement but included a broad 5-year time limit on cash assistance. He also led the effort among Senate Democrats to negotiate the agreement that led to passage of the bipartisan Senate bill last fall. During floor debate, he initially intended to offer an amendment to impose a 90 percent maintenance of effort requirement on the states, but reduced the requirement to 80 percent to gain bipartisan support. Breaux had a major role in designing the following elements of the Senate-passed bill: maintenance of effort; state match issues; performance bonus; SSI benefits for children.

During the hearing on February 28, we expect Breaux to focus on the implications of the **reduced state maintenance of effort and matching requirements** contained in the NGA proposal. He may also ask your view on the NGA performance bonus.

SENATOR KENT CONRAD (D-ND)

Senator Conrad is expected to attend the hearing. He attended most of the February 22 Finance Committee hearing on the NGA proposal with the governors.

MEDICAID: Senator Conrad is knowledgeable about Medicaid and has a range of concerns with the NGA Medicaid proposal -- **the definition of disability; the amount, duration and scope provisions; provider tax provisions and "gaming" the system; RHICs and FQHCs.**

WELFARE REFORM: Senator Conrad is active and informed on welfare issues. During Senate debate on welfare reform last fall, Conrad proposed substitute legislation similar to the Administration's new proposal. In addition, he recently proposed to maintain the welfare entitlement, while allowing states the option to block grant AFDC. He has taken a lead role on SSI children's issues and is very interested in teen pregnancy prevention. Conrad voted for the Senate-passed version of HR 4, and is part of the bipartisan Senate group working to develop a welfare reform compromise.

Senator Conrad has referred to the NGA proposal as the Governors' Wish List. He is particularly concerned about the many NGA provisions that **reduce state match and maintenance of effort** and has said that the block grant looks like a blank check to the states. He believes **federal oversight and enforcement** are important elements of welfare reform and is interested in ensuring **fair and equitable standards and procedural protections**. He may ask the Secretary for the Administration's views on these issues.

SENATOR BOB GRAHAM (D-FL)

Senator Graham may attend the hearing. He did not attend the February 22nd Finance Committee hearing with the governors.

MEDICAID: The Senator has been a leader in the Medicaid debate, working closely with Senator Chafee and the Senate Bipartisan group. Senator Graham will publicly want to support the thrust of the NGA proposal because of Governor Chiles' role in crafting the plan. He strongly supports maintaining a Federal guarantee of eligibility and benefits. He is also very much in favor of giving states maximum flexibility, but does believe states should be held accountable through some Federal oversight. Senator Graham has pushed for inclusion of an equity adjuster in the Medicaid formula so that a slow growth state and/or low per capita state (FL) not be disadvantaged relative to states with a higher per capita (NY). In the past, the Senator has been very outspoken on state abuse of donations and taxes schemes. He is concerned with the Governors' proposal to repeal the OBRA 90 donations and taxes provisions and to reduce the state Medicaid match.

WELFARE: Senator Graham has taken an especially active role on welfare reform issues of concern to the State of Florida. He galvanized Senate attention to the inequitable impact that block grants pose to high growth states, and worked closely with Senator Hutchison and others to develop the supplemental growth fund that was ultimately included in the Senate bill. Senator Graham believes strongly in adequate state match and maintenance of effort requirements. In addition, Senator Graham has discussed the importance of entry level jobs in developing work skills, a lesson he learned during his "job a day" campaign several years ago.

With respect to immigrants, Senator Graham has highlighted the difficulties stemming from the limitation on benefits to legal immigrants, Cubans and Haitians entrants. Senator Graham voted for the Senate version of HR 4, but has continued to raise concerns about **funding formulas, contingency funds and immigration issues.**

Senator Graham is very interested in **retaining Cuban and Haitian entrants eligibility for federal benefits.** The Senator has written to the President and has asked for his support in exempting Cuban and Haitian entrants from the immigrant restrictions proposed under welfare reform. Under the welfare reform bill passed by Congress, Cuban and Haitian entrants would lose their eligibility for the federal benefits. The Administration has been supportive of the Senator's efforts.

SENATOR CAROL MOSELEY-BRAUN (D-IL)

Senator Moseley-Braun is expected to attend the hearing. She did not attend the February 22 Finance Committee hearing on the NGA proposal with the governors.

MEDICAID: Senator Moseley-Braun is inclined to support the Administration's plan on Medicaid. She has some concerns about certain provisions, such as the **repeal of the Boren Amendment**. She continues to have an interest in the **1115 waivers** and believes that we don't have enough information from these demonstrations to allow states to move forward with total flexibility at this time. She has concerns about how the **insurance umbrella** would work under the NGA proposal. For example, would there be an incentive to limit certain benefits or individuals in the mandatory category so that the state could then cover people under the umbrella fund and get more federal dollars? Illinois is a low DSH state and the Senator would be concerned about any **formula** that disadvantages her state. The Senator also has concerns about the incentive for states to **significantly cut back** on their contribution to Medicaid under the NGA proposal.

WELFARE REFORM: Senator Moseley-Braun remains committed to an AFDC entitlement and opposed to proposals -- including NGA's -- that eliminate what she considers to be an essential safety net for America's children. During the 1995 welfare reform debate, she developed her own welfare reform plan and strongly supported Senator Moynihan's proposal. She was one of 12 Senators to vote against the Senate-passed version of HR 4.

Her key issues have been **maintaining the AFDC and child protection entitlements, mandatory vouchers after the time limit, child care and contingency funds.**

Senator Moseley-Braun may express concerns about the meager state contributions in the NGA proposal. Her staff has also advised that she may ask the Secretary to sketch out the NGA proposal, explain how HHS thinks it may work and how it may affect Illinois. How, for example, would the child protection block grant work; how is child care likely to fare without state matching funds? She also may ask about immigration issues, but is unlikely to ask about Food Stamps or child nutrition.

Her staff has expressed concern about Senate Democratic participation in the welfare reform discussions, and whether the White House will sufficiently share information with them and keep them involved.



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D. C. 20201

Testimony

of

Donna E. Shalala

U.S. Secretary of Health and Human Services

at

Committee on Finance

United States Senate

February 28, 1996

Mr. Chairman, Senator Moynihan, and members of the Committee: I want to thank you for giving me the opportunity to testify today about the National Governors' Association (NGA) resolutions on Medicaid and welfare and the President's vision for reform in these areas.

Throughout the years, this committee has built a great tradition of bipartisan leadership on these issues. We look forward to working closely with you to reach bipartisan consensus on Medicaid and welfare reform legislation.

This hearing comes at a critical juncture in our nation's history.

Right now, from kitchen tables to the halls of Congress, we are engaged in a historic debate about the size, scope, and role of the federal government.

This debate is about much more than deficits and devolution. At its heart, it's about who we are as Americans -- and what kind of legacy we want to leave for our children.

The Clinton Administration believes that we must balance the budget in seven years and shift more responsibility to the states and local communities. But, we must do it in a way that is consistent with our values.

As the President has said time and time again: We can balance the budget and find common ground -- without turning our backs on our values, our families, and our future.

We believe we can give the states the flexibility they need -- while still maintaining a strong federal-state partnership built on a foundation of shared resources, accountability to the taxpayers, and national protections for the most vulnerable Americans.

That's why the President has proposed a common sense plan that balances the budget, gives new flexibility to the states, and reforms welfare and Medicaid, without breaking our promises to our citizens -- from the seniors living in nursing homes to the families struggling to break free from the chains of poverty.

That is the challenge we must meet as we work to reform Medicaid and welfare. That is the standard by which we must judge any reform, including the resolutions recently adopted by the National Governors' Association.

We greatly appreciate the efforts of the NGA in fashioning a bipartisan consensus on the foundations of a plan and their ongoing work to add further detail to their resolutions. We believe that they have made a positive contribution to the debate and have increased the likelihood that Republicans and Democrats will produce bipartisan solutions to reforming our welfare and Medicaid programs. While we applaud their tenacity and their contributions, we do have serious questions about some of the proposals they have put forward: questions about maintaining national objectives and the federal-state partnership necessary to achieve them.

It is now up to this Administration and this Congress to build on the spirit of the Governors' efforts. It is time for all of us to work together to reach our mutual goals: flexibility for the states; incentives for AFDC recipients to move from welfare to work; the preservation of health insurance coverage for those who need it most; and protections for our most precious resource, our children.

MEDICAID

Let me turn first to the Medicaid program. Medicaid provides vitally important health and long-term care coverage for 36 million Americans and their families, including the following:

- o It provides primary and preventive care for 18 million low-income children;
- o It covers 6 million individuals with disabilities -- providing the health, rehabilitation, and long-term care services that would otherwise be unaffordable for these individuals and their families;
- o It covers 4 million senior citizens -- including long-term care benefits that provide financial protection for beneficiaries, spouses, and the adult children of those requiring nursing home care.
- o Finally, it pays the Medicare premium and cost sharing for low income seniors, which is the only way to make the use of Medicare benefits affordable for these individuals.

As part of his balanced budget plan, the President has proposed a carefully designed and balanced approach to Medicaid reform. His plan preserves Medicaid (title XIX of the Social Security Act) but makes important changes that will give states unprecedented

flexibility to enhance the program's ability to meet the needs of the people it serves. The

President's plan:

- o preserves the federal guarantee of a congressionally-defined benefit package for Medicaid beneficiaries;
- o preserves Medicaid protection for all currently eligible groups;
- o maintains our shared financial partnership with the states as they provide health coverage to needy individuals;
- o provides unprecedented new flexibility so that states can better manage their programs and pay providers of care and operate managed care and other arrangements without unnecessary federal requirements, while maintaining programmatic and fiscal accountability; and
- o contributes federal savings to the balanced budget plan through the use of a per capita cap on federal matching that adjusts automatically to changes in state Medicaid enrollment, changes in the economy and reductions in disproportionate share hospital payments.

As you know, the President strongly opposed -- and ultimately vetoed -- the congressional approach to Medicaid reform because it did not meet these standards. The Congress voted to repeal the Medicaid program and replace it with a new "Medigrant" program that did not include meaningful guarantees of eligibility or benefits. The Congress also proposed a "block-grant" funding mechanism that breached the 30 year federal partnership with the states to share in changes in state Medicaid spending.

As I mentioned earlier, NGA recently approved the outlines of its own Medicaid reform plan, which has been helpful to the debate. In particular, we have been pleased that the Governors appear to agree with one of the key elements of our plan -- namely that federal financing must be responsive to actual, and often unanticipated, changes in Medicaid enrollment in the states and changes in the economy.

However, while the details of the NGA plan are still not completely fleshed out, we are concerned that the elements of the NGA resolution do not reflect the priorities set out in the President's Medicaid plan in certain areas. These are: (1) the need for a real, enforceable federal guarantee of coverage to a congressionally-defined benefit package; (2) appropriate federal and state financing; and (3) quality standards, beneficiary protections, and accountability.

The federal guarantee of coverage and benefits

The federal "guarantee" of coverage and benefits is at the core of the federal Medicaid program. Unfortunately, the term "guarantee" has been assigned very different meanings in the context of the current Medicaid debate. When we use the term guarantee in the context of a federal statute like Medicaid, we mean a real guarantee, composed of three, interrelated components: definitions of 1) eligibility; 2) benefits, and 3) enforcement.

Eligibility

Let's begin with eligibility. The NGA plan sets out a number of current law groups that states must cover in their plan. However, problems remain in the NGA definition. First, it repeals the current law phase-in of Medicaid coverage for children ages 13-18 in families with income below the federal poverty level -- a bipartisan coverage expansion signed into law by President Bush.

In addition, the NGA resolution repeals the federal standard for defining disability and replaces it with 50 separate state definitions. This has the effect of making Medicaid coverage and benefits for those with disabilities uncertain and variable around the nation. For example, it would be possible for states to use restricted definitions of disability resulting in very limited coverage for populations whose service needs are pronounced and among the most costly. In such situations, we are concerned that narrow state definitions of disability could preclude individuals with HIV, certain physical disabilities, or mental illness, from receiving critically needed services under Medicaid. We should not turn back the clock on those with disabilities by permitting 50 different state definitions for purposes of Medicaid coverage.

It appears that the Governors have retained the linkage between cash assistance and eligibility for Medicaid. However, there are still some outstanding questions that require clarification, including how currently covered populations, like the welfare-to-work eligibles, will be covered after the enactment of welfare reform.

Benefits

Eligibility is only one component of the guarantee -- because the question is eligibility for what -- bringing us to benefits. The NGA resolution lists benefits that are characterized as "guaranteed for the guaranteed populations only." The resolution also says that all other benefits defined as optional under the current program would remain optional, and that there would be an additional set of long-term care options.

This new framework raises several unresolved questions. The first relates to the adequacy of the benefits. Current Medicaid law and regulations already give states substantial flexibility in defining the amount, duration, and scope of benefits, and states have used this flexibility to respond to their unique circumstances. This latitude is tempered by a very reasonable constraint -- benefits must be "sufficient to reasonably achieve their purpose". We have concerns that by specifying "complete" flexibility on amount, duration, and scope, the NGA proposal provides no standard against which to assess the reasonableness of a state's benefit plan. Without a standard, any federal "guarantee" is illusory. We believe the Governors understood this as they acknowledged in their testimony last week that the provision in their resolution on this issue has shortcomings that need to be addressed.

The NGA resolution also is silent on the current law standards of comparability and "statewideness" of services -- among and within eligible groups -- for mandatory as well as optional services. In the absence of further information about such provisions, there is no standard against which the "guaranteed" benefits and potential discrimination against certain groups or diseases can be assessed, and therefore we are concerned about the potential for discrimination against certain groups or diseases.

The NGA proposal also would limit the treatment portion of the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) program, so that states need not cover all Medicaid optional services for children. The NGA does not yet specify exactly how this

would be done, so it is difficult to assess the impact of the provision -- other than the certainty that some children would not receive treatments despite the clinical recommendations for those services arising from the EPSDT screening and diagnosis process.

Enforcement

The third essential component of the federal guarantee is enforcement. Implicit in the concept of defined populations and defined benefits is the notion of a meaningful enforcement mechanism. A federal cause of action for beneficiaries assures that those seeking a remedy for the deprivation of medical care receive the same due process rights everywhere in the United States. The NGA resolution requires states to provide a state right of action, but eliminates any federal right of action for individuals and providers who assert that a state is violating federal Medicaid laws. The only access to federal court for such claims would be the opportunity to petition the U.S. Supreme Court for review of a decision of a state's highest court.

The NGA provisions pose a number of serious questions and concerns. Under the proposal, we believe Medicaid would be the sole federal statute conferring benefits on individuals with no possibility of federal enforcement by its intended beneficiaries.

Review by federal courts also promotes efficiency. As a practical matter, common sense tells us that those aspects of the Medicaid program that are common to all states should

be subject to consistent interpretation and administration. When the same question arises across multiple jurisdictions, decision-making in the federal court system maximizes efficiency and predictability. This is particularly true when Medicaid interacts, as is often the case, with other federal statutes (such as Medicare, Social Security, SSI and AFDC). Federal courts are more experienced in analyzing these federal programs and are better able to understand and decide cases involving relationships among them. When courts are being asked to interpret statutory provisions that apply to all participating jurisdictions, we should not construct a system that will encourage different outcomes in different states.

Suits against states filed by providers over payment rates have caused the greatest problem to the states. Under the Administration's plan, the Boren Amendment and related provider payment provisions would be repealed, thereby eliminating these causes of action by providers. Thus, under the Administration's plan, state concerns about limiting their exposure to suit in federal court would be resolved largely.

On balance, when we assess the three components required to make any guarantee real -- the definitions of eligibility, benefits, and enforcement in the NGA resolution -- we continue to have concerns because the federal guarantee of Medicaid coverage and benefits does not appear to be real and enforceable for recipients.

Financing

The second key issue is the financing contained in the NGA resolution. The NGA

resolution would replace the current financing system with a combination of a fixed federal payment and a payment adjustment for unexpected increased enrollment. The Governors' financing mechanism has the potential to be creative and a workable formula that constrains growth without providing incentives to drop coverage. Their funding approach, which ensures Medicaid dollars increase with enrollment, represents a constructive addition to the debate. As the Governors have noted, however, these provisions must be fleshed-out in much greater detail before anyone can assess whether the financing actually flows based on changes in enrollment and the economy.

The NGA proposal also includes two changes in the state share of financing Medicaid. The minimum federal contribution to the financing of Medicaid would increase from 50 percent to 60 percent, and states' use of provider tax and donation financing mechanisms would once again be unconstrained.

While these proposals are appealing to many states, they raise significant concerns. Depending on the overall structure of the program and on state decisions about program spending, raising the minimum federal match rate from 50 percent to 60 percent either could result in significant increases in federal spending, or reductions in state contributions to Medicaid -- and in total Medicaid funding for health care. For example, an analysis of this provision by the Center on Budget and Policy Priorities indicated that if the seven-year federal funding reduction were \$85 billion and state matching requirements were reduced in the same manner as the congressional reconciliation bill, states could reduce state Medicaid

funding by as much as \$182 billion to \$214 billion over seven years. Under this scenario, the total federal and state seven year cut could total from \$241 billion to \$299 billion, and the funding cut could be between 19 percent and 26 percent in 2002.

Defining and revising the appropriate federal and state contributions and spending levels will always be one of the most difficult issues to settle in any Medicaid reform plan. There is no question that these matters merit careful attention in the long-term. However, given the enormous fiscal implications, the President's plan proposes to gain advice from an intergovernmental advisory commission on the appropriate federal and state funding before the Congress proceeds to change the current distribution.

The NGA plan would also permit unconstrained use of provider tax and donation financing approaches for the "state" share of Medicaid. These are the exact mechanisms that the Congress recently limited -- in the case of taxes -- or outlawed completely -- in the case of donations. During the late 1980s and early 1990s, many states took advantage of these funding approaches, costing the federal government billions of dollars and helping drive annual Medicaid spending growth rates up to well over 20 percent. The Congress wisely enacted limits on these mechanisms that remain appropriate today.

In addition, the NGA proposal treats American Indians and Alaska Natives (AI/ANs) in its category of "special grants" that includes "grants to certain states to cover illegal aliens

and to assist Indian Health Service and related facilities in the provision of health care to Native Americans". Native Americans have a unique status in that they have a government to government relationship with the United States that distinguishes them from other special populations. Based upon this legal status, they are entitled to benefits promised under federal treaties and trust responsibilities and to any benefits for which they are otherwise eligible as U.S. citizens. The NGA resolution regarding Indian Health services does not acknowledge this legal relationship, nor does it recognize the fact that American Indians possess dual citizenship. They are citizens of both the state and their tribe. The NGA resolution does not recognize the state government's responsibilities to American Indian citizens. We are concerned by policies which make the federal government the sole provider of health care to American Indians and Alaska Natives and abrogate the right of these citizens to participate in state funded services on the same basis as any other state citizen.

Finally, we all have to examine the NGA proposal and financing structure in the context of the effort by the President and the Congress to achieve a balanced budget in seven years. We do not yet know whether this plan will achieve the scoreable savings that are required under the President's balanced budget plan -- or under the congressional proposals. If it does not, it would have to be modified to produce savings. Otherwise, other portions of the budget would have to be revised to bring the budget into balance.

Protections for beneficiaries and taxpayers

The NGA resolution would repeal title XIX and create a new title for the Medicaid

program. This has the effect of seriously compromising the framework for quality standards, beneficiary and family financial protections, and program accountability.

The NGA resolution is silent in many areas. In other areas where the resolution is specific, some long-standing protections would be reduced or eliminated. For example, the NGA resolution eliminates the federal role in monitoring nursing home quality assurance. Yet without federal monitoring and enforcement of state and facility compliance, the bipartisan uniform quality standards established by the Omnibus Budget Reconciliation Act of 1987 could be undermined significantly.

The NGA resolution makes no mention of quality assurance requirements or monitoring responsibilities for Medicaid managed care. This is a particularly important area since Medicaid managed care enrollment is increasing so dramatically -- about one-third of beneficiaries are now in managed care, a 140 percent increase in enrollment over the past three years. The President's plan recognizes the need for updating managed care quality standards. It repeals some outdated approaches and requires states to establish a quality improvement program that must include developing appropriate standards for Medicaid-contracting health plans and using data analysis to track utilization and managed care outcomes.

Finally, the NGA resolution does not clearly address beneficiary and family financial protections such as spousal impoverishment and family responsibility protections that have

been central to the Medicaid program for some time. The NGA resolution also does not address the imposition of co-payments and other cost sharing for Medicaid beneficiaries. Further clarification in all of these areas is needed, because these are central elements of the financial security that Medicaid provides today for beneficiaries and their families.

Conclusion

Let me conclude by focusing on one fundamental structural issue -- whether we approach the task of Medicaid reform by making changes in the current title XIX of the Social Security Act, or by repealing that program and replacing it with a new title. We support reform, not repeal, of Title XIX. The potential unintended consequences of repealing and replacing this program are staggering -- for states, beneficiaries, providers, and the federal government, especially when you consider that it would reopen thirty years of settled litigation. The Congress can address many of the most pressing concerns about any Medicaid reform plan by amending the current law.

From the beginning of the current Medicaid debate, the President has maintained that Medicaid must be financed through a federal-state partnership that ensures federal funding and provides a real, enforceable guarantee of coverage for a defined package of health and long-term care benefits. The President's plan proposes unprecedented new flexibility for the states in how to operate their programs, pay providers, and use managed care and other delivery arrangements, while retaining and revising key standards related to quality and beneficiary financial protections. The President's proposal would achieve those objectives in

a way that would also help contribute to a balanced budget by 2002. We believe that the NGA resolution has made a significant contribution to our mutual efforts to reform the Medicaid program. We look forward to working with the Governors, Members of Congress, consumer groups, health care providers, and other interested parties in the near future on this important issue.

WELFARE REFORM

Now I would like to turn to welfare reform. Let me start by reiterating some points the President made in his State of the Union address. Welfare caseloads have declined by 1.4 million since March of 1994 -- a decline of 10 percent. A larger percentage of those still on the rolls are engaged in work and related activities. Fewer children live in poverty. Food stamp rolls have gone down. Teen pregnancy rates have gone down. At the same time, child support collections have gone up, as the Administration has improved state collection efforts, the IRS's seizure of income tax refunds, and the ability of the federal government to make federal employees accountable for the support they owe their children.

Over the last three years, we have worked with governors and elected officials to give 37 states the flexibility to design welfare reform strategies that meet their specific needs. This Administration has encouraged states to find innovative ways to move people from welfare to work and to promote parental responsibility, and these efforts already are making a difference for more than 10 million recipients throughout the country. States, led by Governors of both parties, now are demanding work; time-limiting assistance; requiring teens

to stay in school and live at home; and strengthening child support enforcement.

President Clinton also has worked with the Congress to expand dramatically the Earned Income Tax Credit to make work pay over welfare. This program, which President Reagan said was the most pro-family, pro-work initiative undertaken by the United States in the last generation, meant that, in 1994, families with children with incomes under \$28,000 paid about \$1,300 less in income tax than they would have if the laws hadn't been changed in 1993.

Yet, as the President said in January, we should take advantage of bipartisan consensus on time limits, work requirements, and child support enforcement to enact national welfare reform legislation. The President has consistently called for bipartisan welfare reform and the Administration applauds the way Republicans and Democrats came together to put forth the NGA recommendations. As you may recall, the President started us down this road when he brought together a bipartisan group of congressional leaders, Governors, and federal and local officials to discuss welfare reform at the Blair House last year.

We all want welfare reform that promotes work, requires responsibility, and protects children. Real welfare reform is first and foremost about work: requiring recipients to make the transition into the work force as quickly as possible and giving them the tools they need to enter and succeed in the labor market. This will require a change in the culture of welfare offices so that every action provides support and encouragement for the transition to work.

The President, as part of his balanced budget plan, has proposed a balanced approach to welfare reform that achieves these goals. It replaces welfare with a new, time-limited, conditional entitlement in return for work and gives states new flexibility to design their own approaches to welfare reform. Within two years, parents must go to work or lose their benefits, and after five years, benefits end. The plan provides vouchers for children whose parents reach the time limit, and protects States in the event of economic downturns or population growth. It also has tough child support enforcement measures and preserves the national commitment to nutrition assistance, foster care, and adoption assistance, preserving states' ability to respond to growing caseloads.

The Administration will continue to judge legislation adopted by the Congress on the basis of whether it promotes work, responsibility, and family, and protects children. And, following the example of the NGA and the Senate last fall, we strongly hope for legislation that will be endorsed by a majority of Democrats and Republicans in both chambers of Congress.

The NGA proposal makes numerous modifications to the conference welfare bill -- many of which, if adopted by the Congress, would be improvements. Some of NGA's recommendations fall short and should be improved.

On the positive side, the NGA proposal reflects an understanding of the child care resources states will need in implementing welfare reform. By adding \$4 billion for child

care above the level in the conference report for H.R. 4, the NGA proposal acknowledges that single parents can only find and keep jobs if their children are cared for safely. The additional investment is essential to ensure that child care resources are available for those required to move from welfare to work and -- equally important -- to ensure that child care is available for low income working families at-risk of welfare dependency. We are troubled, however, that the NGA proposal fails to include Senate provisions for ensuring safe and healthy child care, and that the increased federal spending does not require a state match.

By adding \$1 billion to the H.R. 4 contingency fund and allowing states to draw funds if poverty rises, the NGA proposal properly recognizes that states may experience unexpected changes in population or downturns in their economy. In the event of a national economic downturn, however, even a \$2 billion contingency fund might be exhausted quite rapidly. During the last recession, for example, total AFDC benefit payments rose from \$17.2 billion in 1989 to \$21.9 billion in 1992, a \$4.7 billion increase over the base year in one year alone. A provision should be added to the bill allowing states to draw down matching dollars during a national recession even if the \$2 billion in the contingency fund has been expended. We also believe the trigger mechanism should be improved to ensure greater responsiveness to the states' need for additional resources.

The NGA proposal also would eliminate the requirement in the Senate bill that states meet their full 1994 level of effort in order to be eligible for the contingency fund. The removal of this requirement would allow a state to draw down additional federal dollars

while actually reducing its own contribution to the family assistance program. It is difficult to understand why a state in need of contingency fund dollars to meet the demand for assistance would simultaneously be allowed to cut its own spending on poor families below the 1994 level. We support restoring the contingency fund maintenance of effort provision contained in H.R. 4.

The NGA proposal also properly recognizes the importance of child support enforcement to welfare reform. Last year, the President insisted that welfare reform include the toughest child support enforcement reforms in this country's history. Since then, Republicans and Democrats have worked together in a bipartisan spirit and included all of the major proposals for child support enforcement reform that the President requested: streamlined paternity establishment, new hire reporting, uniform interstate child support laws, computerized statewide collections, and drivers license revocation. We applaud the efforts of the NGA and the members of this Committee for their hard work on the child support enforcement provisions. It has been bipartisanship at its best.

On Food Stamps, the NGA proposal makes two important improvements to the H.R. 4 conference bill. First, it does not impose a funding cap on the Food Stamp program as the conference bill did. A cap on Food Stamp spending would jeopardize the ability of the Food Stamp program to get food to people who need it. Second, the NGA proposal protects families with relatively high shelter costs -- mostly families with children -- by adopting the

Senate's approach to the program's deductions from income.

The NGA proposal also makes substantial improvements to the performance bonus provisions in the conference agreement by establishing a separate funding stream to pay for bonuses -- rather than allowing states to reduce their maintenance of effort. It makes modifications to the work requirements to make them more feasible and less costly for states to meet. In particular, the Administration is very supportive of provisions that allow part-time work for mothers with pre-school age children and that reduce the maximum number of hours per week from 35 to 25.

The Governors' proposal also is noteworthy because it limits proposed cuts to the Earned Income Tax Credit. We cannot be serious about welfare reform if we cripple the primary work incentive for low-income parents. Along with child care and health coverage, the EITC is vital to helping people move from welfare to work.

Finally, the Administration is supportive of several provisions that the NGA adopted from the Senate-passed bill -- a 20 percent caseload exemption from the time limit for battered women, women with disabilities and others who may need a hardship exemption; a state option to implement a family cap; and requirements that teen mothers live at home and stay in school.

The Federal-State Partnership

While the NGA proposal improves on the conference bill in a number of ways, the Administration has serious concerns about several provisions. While it is critical that states have the flexibility to design programs to meet their specific needs, it is equally essential that the federal government ensure accountability in the use of tax dollars and make certain the safety net for poor children is maintained. The federal-state match system under current law always has been the "glue" that holds this partnership together and was part of the welfare reform plan the Administration proposed as part of its balanced budget plan.

A serious concern about the NGA proposal generally is that the federal-state partnership is severely weakened. As I have already mentioned, the Administration prefers the provision in the Senate bill that requires 80 percent maintenance of effort of the 1994 level, and a requirement for a 100 percent maintenance of effort for access to the contingency fund. We also oppose the NGA provision allowing a state to transfer up to 30 percent of its cash assistance block to other programs such as Title XX, the Social Services Block Grant. Since most states spend considerable state dollars on social services, this transfer effectively permits substitution of federal dollars for state dollars.

The problem is exacerbated in the Governors' proposal by the fact that the additional \$4 billion in child care funds requires neither a state match nor even maintenance of the FY 1994 level of state effort on child care.

In total, these provisions imply that states could, by law, reduce their spending substantially under the MOE and transfer provisions while federal spending on AFDC and child care programs would continue. One analysis presented before the House Ways and Means Committee by the Center on Budget and Policy Priorities last week argued that states could hypothetically reduce spending by more than \$50 billion over the next seven years if they reduced spending to 75 percent of their current effort and transferred 30 percent of cash block grant funds to other activities. Most states would not reduce spending this dramatically, but there is no reason why states should be allowed to reduce spending while Federal support continues at roughly current levels.

Finally, the NGA proposal needs to provide greater accountability for taxpayer dollars and stronger protections against worker displacement. Provisions should be added that provide for accountability in state plan implementation and require a program specific audit within federal guidelines.

Protections for Children

The NGA proposal also contains several provisions that threaten the safety net for poor children. Federal and state child protection programs provide an essential safety net for the nation's abused, neglected and adopted children, and children in foster care. As we embark upon bold new welfare reform initiatives, it is critical to maintain a strong child protection system for these extremely vulnerable children. Unlike the Senate's bipartisan approach to child protection, the NGA proposal jeopardizes this essential safety net by

allowing states to replace with block grants current entitlements for adoption, foster care, independent living and family preservation. With disturbingly uneven state performance in this area, it also is troubling that the NGA's proposed redesign of the nation's child protection system fails to include a mechanism to enforce protections vital for the lives and well-being of abused and neglected children. The NGA proposal also would block grant important programs focused on prevention of child abuse and neglect. If the system includes no targeted prevention funding, crisis-driven decision-making may deplete resources for prevention.

Food Stamps and Child Nutrition. On behalf of the Secretary of Agriculture, I'd like to discuss a few issues relating to the nutrition programs. While the NGA agreement does include some improvements to the conference report's provisions on Food Stamps, the NGA proposal did not go as far as it should, and serious concerns remain.

- The NGA proposal continues to provide a state option for a Food Stamp block grant. The nutrition and health of millions of children, working families, and elderly could be jeopardized if many states took advantage of this option, as they might under the terms contained in the proposal. Although the Administration is committed to simplification and increased flexibility in the Food Stamp program, we are strongly opposed to a Food Stamp block grant.
- In addition, the NGA proposal continues the proposed Simplified Program to

households which receive both Food Stamps and AFDC. While the Administration supports a Simplified Program and has developed its own proposal, the NGA proposal undermines national standards that work and creates a hidden cost for states.

- The NGA proposal severely time limits Food Stamp receipt for many unemployed adults. Anyone who is not willing to work should be removed from the program. But those who are willing to work should have the opportunity and the support necessary to put them to work. Many who are willing to work could lose their Food Stamps because states are unwilling or unable to provide sufficient work and training opportunities. Without resources to provide work opportunities, states could face the burden of caring for thousands of people who have lost nutrition assistance.
- The NGA proposal retains the conference bill's provision for school nutrition block grant demonstrations. The block grant demonstrations would undermine the program's ability to respond automatically to economic changes and to maintain national nutrition standards.

Guarantees of fair and equitable treatment. The NGA proposal does contain a requirement that states set forth and commit themselves to objective criteria for the delivery of benefits and fair and equitable treatment. This is an improvement over the conference bill, which contained no guarantees that states would commit to objective eligibility and other criteria and promptly and equitably serve those who met them. To ensure that applicants and

recipients are not subject to arbitrary treatment -- for example, being placed on waiting lists -
- state plans should be explicit, contain certain elements, and bind the states to their commitments. Among those commitments should be applications, eligibility and sanctions criteria, and procedures and time frames for decisions. Moreover, statewideness and equity across families in each state must be the goal. Applicants and beneficiaries should be told the reasons for decisions on their rates. Mistakes in the administration of the program should be correctable. Once these objectives are met, applicants, recipients and other taxpayers in each state will understand the benefits and concomitant responsibilities under their state plans.

Restrictions On Benefits To Immigrants

The recent NGA proposal does not address the immigrant provisions included in the H.R. 4 welfare reform conference bill. That bill would have banned most legal immigrants, including the disabled, the elderly, and children, from receiving means-tested benefits. It also would have excluded illegal aliens from all child nutrition benefits, creating an unprecedented local administrative burden and ultimately denying benefits to millions of eligible children. This provision alone would require all 45 million students enrolled in participating schools to document their citizenship to participate in the federally-supported school lunch program, placing an enormous administrative burden on local school systems.

The Administration opposes deep and unfair cuts in benefits to legal immigrants.

Instead, the Administration strongly supports strengthening and enforcing sponsor responsibility for immigrants, by extending deeming provisions until citizenship. It is particularly important to note that the NGA, in its letter to the welfare conferees dated October 10, 1995, specifically *supported* the deeming approach of the Administration and *opposed* the banning provisions in H.R. 4. We are deeply concerned that the legal immigrant provisions of H.R. 4 will represent an enormous cost shift to certain states, as well as to federal taxpayers, leaving state and local governments solely responsible for assistance to legal immigrants.

In short, the NGA welfare proposal represents an important bipartisan step forward in enhancing the ability of the states to reform welfare by promoting work, encouraging parental responsibility and protecting children. It needs to be improved in important ways. We look forward to working in a bipartisan way to build on the improvements that have been made and to achieve welfare reform of which we can all be proud.

In conclusion, Mr. Chairman, let me restate the Administration's commitment to enact both a balanced budget and Medicaid and welfare reform legislation. As the President has said, budget cutting shouldn't be wrapped in a cloak of reform. Let's pass needed Medicaid and welfare reforms. Let's cut the deficit. But let's not mix up the two and pretend that one is the other.

I know the President shares my hope that with the leadership of this committee, the same level of bipartisan cooperation will exist again on the critical issues of Medicaid and welfare reform.

Because when we are all long gone and the history books of this period have been written, what will they say about our role in this great debate?

Did we give the American people a government that honors their values and spends their money wisely?

Did we balance the budget and shift responsibility away from Washington without breaking our historic promises of health care to seniors, children, and people with disabilities?

Did we enact real welfare reform -- not by punishing innocent children, but by encouraging work and responsibility?

Did we give our citizens the tools they need to be both good parents and good workers?

Did we move forward on common ground with a common vision?

Quite simply, did we do the right thing?

That is the challenge facing this Administration, this Committee, and this Congress.
And, that is the challenge we must meet together.

Again, I want to thank this Committee for giving me the opportunity to testify today
and I look forward to answering your questions.

QUESTIONS & ANSWERS

STATE OF TEXAS
DEPARTMENT OF HEALTH
MEDICAID

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SPOUSAL PROTECTION

QUESTION:

Under the NGA plan, would states be required, as they are under the current Medicaid program, to protect income and resources for spouses of those who are institutionalized?

ANSWER:

- ▶ The NGA proposal is silent on this point. There is no provision regarding this important current law protection for the spouses of those who are institutionalized. We understand that the NGA may be dealing with this issue.
- ▶ Under the President's plan, we continue these vital protections which prevent these spouses from having to draw down their income and assets too far and sell their homes to pay for the care of their husbands and wives in nursing homes. Without these protections, these spouses face a real risk of poverty and hopelessness. In addition, the President is committed to prohibiting nursing home practices that place unfair financial burdens on the families of those in nursing homes. For example, the President's plan would continue to prohibit nursing homes from denying admission based on financial status, charging payments as condition of admission or continued stay, and imposing copayments or balance billing for Medicaid-covered services.
- ▶ If the NGA proposal leaves out such critical protections, this would be a serious weakness in the NGA plan.

FAMILY RESPONSIBILITY

QUESTION:

As you read the NGA plan, would adult children be required to provide financial support to cover some or all of the costs of their parent's medical and especially long-term care expenses?

ANSWER:

- ▶ The NGA proposal is also silent on this issue. However, the Administration will continue to insist that the adult children of sick parents not be forced to pay their parents' medical bills or nursing home expenses. Unfortunately, having sick or ailing parents is a fact of life everyone must eventually face. But if you find yourself in this difficult situation, you should not be forced to decide between a college education for your children and medical care for your parents. But without the current law protections that prevent people from having to pay for their parents' medical care, this is a very real and frightening decision people may face. The Administration is committed to ensuring that people never have to make such a decision.
- ▶ We are concerned that the NGA plan does not specifically protect the adult children of ailing parents. Such protections must remain part of Medicaid.

WELFARE/MEDICAID ELIGIBILITY

QUESTION:

Would new eligibility standards for State cash assistance programs under welfare reform be likely to lead to changes in Medicaid eligibility? Which groups would be most likely to lose Medicaid coverage?

ANSWER:

- ▶ Under the NGA proposal, States may choose between offering Medicaid to all persons who qualify for AFDC under current standards, or to those who qualify under the standards for the new systems which States will create under welfare block grants. If States choose to use the new standards, and if these eligibility standards are tighter than those currently in place, then eligibility for Medicaid will be tightened simultaneously.
- ▶ Some persons who could lose their welfare eligibility will still be guaranteed Medicaid eligibility under the NGA plan. These are:
 - pregnant women up to 133% of poverty
 - children to age 6 up to 133% of poverty
 - children ages 6 to 12 up to 100% of poverty.
- ▶ However, there are other groups who could be dropped from welfare and who would not be guaranteed eligibility for Medicaid through other means. These include:
 - children over age 12 living in poor families
 - female parents living in poverty who are not pregnant.
- ▶ Millions of poor women and children fall into these last two categories, and thus are at risk of losing their Medicaid coverage under the NGA plan.

BACKGROUND:

- ▶ CBO has predicted that States could use their new welfare systems to expand eligibility, and possibly provide a smaller benefit to the newly eligible populations. Under this scenario, the number of persons eligible for Medicaid would increase, thus increasing Federal costs.

TRANSITION: MEDICAID TO WORK

QUESTION:

Does the NGA plan require that Medicaid be provided to individuals who are transitioning from cash assistance to work? If so, who would be covered and how?

ANSWER:

- ▶ The NGA plan is silent on this issue. While it states that States may link Medicaid eligibility to eligibility for their new welfare systems, it does not specifically address the transition issue.

BACKGROUND:

- ▶ Under current law, individuals who are transitioning off AFDC to work are guaranteed eligibility for Medicaid for one year.

NGA PROPOSAL: DISABILITY DEFINITION

QUESTION:

The NGA plan guarantees coverage for persons with disabilities, but allows States to define "disabled". What is the Administration's position on this provision?

ANSWER:

- ▶ The Administration believes that the current minimum Federal standards for defining disability should remain in place. Otherwise millions of disabled Medicaid recipients and their families are put at risk. This policy would ensure that there would be a national "floor" on the definition of disabled, thereby ensuring that the most vulnerable disabled populations are protected throughout the country.
- ▶ Without a minimum Federal standard, there could be a great variation in coverage across States, and some particularly vulnerable populations could lose their coverage in some States.
- ▶ States could also use this rule to expand eligibility and possibly provide a smaller benefit to the newly eligible populations. Under this scenario, the number of persons eligible for Medicaid would increase, thus increasing federal costs.

BACKGROUND:

- ▶ The Administration has proposed a change in the federal definition of disability (for Medicaid and SSI) to restrict eligibility base on substance abuse.

UNFUNDED MANDATE?

QUESTION:

The Governors's plan will help states control Medicaid costs while protecting the most vulnerable populations. On the other hand, the Administration's plan is an unfunded mandate on the states. Wouldn't you agree that the Governors' plan helps states stabilize their costs while your plan shifts costs to the states?

ANSWER:

- ▶ With all due respect, Senator, I think you have it backwards. It is the President's plan that maintains the true partnership that has existed for thirty years between the federal government and states. It is the President's plan that is based on a funding formula that protects states from fluctuations in enrollment including those due to economic downturns or demographic changes. It is the President's plan that does not shift costs to the states.

STATE FLEXIBILITY

QUESTION:

The Administration claims it is providing maximum flexibility to the states, but yet you are up here demanding that states continue to cover the same groups with the same benefit package and keep many of the same overly burdensome regulations. Why is it you think you can have it both ways?

ANSWER:

- ▶ The Administration's plan does retain the commitment - backed by adequate financing - of Medicaid coverage for health and long-term care services for its beneficiaries. And, we provide unprecedented new flexibility to states in how to deliver these benefits.
 - Flexibility for managed care without waivers
 - Flexibility to use home and community-based services without waivers
 - Flexibility to get provider payment rates without regard to the Boren Amendment

- ▶ Flexibility for the states should not mean that there are no minimum federal guarantees for Medicaid beneficiaries. States should have maximum flexibility to achieve program efficiencies, but that does not mean that they should not be accountable to the standards set by Congress who provides the Federal dollars for them.

COVERAGE LOSS

QUESTION:

Is there anything in the NGA proposal that would assure that the number of people covered under Medicaid will not decline, relative to current levels?

ANSWER:

- ▶ There is nothing in the NGA plan which assures that coverage will not decline. While the plan does "guarantee coverage" to specified groups of individuals, millions of individuals who are currently eligible could lose their eligibility under the NGA plan. These include:
 - persons with disabilities who do not meet their State's new definition of "disabled"
 - children between ages 13 and 18 in families below 100% of poverty (note, these children are not currently covered, but the law requiring their coverage is being phased in.)
 - some persons who currently qualify for welfare but who would not qualify under States' new systems.

FEDERAL RIGHTS OF ACTION

QUESTION:

Why is the Administration insisting that individuals be allowed to bring suits about Medicaid benefits and eligibility in federal court? Isn't it OK to deal with these issues in state court as the NGA has proposed?

ANSWER:

- ▶ The historic purpose of the Medicaid program is to provide health care benefits to America's most needy citizens. Medicaid was created by the Congress as a federal-state program of basic minimum requirements and shared responsibility for funding. The federal share of Medicaid financing is over \$100 billion per year. The ability of all Americans to receive needed health care benefits is currently protected by the federal courts so that individuals in this program receive the same due process rights everywhere in the United States. Simply put, in order for American citizens to be able to receive health care services to which they are entitled, there must be a mechanism to enforce the provisions enacted by Congress. Anything less than a remedy in federal court would not guarantee uniform access to intended benefits.
- ▶ The NGA resolution would require that states provide a state right of action for individuals. There are a number of reasons why that approach is not acceptable.
 - Medicaid would be to my knowledge the only federal statute without a possibility of federal enforcement for those seeking remedy for non-provision of services. For example, all other programs created under Federal statutes -- ranging from Social Security to subsidies for beehive farmers -- would be enforceable, but Medicaid would not. This denies our poorest citizens the rights the rest of us enjoy - the right to hold providers accountable for inadequate and careless care.
 - Elements of Medicaid that are common to all states should be decided in ways that assure consistency in interpretation--including situations where Medicaid interacts with other programs such as Social Security or Medicare.

- Most of the suits filed against states have been by providers about payment rates. The Administration's plan would repeal the Boren amendment, thus eliminating cause for such action. As a result additional revision in this area appears to be unnecessary.

BACKGROUND:

- ▶ At last week's hearing, Senator Hatch raised concerns about the constitutionality of the NGA's proposal on right of action. The Department of Justice is looking into this question. If he asks, you can promise to get back to him with DOJ's answer.

STATE GROWTH RATES

QUESTION:

Shouldn't States with lower costs receive higher growth rates than higher-cost States?

ANSWER:

- ▶ While the Administration's plan provides the same per capita growth rates to all States, the President believes that the possibility of using variable growth rates should be examined carefully. This is because at present there are wide variations in how much States spend on each Medicaid beneficiary, and providing the same growth rate to all States will lock these variations into place permanently. Accordingly, he has proposed a Commission to study whether variable growth rates are appropriate, and to develop a methodology for setting them. This Commission would consist of representatives from State Medicaid agencies, consumers, and providers.

BACKGROUND:

- ▶ In addition, the President's Medicaid plan includes special funding to assist States with the transition to the new Medicaid system. These funds could potentially be used to assist lower-cost States.

MEDICAID AND COMPARABILITY

QUESTION:

You've stressed the importance of something called "comparability". Why is comparability so important and what does NGA plan say about it?

ANSWER:

- ▶ Comparability is critical: it means that all categorically eligible Medicaid recipients in a state must receive the same benefit package. Comparability represents a fundamental principle: no individual or group of people with a particular disease or disability should be singled out and given a reduced package of benefits. This principle prevents categorically eligible people with expensive diseases or disabilities from being discriminated against. For example, without comparability requirements, people who are HIV positive could be given reduced benefits that deny them urgently needed care. Alternatively states could provide richer benefits to politically favored groups.
- ▶ Unfortunately, the NGA plan would permit such discrimination based on diagnosis because the NGA plan does not uphold the principle of comparability. We think this is a central weakness of their approach.

BACKGROUND:

- ▶ Under current law, categorically eligible recipients must all receive the same benefits package. However, medically needy recipients may receive fewer benefits than the categorically eligible. In addition, different groups of medically needy eligibles may receive different benefit packages. For example, a medically needy child can receive a different benefit package than a medically needy elderly person. But all medically needy children must get the same package and all medically needy elderly must get the same package.

COMPARABILITY

QUESTION:

If the Administration does not support comparability across states, why do you insist on comparability within states?

ANSWER:

- ▶ The Administration has strongly supported continuing federal standards that provide a real guarantee of coverage of defined benefits in every state. As under current law, there can be variations, but the mandatory populations -- kids, pregnant women, cash recipients, those with disabilities, and seniors -- are guaranteed certain benefits.
- ▶ Within an individual state there is wide latitude to determine which optional benefits to provide. However, once a state decides to cover an optional benefit, it must make that benefit available to all Medicaid residents within a state, without regard to medical diagnosis and without regard to place of residence. If there is no minimum defined benefit package available to all Medicaid recipients, we believe that the risk of discrimination against beneficiaries with expensive diseases, like HIV, becomes too great to warrant removing the comparability requirement from Medicaid. The principle is really one of basic fairness: citizens within one state should be entitled to the same benefits, regardless of what illness they may have or where they may live.

MEDICAID AND STATEWIDENESS

QUESTION:

You've stressed the importance of something called "statewideness". Why is statewideness so important and what does NGA plan say about it?

ANSWER:

- ▶ Statewideness says all categorically eligible recipients within a state must receive the same benefits package, regardless of what geographic region they live in. Simply stated, a child in a rural area deserves the same benefits package as a child in an urban area. Without a statewideness requirement, kids in some regions of a state could receive reduced benefits packages. In addition, without statewideness, the Medicaid program could devolve to the county level, where wealthier counties could afford generous Medicaid benefits, while the poor counties, who have the greatest need for Medicaid, may only offer sparse benefits. This raises real equity concerns. We believe Medicaid recipients should not be discriminated on the basis of residence within a given state.
- ▶ The NGA plan appears to allow such discrimination based on geographic region because the NGA plan would remove the current law statewideness requirement. This is another crucial weakness in the NGA approach.

BACKGROUND:

- ▶ Governor Engler argued on February 22, that statewideness should not apply because the Upper Peninsula doesn't have the sophisticated hospital system that Detroit has. If this concern is cited, you can remind the committee that statewideness refers to benefits, not available delivery systems.

TREATMENT OF WAIVER STATES

QUESTION:

Does the NGA plan have any special treatment for states with innovative 1115 waivers?

ANSWER:

- ▶ The NGA plan does not make mention of states with 1115 demonstrations.

BACKGROUND:

- ▶ There are now fourteen (DE, DC, HI, MN, OK, OR, RI, TN, VT, FL, KY, MA, OH, AZ) approved 1115 Medicaid demonstrations. In the Administration proposal, states may continue their waivers. However, states with such waivers would be subject to the same per capita growth rates as all other states. The resulting limits may be significantly lower than the limits these states have agreed to under their demonstration agreement.

TREATMENT OF "WAXMAN KIDS"**QUESTION:**

How does the NGA plan treat "Waxman kids"?

ANSWER:

- ▶ The NGA plan would stop the phase-in of coverage for "Waxman kids" at its 1996 level, which is age 12. This means that children between ages 13 and 18 in families with incomes below 100% of poverty will not eligible for medicaid coverage.
- ▶ This also means that children who are now covered will lose Medicaid eligibility one they turn thirteen.

CHOICE OF PLANS

QUESTION:

Do you believe that individuals will be guaranteed a choice of health plan or provider under the NGA Agreement?

ANSWER:

- ▶ The NGA did not make any commitment about guaranteeing Medicaid beneficiaries a choice of health plan or health provider. While I cannot speculate about the NGA's intent, I can tell you that this Administration believes that choice of plan or provider provides an important quality protection for beneficiaries.
- ▶ As long as choice of plan or provider is guaranteed, Medicaid enrollees will not be forced into substandard health care. The Administration's Medicaid proposal upholds this important principle by ensuring that all Medicaid beneficiaries may choose between at least two health plans or, in rural areas, between providers within a single plan.

TAXES AND DONATIONS

QUESTION:

Why shouldn't States be allowed to use tax and donation programs to generate State dollars for the Medicaid program? Why should the Federal government care how States come up with their funding for Medicaid services?

ANSWER:

- ▶ The Congress passed the 1991 law restricting provider taxes and outlawing the use of provider donations for good reason -- these providers financing mechanisms were essentially a raid on the Federal treasury. During the late 1980s and early 1990s, these programs drove federal Medicaid's spending growth rates to well over twenty percent. The Department of Health and Human Services led by the Inspector General, was very alarmed by these financing methods and the Congress acted, and acted appropriately. Since these programs have been controlled, Medicaid spending has returned to its historical growth patterns -- eight percent in 1995.
- ▶ Repealing the 1991 taxes and donations law would allow States to reinstate these schemes that reduce the "real" dollars that they contribute to the Medicaid program and shift costs back to the Federal government. The State/Federal financial partnership, that is the heart of the Medicaid program, would therefore be seriously undermined. This could have a serious impact on our ability to achieve the necessary savings from Medicaid to balance the budget in seven years.

FEDERALLY QUALIFIED HEALTH CENTERS**QUESTION:**

Federally qualified health centers provide an important safety net for the most vulnerable populations in both urban and rural areas. Does the Governors' proposal include a provision that ensures the viability of this delivery system?

ANSWER:

- ▶ The Governors' proposal does not appear to protect FQHCs and RHCs or their patients. This is a serious concern for this Administration, because we know that these safety-net providers serve as a medical home to many of our beneficiaries. To ensure that these providers can navigate smoothly through a reformed Medicaid program, the President's plan has established new transition grants for FQHCs and RHCs. A payment pool of \$500 million a year will help FQHCs and RHCs develop the systems, networks and financial capacity to prosper within the new Medicaid program.

QUALITY

QUESTION:

Why do you assert that the NGA proposal would threaten quality of care for Medicaid beneficiaries?

ANSWER:

- ▶ The NGA agreement does not even mention quality assurance requirements or monitoring responsibilities for Medicaid managed care plans. We cannot be sure that this proposal includes any provision to ensure that Medicaid enrollees receive high-quality health care, or to protect them from low-quality health plans.
- ▶ We believe that quality assurance cannot be ignored. Nearly one-third of all Medicaid beneficiaries belong to managed care plans -- and most of these individuals are enrolled in managed care because their State requires them to do so. We believe that Medicaid beneficiaries and Federal tax payers deserve complete assurance that these plans deliver the high-quality services they are paid to provide.
- ▶ The President's plan replaces out-dated approaches to managed care quality assurance and ensure that States take an active role in ensuring quality by requiring States to develop their own quality improvement and monitoring programs. Our proposal also requires health plans to meet certain minimum requirements -- such as the provider capacity they need to meet the needs of their enrollees.

MEDICAID PAYMENTS FOR MEDICARE COST-SHARING

QUESTION:

Do you believe that the NGA proposal retains current law eligibility and coverage for Medicare cost-sharing?

ANSWER:

- ▶ I understand that the Governors have modified their agreement to specify that Medicare cost-sharing coverage remains unchanged. This is extremely important to the Administration, because we are committed to ensuring that the Medicaid program continues to cover low-income, elderly individuals for these expenses. Medicaid coverage of Medicare premium and cost-sharing expenses makes the Medicare program work for many low-income beneficiaries.
- ▶ Retaining this coverage for Medicare beneficiaries is a fundamental principle for this Administration. In our proposal, we left this benefit untouched and excluded these costs from the per capita limitation on Federal Medicaid payments.

AMOUNT, DURATION AND SCOPE

QUESTION:

The NGA Agreement gives States "complete flexibility" on the amount, duration and scope of covered services. Does the Administration agree with this approach?

ANSWER:

- ▶ First, I understand that, in hearings before the Commerce Committee last week, the Governors stated that their position on amount, duration and scope of covered services may be revised.
- ▶ I believe that current law and corresponding regulations provide States with substantial flexibility to define covered benefits. States may circumscribe the amount, duration and scope of a covered service, as long as these limitations do not render these benefits meaningless. Benefits must be sufficiently generous to "reasonably achieve" the purpose of the service.
- ▶ This reasonableness standard has protected Medicaid beneficiaries in the past.
 - For example, one State recently requested to limit a variety of services -- such as physician visits, podiatrist visits and other providers -- to a combined total of 12 visits per year.
 - In another instance, a State proposed to not cover home health services under certain circumstances. In response, HHS and the State agree to new utilization control rules for home health services, rather than a benefit limitation.
 - Similarly, we are able to ensure that limitations on amount, duration and scope do not endanger children who require medically necessary services.

MEDICAID COST SHARING

QUESTION:

The NGA proposal does not address cost sharing. Should there be any federal standards to limit the amounts or other conditions for beneficiary cost-sharing? What's wrong with having cost sharing requirements like most private health insurance plans?

ANSWER:

- ▶ As you know, current Medicaid law and regulations limit the amounts and other conditions applicable to beneficiary cost sharing. This assures that vulnerable people can actually receive the health care we have promised.
- ▶ The RAND Health Insurance Experiment is the best source of data on the impact of cost sharing on low-income people. It found that cost sharing deterred people from seeking all types of health care, even potentially effective treatments and appropriate hospitalization. These effects were especially problematic for lower-income people in poor health.
- ▶ I do not believe it is fair to compare Medicaid with private health insurance. If you obtain your health insurance through your employer -- the Federal government -- then you probably are far better protected from financial risk than Medicaid beneficiaries.
 - Of the ten fee-for-service plans available to all Federal employees, plus the BACE plan available only to Members of Congress and their staff, all have a "catastrophic" or out-of-pocket limit on the deductibles, coinsurance, and copayments you would pay in a year, which range from \$1,000 to \$4,000 per year for a family or between 0.7 and 3.0 percent of a Congressional salary of approximately \$134,000.
 - However, no out-of-pocket limit is required in Medicaid. While Medicaid cost sharing is limited to "nominal" amounts, it can add up to a level that becomes catastrophic.

- States have authority now under our regulations to adopt a “cumulative maximum” for deductibles, coinsurance, and copayments a family must pay, but most do not use it.
- Further, even a nominal copayment for a poor person may be more burdensome than a standard copayment is to a middle-income person. In fact, cost sharing imposed on Medicaid beneficiaries is likely to comprise a much larger percentage of income than cost sharing for the average middle class American.

NEW MEDICAID TITLE

QUESTION:

Medicaid is bankrupting State and Federal treasuries with complex and costly mandates. What is needed is a major overhaul, not just tinkering around the edges. In my view, we should throw out Title XIX and write a new, streamlined, simplified Title. In your testimony, you indicate that the Administration strongly opposes this approach. Why?

ANSWER:

- Changes to the Medicaid law should not attempt to fix what is not broken. Repealing title XIX could have a number of unanticipated consequences that only complicate reform efforts.
 - **Increased litigation** -- Using a new title could result in new litigation that would be contentious and costly, even where Congress expressed a general intent to continue parts of the program as under current law.
 - **Loss of Protection for beneficiaries, providers, and States** -- Revision (rather than replacement) of title XIX could avoid inadvertently losing provisions such as:
 - Beneficiaries - Presumptive eligibility for poor pregnant women or guaranteed medical reviews for patients in nursing homes and institutions for the developmentally disabled are related to quality and cost-effectiveness of care.
 - Providers - Guarantees of prompt payment are linked to their willingness to participate in Medicaid.

-- Providers and beneficiaries - Limits on cost-sharing protect providers from bad debt and beneficiaries from unreasonable expenses.

- States - Due process guarantees for State plan disapprovals, non-compliance, and financial disallowances protect States. They also have specific authority to collect funds beneficiaries would otherwise receive for services already paid by Medicaid (e.g., settlements from auto accidents) and to legally enforce medical support obligations of absent parents for their children.
- ▶ State implementation -- States could begin revising their existing programs more easily with fewer start-up costs and delays in implementation.

NURSING HOME QUALITY

QUESTION:

The NGA plan retains nursing home quality standards and gives States responsibility for enforcement. Under the plan, how will the role of the federal government change and what is the likely impact of this change on quality of care in nursing homes?

ANSWER:

- ▶ Although the Governor's agreement appears to retain current law standards and protections, it eliminates the federal role in assuring quality. Uniform quality standards are meaningless without uniform enforcement. Federal involvement is instrumental in ensuring consistent quality of care across States.
- ▶ The President's plan, on the other hand, preserves the landmark, bipartisan OBRA '87 nursing home reform law that has undeniably improved care and overall quality of life, and protected the rights of individuals in nursing homes. The bill retains uniform federal quality standards and a significant federal role in enforcement of standards and innovation to improve care practices and preserves the federal/state partnership in ensuring quality care for nursing home residents.

COVERAGE FOR OPTIONAL GROUPS

QUESTION:

Do you know if the NGA plan requires a minimum benefit package for optional eligibility groups?

ANSWER:

- ▶ Unlike current law the President's plan, the NGA plan does not appear to guarantee a set benefit package to those optional groups that a State chooses to cover. The Governors' agreement may allow States to provide coverage to these individuals that is less comprehensive than that provided to mandatory populations.
- ▶ In addition, if states could provide selected benefits for optional populations without also providing the basic Medicaid benefits, states could draw federal Medicaid funds to pay for purely state expenses (eg. institutional mental health care for adults or dental benefits for public employees).
- ▶ The President's plan, on the other hand, fulfills our commitment to true coverage by providing a guaranteed set of benefits for all mandatory and optional groups of beneficiaries.

NGA PROPOSAL - A POINT OF DEPARTURE, NOT A FINISHED WORK

QUESTION:

Madam Secretary, you have strongly criticized the NGA plan, even though the President has praised the Governors for their constructive and creative proposal. Why are you backing away from a plan the President so recently embraced?

ANSWER:

- ▶ The Governors have, indeed, taken important positive steps toward a Medicaid compromise they can embrace that also meets the President's firm principles for coverage, benefits and accountability. Nobody should try to diminish their efforts.
- ▶ The NGA effort is a good point of departure -- it's just not a finished product. This is not surprising when you consider that all the Governors discussed it for only a few days. The lead Medicaid Governors, themselves, acknowledge that critical details defining the specifics of their plan are missing or need work and they continue to meet in order to flesh out the policy resolution agreed to earlier this month.
 - Eligibility is one aspect that needs substantial work. While the Governors made an important effort to protect some vulnerable populations, we need to assure eligibility is protected for still others and we must be sure the entitlement to coverage is enforceable.
 - Benefits are another aspect that needs substantial work. While the Governors made an effort to specify a benefit package, we need to make sure there is a nationally defined benefit standard that includes standards for adequacy, comparability and statewideness.

- The financing proposal made substantial progress in designing a plan where the funds follow eligible people, but we need to know more specifics. When Medicaid enrollment increases during an economic downturn, the federal government and states must share in that added expense. Anything less could mean a loss of coverage for the most vulnerable. Other aspects of the financing plan, especially changes in matching rates, could contribute to coverage loss and therefore must be carefully reviewed.
- Finally, the NGA proposal needs work when it comes to accountability for quality of care and for the use of federal funds. We oppose repeal of the OBRA 1993 limits on donations and taxes as this will revitalize the financial abuses of the 1980s. We also disagree with the changes they appear to have proposed for quality of care standards in nursing homes and in managed care.

CURRENTLY IN DEPARTMENT CLEARANCE PROCESS

NGA AND VACCINE FOR CHILDREN

QUESTION:

How does the Administration view the NGA proposal as it relates to the Vaccines for Children Program?

ANSWER:

- ▶ The NGA proposal was silent on VFC. We strongly hope this means the Governors meant to leave VFC untouched. This program has enjoyed the support of Governors and State Health Officers and of key members of Congress including the chairman of this committee.
- ▶ We believe VFC is a critical component of our national strategy to assure universal childhood immunization. We would oppose language, such as that included in the conference agreement, to repeal VFC. We also would oppose the conference agreement provision that nullifies all VFC contracts as this would prevent the federal government's purchase of any childhood vaccines until such time as new contracts could be negotiated.

CURRENTLY IN DEPARTMENT CLEARANCE PROCESS

INSURANCE POOLS

QUESTION:

How does the NGA's plan respond to changes in enrollment?

ANSWER:

- ▶ The NGA's plan shows progress towards being more responsive to shifts in beneficiary populations such as those due to changes in the economy, but we need further information to determine how the plan would work. The plan calls for an Insurance Umbrella, which could cover growth in caseload that was not anticipated under the basic grant and its growth formula. The umbrella payments would be guaranteed on a per beneficiary basis. The language is unclear, but it appears that payments under the umbrella could be based on a per capita rate; similar to the per capita cap offered in the President's plan.

SCORABILITY

QUESTION:

Will the NGA plan result in deficit reduction?

ANSWER:

- ▶ We need to examine the NGA proposal to ensure that it will support efforts by the President and the Congress to achieve a balanced budget in seven years. In its current draft form, there is too little information to determine associated costs or savings from the proposal. It is unlikely that the Congressional Budget Office could begin to score the plan until the NGA supplies considerable details about the basic financing structure and formulas alluded to in the plan. In addition, several other provisions in the plan, such as eligibility and benefit definitions, would need to be modified in order to achieve savings.

BACKGROUND:

Eligibility: A loose definition of disability could result in significant unanticipated growth in this population, triggering large payments to states under the insurance umbrella.

Benefits: States set benefit packages and have flexibility to determine amount, duration and scope. States could include all optional groups to receive a higher base, without the expense of having to provide full benefits for these groups.

The loose definition of Eligibility and Benefits becomes especially problematic with the addition of repealing Provider Tax and Donation restrictions. With repeal of these restrictions, states could draw down full federal match without spending any "real" money.

FMAP: INCREASE IN SPENDING**QUESTION:**

How does raising the minimum federal match lead to increases in federal spending?

ANSWER:

- ▶ The NGA plan increases the FMAP from 50 percent minimum match to 60 percent. There are now 29 states receiving a federal match less than 60 percent. These states would move up to 60 percent. Thus, the plan may temporarily increase the federal Medicaid baseline as the base amounts per state are established. This would make it more difficult to achieve the savings needed to balance the budget in seven years.

FMAP: DECREASE IN SPENDING**QUESTION:**

How would an increase in the minimum federal match decrease state spending?

ANSWER:

- ▶ When the federal match is increased, the states would have to put up less of their own funds in order to receive the maximum amount of federal funding. Thus, a small reduction in spending at the federal level could result in even larger reductions at a state level. The end result could be a much deeper overall cut in Medicaid benefits.

TREATMENT COMPONENT OF EPSDT

QUESTION:

The NGA proposal would redefine the Treatment component of EPSDT. Do you know who will define it and whether there will be a uniform benefit package for all children?

ANSWER:

- ▶ The NGA proposal is not clear on how the treatment component would be defined; although the Governor's indicate that the new definition will result in States being required to cover fewer optional services.
 - An EPSDT screen could reveal a condition requiring attention for which treatment would not be covered, and
 - The treatment benefit package for children would vary by State and potentially within States as well.
- ▶ This retrenchment from current law: All States are now required to provide any service that could be covered under Medicaid law to treat a medical condition or problem that is detected by an EPSDT screen, even if the State does not cover the service, or covers only limited amounts of it, for other Medicaid populations.

IMMIGRANT SPECIAL GRANTS

QUESTION:

The NGA proposal would provide certain States with special, 100 percent Federal grant funds to pay for the Medicaid costs of undocumented immigrants on the ground that they are properly Federal, rather than States responsibilities. What do you think of this approach?

ANSWER:

- ▶ The Governor's proposal seems similar to our own proposal.
- ▶ Control of Federal borders is, indeed, a Federal responsibility, meeting the needs of individuals within them has traditionally been and should continue to be one which is shared among various levels of the public sector and various groups and individuals in the private sector.
- ▶ The President's 1995 immigration bill and Administration budgets for the last several years have recognized the Federal role in sharing this responsibility by proposing to provide additional, 100 percent Federal funds to help States with the largest share of undocumented immigrants pay for the emergency medical services under Medicaid to which such individuals are entitled.

INDIAN SPECIAL GRANTS

QUESTION:

The NGA proposal would provide certain States with special, 100 percent grant funds to pay for the Medicaid costs of American Indians on the grounds that they are properly Federal, rather than State responsibilities. What do you think of this approach?

ANSWER:

- ▶ To understand NGA's special grant, you must read the Indian Health Services resolution they also adopted at their February 6, 1996 meeting. In it, NGA indicates that States should pay nothing for health services to American Indians.
- ▶ The NGA approach fails to recognize that American Indians and Alaska Natives are dual citizens, of both their Tribe and of the U.S. (as well as any State in which they reside). Thus, they are dually entitled to benefits promised under Federal treaties and trust responsibilities and to any benefits for which they are otherwise eligible as U.S. citizens.
- ▶ The NGA special grant for Indians would appear to limit funding available to Indian Health providers to a specific amount. The Indian Health Services resolution appears to suggest that Indian health providers would no longer be eligible for Medicaid reimbursements.
 - This would be inequitable because NGA funding available to other providers could grow by the per capita amount and could be augmented by the umbrella funds.
 - Growth allowed under NGA's per capita and umbrella mechanisms is more, rather than less necessary to properly provide Medicaid services for AI/AN people because: AI/AN eligibles are under-enrolled in Medicaid, Indian health providers are still developing Medicaid billing capability, and the AI/AN population is growing faster than the U.S. population generally.

- ▶ The President's Medicaid reform plan takes a far more appropriate approach:
 - It maintains the Medicaid entitlement for eligible AI/AN individuals on the same basis as other citizens and it maintains the right of eligible Indian health care providers to bill Medicaid.
 - Medicaid reimbursement for Indian health providers outside the per capita cap could respond to all potential growth factors without an arbitrary limit, such as NGA's special grant.

INDIAN SPECIAL GRANTS

QUESTION:

The NGA proposal provides States with special, 100 percent Federal grant funds to pay for the Medicaid cost of American Indians on the grounds that they are Federal, rather than State responsibilities. What do you think of this approach?

ANSWER:

- ▶ While I appreciate the efforts of the NGA to address this important issue, I do have concerns about this proposal.
- ▶ The NGA Medicaid proposal could be read to limit funding available to Indian health providers to a set amount. When read concurrently with a February NGA resolution on IHS, it appears that Indian health providers might no longer be eligible for Medicaid reimbursement.
- ▶ If this is the approach of the NGA it fails to recognize the dual rights of Indian citizens -- their right, under trust responsibilities to benefits promised under treaties and their right, if eligible, to Medicaid services. I hope this is not what NGA intended.
- ▶ In comparison, the Administration maintains both rights for Indians: the guarantee to Medicaid for eligible Native American individuals and the right of eligible Indian health care providers to bill Medicaid.

BACKGROUND:

- ▶ The NGA Medicaid proposal creates a federally-financed fund to provide care to Native Americans or fund IHS facilities. Presumably, the fund is capped.
- ▶ Before passing the NGA Medicaid proposal, the NGA passed an IHS resolution. The resolution requires the federal government to finance all IHS and related care. The proposal also suggests that Indian health providers would not longer be eligible for Medicaid reimbursements.
- ▶ When combined, the NGA Medicaid proposal and the IHS resolution can be read to limit funding available to Indian health providers and limit eligibility for Indian health providers Medicaid reimbursement.
- ▶ The Administration proposal includes a special program for Native Americans which lies outside the per capita cap. All IHS facilities, as well as other tribally related facilities will be guaranteed federal funding.