MEMORANDUM

November 6, 1995

TO: Laura Tyson and Carol Rasco

FR: Chris Jennings

RE: Major Health Care Issues for Which We Seek Your Guidance

cc: Gene Sperling, Jennifer Klein, and Nancy-Ann Min

The following is a quick summary of major health issues that are likely to be raised during any negotiation with the Congress over a compromise balanced budget initiative. This list is far from all-inclusive and is not listed in any particular order, but we believe it outlines those issues that are most likely to elicit significant attention.

We provide this information in an attempt to facilitate discussion on high profile health issues and to help us determine how best we should position ourselves on them. We hope it is helpful in preparing you for tomorrow's meeting at 1:00 pm. Please call me at 6-5560 with any questions.

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Major Health Care Issues For Which We Seek Consideration/Guidance

Medicare

- Medicare baseline
- Total Medicare cuts
- Allocation/Ratio of Medicare beneficiary/provider-specific cuts
- Medicare program budget caps and failsafe mechanisms
- Trust fund transfers
- Balance billing
- Extension of state and local HI tax to all state and local government workers
- Segmentation of the Medicare insurance pool -- MSAs and Association plans
- Provider Service Networks
- Geographical variation in Medicare reimbursement to HMOs
- Repeal of clinical laboratory quality regulations (CLIA) and the provision of more lenient fraud and abuse provisions
- President's Medicare expansions/improvements

Medicaid

- Medicaid baseline
- Total Medicaid cuts
- The entitlement and guarantee of coverage
- The benefit package

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- State flexibility
  - (1) Repealing/restructuring the Boren amendment
  - (2) Repealing the requirement that States contract out with public hospitals and reimburse community health centers/rural health clinics at cost

- The inevitable Medicaid formula fight

- Waiver states

- Nursing home standards and spousal impoverishment

- Qualified Medicare beneficiary program

- Abortion

- Vaccines program

- President's Medicaid reforms

Other Outstanding Health Issues

- President's health care reform initiative

- Medical malpractice

- Anti-trust provisions

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Major Health Care Issues For Which We Seek Consideration/Guidance

Medicare

- **Medicare baseline.** Although any list of savings proposals is likely to score almost the same on both CBO and OMB baselines, the CBO baseline projects about $70 billion more in spending over 7 years. Since it is obviously much more difficult to balance the budget off the CBO baseline, how hard do we push for the OMB baseline?

- **Total Medicare cuts.** Regardless of the baseline, is there a number that we will oppose going over?

- **Allocation/Ratio of Medicare beneficiary/provider-specific cuts.** Are there specific Medicare cut ratios that we should aim for? Are there some beneficiary cuts we will/won't consider (e.g., **income related premiums, increases in Part B premium above 25% of total expenditures, Part B deductible, etc.**)? Are we concerned about particular providers over others (hospitals, academic health centers, home health care, etc.)?

- **Medicare program budget caps.** What is our position? If we do not absolutely oppose (and/or are forced there) are there alternatives worth considering if we need to move in this area (e.g. budget alternatives that guarantee savings such as failsafe mechanisms, caps only if linked to private sector growth -- or some other -- rates)?

  -- **Failsafe mechanisms.** Do we adamantly oppose failsafe mechanisms, or do we consider using them as a device IF CBO baseline scoring is used? (We might do this as a means of maintaining that our baseline is correct -- suggesting that the cuts off the CBO baseline will not be necessary.)

- **Trust Fund transfers.** Do we oppose transferring Part A expenditures (like some home health care payments) into the Part B program in order to enable us to achieve a later Part A Trust Fund exhaustion date and/or to reduce traditional cuts from Part A? Do we oppose transferring general revenue savings from the Part B program into the Part A HI Trust Fund?

- **Balance billing.** Do we insist on balance billing protections be applied to all health plans?

- **Extension of state and local Medicare HI tax to all state and local government workers.** Although this could create political problems for us if we ended up supporting, this financing proposal was included in the HSA and has policy rationale. Outside the context of broader reform, what is our position at this time?

- **Risk of Segmentation of the Medicare insurance pool -- MSAs, Fee-for-Service plans, and Association plans.** Since we oppose the widespread and untested use of MSAs, particularly for the Medicare population, how do we position ourselves on this defining, philosophical concept with Republicans? Do we adamantly oppose and/or do we actively push for compromises -- like other limited uses, such as demonstrations?

- **Provider Service Networks.** We believe these can only work with adequate standards in place; if we don't get them, can we go to the mat on this issue?

- **Geographical variation in Medicare reimbursement to HMOs.** The Hill is shifting HMO reimbursement from the urban plans to rural communities trying to set up managed care plans. One consequence of going too quickly here may be for beneficiaries in urban areas (like L.A.) to start losing benefits. Should we let the now generally rural-biased Congressional process take the lead, or do we intercede at all?

- **Repeal of clinical laboratory quality regulations (CLIA) for physician office labs and the provision of more lenient anti-kickback and self-referral fraud and abuse provisions.** Under normal reconciliation circumstances, the Executive Branch would do little else other than to give a general sense of direction on these types of issues. However, the CLIA and fraud and abuse issues are high profile provisions. Do we adamantly oppose and insist on reinstatement with some minor changes? Or, is this left to the Dems in Congress to push?

- **President's Medicare expansions/improvements.** How hard do we push for the President's restructuring, mammography, respite care, and long-term care ideas?

Medicaid

- **Medicaid baseline.** The CBO baseline projects about $64 billion more in Medicaid spending over 7 years than does OMB. Achieving savings through a per capita cap is actually easier off of the CBO baseline. What baseline do we push?

- **Total Medicaid cuts.** Understanding that too large a Medicaid cut number leads almost inevitably to a block grant, is there a number that we will not go over?

- **The entitlement and guarantee of coverage.** Our base supporters believe that the Medicaid entitlement debate is a defining issue for the Administration. Do we draw the line against the Republican block grant approach? If so, when and how do we draw it? Do we preserve guarantee for all current covered populations or do we leave room open for protecting only certain populations? Do we preserve a real, defined benefit? Do we preserve individual's right of action to ensure they receive benefits?

- **The benefit package.** If we maintain the guarantee that all (or some) populations are covered, do we guarantee that they keep what they have in terms of mandated benefits? Are we open to negotiating with the states in downsizing the benefit? If so, is there anything off the table? The states would like to (1) rid themselves of what they believe to be the overly burdensome EPSDT and QMB requirements, (2) be permitted to limit their Medicaid package to the state's minimum private insurance package, and (3) to be able to define their own Medicaid package, as long as they have a public hearings on its development. Are we open to this line of negotiation?

- **State flexibility.** If the block grant approach does not prevail, program administration flexibility for the states will be a, if not the, primary Medicaid issue. We have a number of flexibility provisions in our Medicaid reform package that should be well received by the Governors. However, beyond the benefit flexibility issue raised above, there are other controversial issues, including:

  (1) **Repealing/restructuring the Boren amendment**, which requires states to provide for fair and reasonable reimbursement to health care providers. This provision was designed to serve as a proxy for quality and Governors hate it. Providers, including some of our supporters, think it is the only way to ensure appropriate reimbursement and acceptable quality. A compromise might be impossible.

  (2) **Repealing the requirement that States contract out with public hospitals and reimburse community health centers/rural health clinics at cost.** The question is not whether this provision will be repealed -- it will be; the question is whether we support any set aside for these health care providers?

- **The inevitable Medicaid formula fight.** Do we care about how and to whom the dollars are allocated? Or, are we simply shopping for a majority of votes in both House of Congress?

- **DSH Cuts/Payments.** How much savings should come from DSH? -- and from whom? The administration's starting point is a flat 33% reduction. Should more come from high DSH states? Given funds be targeted to high DSH facilities?

- **Waiver states.** Do we give any special assistance to states that have received waivers?

- **Nursing home standards and spousal impoverishment.** The conferees will likely come out with something in these two areas that are still problematic. The question is how much can/should we push?

- **Qualified Medicare beneficiary program.** Low income elderly protections for copayments and deductibles have already been dropped. The conferees will produce a requirement on the states to pay premiums for low income beneficiaries that will be equivalent to 44 percent of what they would pay under current law by the year 2002. The question is -- knowing how much the Governors hate this mandate -- how hard do we push on this issue?

- **Abortion.** The Republicans permanently codify the Hyde provision, which prohibits the use of Federal funds for abortion except in the case of rape, incest and when the mother's life is in danger. This provision was struck in the Senate due to its violation of the Byrd rule. Do we take a position?

- **Vaccines program.** Although the Republicans do have a requirement that states cover vaccines for the Medicaid population, it repeals the Vaccines for Children program (and its expanded coverage and purchasing vehicle.) How far are we willing to defend this program? Are we willing to make compromises and, if so, what are they?

- **President's Medicaid reforms.** How far can we go to insist on the President's per capita cap, DSH cuts, and flexibility provisions?

Other Outstanding Health Issues

- **President's health care reform initiative.** The Administration may want to consider pushing some of the President's reforms very hard as a prid pro quo for agreeing to a very tough balanced budget initiative. Issues in addition to those outlined above in the Medicare and Medicaid section to consider include: Insurance reforms, voluntary purchasing cooperatives, insurance portability enhancements like financial assistance for the temporary unemployed, administrative simplification, enhancement of the self-employed tax credit, etc. Perceived victories on this front could help round out a very successful first term for the President. Alternatively, if it is necessary to make Medicare or Medicaid concessions to achieve this relatively modest health care victory, it would likely not be worth the price.

- **Medical malpractice.** The Republicans are proceeding on a very strong medical malpractice provision, which includes caps on non-economic awards. We will be pushed by many interest groups to oppose these caps quite vehemently. (Although they may be dropped as a consequence of running afoul of the Byrd budget amendment.)

- **Anti-Trust provisions.** The Congressional Majority has anti-trust provisions that are strongly opposed by the FTC, the Justice Department and the Council of Economic Advisors. Do we take a strong position as well, assuming these provisions make it to the President's desk?