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NGA Resolutions

HR-36: Implementation of Welfare Reform

Assistance to Legal Immigrants and Refugees. The NGA proposes that legal immigrants who cannot become citizens because of age or disability should not lose SSI or food stamps. The Administration has criticized the welfare law's denial of SSI, food stamps, and other benefits to legal immigrants generally. Our budget proposal, however, differs from the NGA's proposal in approach. On SSI, we would exempt all disabled individuals from the ban -- not only those whose disability has prevented naturalization. We would, however, retain the SSI ban on the aged. On food stamps, we would delay until later this year the benefit cuts affecting all legal immigrants -- not only the aged or disabled. We would not, however, offer any permanent exemptions from the food stamp cuts. Finally, next week the INS expects to issue a regulation and guidance that will allow certain legal immigrants with disabilities to waive citizenship tests.

The NGA's proposal that legal immigrants who have applied to become citizens keep benefits during that waiting period is impermissible under current law, but the Administration would be supportive of a legislative fix along these lines.

The NGA proposes that aged and disabled refugees not lose SSI and food stamps after five years of residence. Our budget proposal would lengthen the time period to seven years for SSI, but not food stamps.

Flexibility in TANF block grant. The Administration generally agrees with the NGA's desire to maintain funding and flexibility in the TANF block grant. The Administration, however, has the responsibility to interpret terms in the statute such as "eligible families" and "assistance" and will release guidance on this issue shortly. In addition, the Administration as yet has no position on the NGA's proposal that states be permitted to transfer more funds between TANF and Social Services Block Grant.

Restrictions on maintenance-of-effort funding. The Administration also generally agrees that the mass of federal restrictions should not apply to state maintenance-of-effort dollars. But the Administration is committed to ensuring that states not use their MOE programs as a way to evade the statute's work requirements. The Administration will issue administrative guidance and seek a legislative clarification to prevent such evasion, while otherwise supporting broad state discretion over maintenance-of-effort funds.

Cash assistance. The Administration has concerns about the NGA's position that only cash assistance should trigger the time limit and other federal requirements. Such a position could cause states to use vouchers and other devices to avoid these requirements. However, the Administration has not yet released guidance on this issue.

Waivers. The Administration concurs generally with the NGA's position that states should be able to operate under existing waivers. The Administration believes, however, that states should not use waivers to evade the fundamental requirements of the law for work and time-limited assistance. The Administration has told states that, although the law permits them

to continue their waivers, we will monitor their actions and work with Congress if we find waivers are being used to evade the purpose of the law.

Work requirements. The Administration does not support the NGA's proposal to count more activities toward the work requirements (additional weeks of job search and job readiness, education, drug and alcohol treatment). The Administration supports the law as written in this area.

Information System Requirements. The Administration does not support the NGA's proposal to reduce reporting requirements under the welfare law. The Administration has not yet reached a decision on whether to exclude reporting and other similar costs from the definition of administrative costs. The Administration also has not reached a position on the NGA's proposal that the Federal government provide funding and technical assistance to create an interstate tracking system for time limits, but probably will agree to support technical assistance to the states. The Administration does not support NGA's proposal for additional Federal funds for states to implement the law's information systems requirements; the Administration believes that the flexibility of the block grant should allow states to create necessary information systems.

Administrative costs. The Administration has not yet taken a position on the definition of administrative costs. HHS is currently working on a regulation that would define this term.

Good faith efforts. The Administration does not support the NGA's proposal that states making "good faith efforts" to comply with the law should not be subject to the law's penalties. HHS, however, will enforce penalties in a way that is sensitive to the challenges states are facing.

Contingency Fund. The Administration as yet has no position on the NGA's proposal to allow states to draw down more per month from the fund. The Administration opposes the NGA's proposal to relax the maintenance of effort requirement associated with the Fund. The Administration is sympathetic to the NGA's concern that certain states may get inappropriately low match rates under certain circumstances, but has not yet taken any action in this area.

Maintenance of Effort Requirement for SSI State Supplements. In the past, the Administration has opposed the NGA's proposal to repeal the maintenance of effort requirement for state supplements to the SSI program. Disability groups oppose this proposal.

EDC-6: Indian Gaming

Last year, in Seminole Tribe of Florida v. Florida, the Supreme Court ruled unconstitutional a provision in the Indian Gaming Regulatory Act (IGRA) that permitted tribes to sue states in federal court for negotiating in bad faith under IGRA. The decision raises questions as to what remedies exist for tribes if a state refuses to negotiate in good faith.

In May 1996, the Interior Department issued an Advance Notice of Proposed Rulemaking (ANPR) to gather comments from interested parties on how to enforce the obligation of states to bargain with tribes in good faith following the Seminole decision. Part of the proposal would give the Interior Department authority to impose a remedy -- including permitting tribal gaming -- when a state is found to have negotiated with a tribe in bad faith. The ANPR closed in July 1996. The Interior Department, however, has not yet made a recommendation.

The NGA opposes any move by the Secretary of the Interior to permit gaming, even as a remedy for bad-faith bargaining, in the absence of a tribal-state compact. This matter is still under review in the Interior Department, and the Administration as yet has no position.

EDC-14: Affordable Housing

30 percent rule. The NGA opposes the current requirement that 30 percent of income be paid as rent and opposes even more strongly increasing the 30 percent figure. The Administration supports the current 30% requirement, but does not support raising that requirement.

Section 8 Assistance. The NGA supports preservation of the existing Section 8 system. The Administration disagrees, on the ground that failing to reform the current system is not financially feasible. The Administration has called for a "mark-to-market" system that should make the Section 8 program more efficient.

The Administration generally concurs with the NGA's other proposals on affordable housing.

HR2: Immigration and Refugee Policy

Denial of benefits to legal immigrants. See separate sheet on Welfare Implementation proposals.

Cuban-Haitian entrants. The Administration strongly supports the NGA's recommendation that Cuban-Haitian entrants be treated as "refugees" as provided under the Fascell-Stone amendment. The Administration opposed the provision in the welfare bill that put an end to that parity.

Waiver of oath. The NGA calls on Congress to waive the oath for individuals who are incapable of communicating the desire to naturalize. The Administration has not yet taken a position on this issue.

Education of undocumented children. The NGA favors reimbursement by the federal government to the states for educational services provided to undocumented children. The Administration supports education for such children and opposes the proposal for reimbursement (the "Son-of-Gallegly amendment").

Alien registration. The NGA proposes annual registration of all legal immigrants in the United States. The Administration opposes this proposal.

Refugee services and resettlement. The Administration will review the questions of allowing each state to privatize refugee resettlement and of extending the period of eligibility for refugee services from eight to twelve months, as proposed by the NGA. These proposals should be considered within the context of the 1997 reauthorization of the Refugee Act, and the Administration welcomes the Governors' input in that endeavor.

The Administration generally concurs with all of the NGA's other positions on immigration and refugee policy.

HR22: Child Care

Funding. The Administration agrees with the NGA that both discretionary and mandatory funds should be funded at full authorization levels and that funding for the Social Service Block Grant should be maintained.

Flexibility. The Administration recognizes that states want maximum flexibility in setting payment rates and defining administrative costs. The Administration is in the process of developing regulations on these and other issues and will take these recommendations into consideration.

Standards. The Administration opposes the NGA's proposal to amend current law requiring states to set standards for all federally funded child care providers in three key areas: minimum health and safety training; the prevention and control of infectious diseases (including immunizations); and building and premises safety. The Administration believes that current law strikes the right balance in allowing states to set the actual standards in these areas, while ensuring that some standards are required.

HR37: Private Sector Health Care Reform

The governors recognize the important progress toward national health care reform made by the Kassebaum-Kennedy law, including administrative simplification and encouragement of private long-term care insurance. The governors contend that in the absence of national health care reform, states should be allowed broad flexibility in developing reform policies. In particular, governors would like to have greater flexibility under ERISA to preserve the state's role in regulating health care insurance of all health plans, including plans that "self-insure" and multiple employer welfare arrangements. We are generally supportive of this approach, but have not proposed specific legislative initiatives.

HR-38: HIV/AIDS

The Administration generally concurs with the NGA's resolutions on HIV/AIDS.

HR-39: Encouraging mentoring

The Administration concurs with the NGA's proposal on encouraging mentoring.

EC-7: Long-Term Care

Many of the governors' long-term care proposals are consistent with initiatives in the President's budget. For example, the governors ask for greater flexibility to enroll dual eligibles in managed care, and the President's plan would ease the waiver process for states to implement managed care. The governors ask that HMO payments be adjusted to encourage expansion of Medicare managed care, and the President's proposal would move toward a more uniform payment rate -- so that areas receiving excessive payments get less while areas receiving lower payments get more. Also, initiatives to improve access and affordability of private long-term care insurance are consistent with past actions by the Administration. For example, the governors' desire to improve consumer protections and improve the affordability of long-term care builds on the accomplishments set forth in the Kassebaum-Kennedy law. The Administration is generally supportive of such initiatives as long as they do not excessively increase the cost of insurance plans.

EC-8: Medicaid

Not surprisingly, the governors seek to gain greater flexibility in administering the Medicaid program. In particular, the governors: (1) oppose a cap on federal Medicaid payments, (2) desire continued distribution of funding for disproportionate share payments through states, rather than federal formulas, (3) endorse greater state flexibility in moving to managed care and in using home and community-based waivers, (4) favor a repeal of the Boren amendment, (5) support federal, rather than state, responsibility for the costs of dual eligibles, and (6) encourage coordination with states to reach children eligible for Medicaid, who are not yet enrolled.

Although the President and the governors agree on a number of proposals (e.g., greater flexibility to move to managed care, a repeal of the Boren amendment, and a coordinated effort with states to enroll eligible children), there are two issues on which there is disagreement.

First, the President's budget will include a cap on federal Medicaid payments to protect excess growth. The governors will likely assert that there is no need to cap future federal Medicaid payments given recent declines in program growth. Currently, the NGA is considering two options on such expenditure caps: (1) to oppose any cap on Medicaid spending or (2) to oppose only those caps that do not provide for adequate state flexibility. We believe, however, that we can make the per capita cap more acceptable to the states by providing them with additional flexibility to administer the medicaid program.

Second, the President's budget will reduce disproportionate share payments, and we are currently considering allocation models that make certain that dollars go directly to facilities that serve a high proportion of uninsured or underinsured individuals and/or a significant number of Medicaid beneficiaries.

EC-23: Protecting Victims' Rights

The NGA urges Congress to pass a Constitutional amendment guaranteeing victim's rights. The President has announced his support for a constitutional amendment guaranteeing victims the right to be notified, to receive restitution, receive reasonable protection measures, and to be heard at sentencing and parole hearings.

Clinton Library Transfer Form

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NATIONAL GOVERNORS' ASSOCIATION

MEDICAID

Not surprisingly, the governors seek to gain greater flexibility in administering the Medicaid program. In particular, the governors: (1) oppose a cap on federal Medicaid payments, (2) desire continued distribution of funding for disproportionate share payments through states, rather than federal formulas, (3) endorse greater state flexibility in moving to managed care and in using home and community-based waivers, (3) favor a repeal the Boren amendment, (4) support Medicare paying for the dually-eligible, and (6) encourage coordination with states to outreach children eligible for Medicaid, who not yet enrolled.

While the President's proposal will support many of the governors' proposals (e.g., greater flexibility to move to managed care, a repeal of the Boren amendment, and a coordinated effort with states to enroll eligible children), there are two issues of which the governors will disapprove. First, the President's budget will include a cap on federal Medicaid payments to protect excess growth. The governors will likely assert that there is no need to cap future federal Medicaid payments as a result of recent declines in program growth. Currently, the NGA is considering two options on such expenditure caps: (1) to adamantly oppose any cap on Medicaid spending or (2) to oppose only those caps that do not provide for adequate state flexibility. The NGA may endorse the first option to achieve a stronger bargaining position, however, NGA staff hopes that the governors' frustration about our budget can be expressed through their policy document rather than through extensive public commentary. Second, the President's budget will reduce disproportionate share payments and, we are currently considering allocation models that insure dollars go directly to facilities who serve a high proportion of uninsured, underinsured, and/or significant number of Medicaid beneficiaries.

LONG-TERM CARE

Many of the governors' long-term care proposals are consistent with initiatives in the President's budget. For example, the governors ask for greater flexibility to enroll dual eligibles in managed care, and the President's plan would ease the waiver process for states to implement managed care. The governors ask that HMO payments be adjusted to encourage expansion of Medicare managed care, and the President's proposal would move toward a more uniform payment rate -- so that areas receiving excessive payments get less while areas receiving lower payments get more. Also, initiatives to improve access and affordability of private long-term care insurance is consistent with past actions by the Administration. For example, the governors' desire to improve consumer protections and improve the affordability of long-term care builds on the accomplishments set forth in the Kassebaum-Kennedy law.

PRIVATE SECTOR HEALTH CARE REFORM

The governors recognize the important progress toward national health care reform made by the Kassebaum-Kennedy law, including administrative simplification and encouragement of private-long-term care insurance. The governors contend that in the absence of national health care reform, states should be allowed broad flexibility in developing reform policies. In particular, governors would like to have greater flexibility under ERISA to preserve the state's role in regulating health care insurance of all health plans, including plans that "self-insure" and multiple employer welfare arrangements. Additionally, the governors are taking a strong stated commitment to consumer protection and quality.

LIST OF PROPOSED CHANGES IN POLICY

COMMITTEE ON ECONOMIC DEVELOPMENT AND COMMERCE

EDC-3	Proposed Amendments	"Military Base Closure, Disposal, and Reuse"
EDC-6	Proposed Amendment (in the form of a substitute)	"The Role of States, the Federal Government, and Indian Tribal Governments with Respect to Indian Gaming and Other Economic Issues"
EDC-10	Proposed Amendments	"Federal Economic and Community Development Programs"
EDC-11	Proposed Amendment (in the form of a substitute)	"Governors' Principles on International Trade"
EDC-14	Proposed Amendments	"Affordable Housing"
EDC-18	Proposed Policy Position	"Reciprocal Refund Offset for Past-Due Tax Debts"
EDC-19	Proposed Policy Position	"Private Sector Jobs for Economically Distressed Areas"
EDC-20	Proposed Policy Position	"Tax-Exempt Financing"
--	Proposed Resolution	"Telecommunications Taxation"
--	Proposed Resolution	"Endorsing the Memorandum of Understanding Regarding the U.S. Innovation Partnership"
--	Proposed Resolution	"Air Bag Safety Campaign"
EDC-15	Proposed Reaffirmation	"Uniform Product Liability Code"

COMMITTEE ON HUMAN RESOURCES

HR-2	Proposed Amendments	"Immigration and Refugee Policy"
HR-15	Proposed Policy Position	"Emergency Management Assistance Compact"
HR-22	Proposed Amendment (in the form of a substitute)	"Child Care"
HR-36	Proposed Policy Position	"Implementation of Welfare Reform"
HR-37	Proposed Amendments	"Private Sector Health Care Reform"
HR-38	Proposed Amendments	"HIV/AIDS"
HR-39	Proposed Policy Position	"Encouraging Mentoring"
HR-1	Proposed Reaffirmation	"Governors' Principles to Ensure Workforce Excellence"
HR-6	Proposed Reaffirmation	"Army and Air National Guard"

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

COMMITTEE ON NATURAL RESOURCES

NR-4	Proposed Amendments	"Superfund"
NR-7	Proposed Amendment	"The Clean Air Act"
NR-9	Proposed Amendment	"Farm and Agriculture Policy"
NR-13	Proposed Amendments	"Safe Drinking Water"
NR-18	Proposed Policy Position	"Pollution Prevention"
NR-19	Proposed Policy Position	"Low-Level Radioactive Waste Disposal"
NR-20	Proposed Policy Position	"Federal Response to Drought"
NR-2	Proposed Reaffirmation	"Solid Waste"
NR-14	Proposed Reaffirmation	"Recreation Resources"
NR-15	Proposed Reaffirmation	"Geologic Mapping"

EXECUTIVE COMMITTEE

Permanent Policy	Proposed Amendment	"Principles for State-Federal Relations"
EC-2	Proposed Amendments	"Political Self-Determination for Puerto Rico"
EC-7	Proposed Amendments	"Long-Term Care"
EC-8	Proposed Amendments	"Medicaid"
EC-23	Proposed Policy Position	"Protecting Victims' Rights"
--	Proposed Resolution	"Consumer Price Index"
EC-10	Proposed Reaffirmation	"Political Status for Guam"
EC-12	Proposed Reaffirmation	"Out-of-State Sales Tax Collections"

NATIONAL GOVERNORS' ASSOCIATION

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1997 Winter Meeting

COMMITTEE ON HUMAN RESOURCES

Governor Tom Carper, Chair
Governor Tom Ridge, Vice Chair

Nolan E. Jones, Group Director

Proposed Changes in Policy

HR-2	Immigration and Refugee Policy	Page 3
HR-15	Emergency Management Assistance Compact	Page 16
HR-22	Child Care	Page 17
HR-36	Implementation of Welfare Reform	Page 22
HR-37	Private Sector Health Care Reform	Page 33
HR-38	HIV/AIDS	Page 42
HR-39	Encouraging Mentoring	Page 49

Reaffirmation of Existing Policy

HR-1	Governors' Principles to Ensure Workforce Excellence	Page 50
HR-6	Army and Air National Guard	Page 52

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

The Committee on Human Resources recommends the consideration of three new policy positions, amendments to four existing policy positions (one in the form of a substitute), and the reaffirmation of two existing policy positions. Policy proposals are time-limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. Immigration and Refugee Policy (Amendments to HR-2)

   This policy has been updated in response to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Governors are concerned about the effect of the Personal Responsibility and Work Opportunity Reconciliation Act on immigrants who were in the United States on the date of enactment, but who cannot meet the citizenship requirement. The Governors are concerned about criminal aliens involved in drug trafficking and other activities and call on the federal government to negotiate prisoner transfer treaties to expedite the transfer of criminal aliens subject to departure. Finally, the Governors believe that aged and disabled refugees should not be barred from federal Supplemental Security Income (SSI) and food stamps after five years' residence.

2. Emergency Management Assistance Compact (New Policy Position, HR-15)

   This policy proposal endorses the Emergency Management Assistance Compact (EMAC) that encourages mutual assistance among the states in managing emergencies and disasters. Fourteen states and territories have joined EMAC.

   The fiscal impact of this policy will vary according to the emergencies and disasters and the cost sharing formula with the federal government.

3. Child Care (Amendment in the form of a substitute to HR-22)

   The proposed amendment in the form of a substitute recognizes that Governors, the federal government, the private sector, and families all have a vested interest in ensuring that our child care system is providing the services and resources that working families need. The Governors believe that the expansion of child care will be necessary to meet the growing demand created by the passage of welfare reform with tough work requirements and time limits. Child care for low-income working families will also need to be expanded. The Governors support adequate funding for child care, flexibility, and the ability to use state standards.

   The proposal has no new fiscal impact on the federal government.

4. Implementation of Welfare Reform (New Policy Position, HR-36)

   The proposed new policy calls for Congress and the federal government to retain the flexibility embodied in the welfare law during the regulatory process or in any subsequent legislative modifications to the statute. The Governors are committed to successful implementation of the Temporary Assistance for Needy Families (TANF) block grant to achieve the goals of welfare reform and believe that greater flexibility, beyond that provided in the law, would facilitate implementation and enable each Governor to accommodate the unique needs of his or her state's economy and welfare population. The Governors believe that the time limit, work requirement, and other TANF restrictions should only apply to recipients of cash and that state maintenance-of-effort dollars should not be subject to these prohibitions or requirements.

   The proposed policy would have a fiscal impact on the federal government.

5. Private Sector Health Care Reform (Amendments to HR-37)

This revised policy makes recommendations for improvements to the private sector health insurance market, including Employee Retirement Income Security Act reforms, quality standards, administrative simplifications, and tort reform. New sections are included on the implementation of the Health Insurance Portability and Accountability Act and on Multiple Employer Welfare Arrangements.

This proposal would not have a significant fiscal impact on the federal government.

6. HIV/AIDS (Amendments to HR-38)

This revised policy strongly supports the Ryan White CARE Act as a whole, but new sections raise real concerns with certain provisions of the statute, including the perinatal transmission mandate and funding available for the AIDS Drug Assistance Program.

The fiscal impact is indeterminate.

7. Encouraging Mentoring (New Policy Position, HR-39)

The Governors call on community and business leaders to encourage participation in mentoring programs. Federal, state, and local government officials are encouraged to provide leadership through example by serving as mentors and promoting personnel policies that allow flexible time for mentoring activities.

The fiscal impact of this policy will vary from state-to-state.

8. Reaffirmation of Existing Policy

The committee recommends the reaffirmation, with minor technical amendments, to Policy HR-1, Governors' Principles to Ensure Workforce Excellence, and Policy HR-6, Army and Air National Guard.

HR-2. IMMIGRATION AND REFUGEE POLICY

2.1 Immigration Policy

2.1.1 **Preamble.** The nation's Governors recognize the important contribution immigrants have made and continue to make to our nation. Although the federal government has the primary role in directing overall policy regarding immigration and refugees, the effects of such policy on local communities present challenges that cannot be ignored by the states. These challenges include demands for education, job training, social and health services, and other assistance designed to promote the integration of immigrants into our communities.

Decisions regarding the admission and placement of legal immigrants and refugees rest solely with the federal government. Similarly, the illegal entry of other individuals also is a direct responsibility of the federal government. ~~When these decisions are coupled with federal mandates to serve both legal and undocumented immigrants and refugees in joint federal-state categorical assistance programs, the consequence is a significant increase in the state share of these program costs.~~

The federal government's unwillingness to provide adequate funding for refugee resettlement and immigrant assistance services has resulted in a dramatic shift of program costs from the federal government to state and local taxpayers. This reduced federal commitment has strained the states' ability to provide the programs and services necessary to promote economic self-sufficiency within the immigrant and refugee community. GOVERNORS RECOGNIZE CONGRESS' WELL-INTENTIONED EFFORTS AND AGREE THAT SPONSORSHIP REQUIREMENTS CAN HELP PREVENT IMMIGRANTS FROM BECOMING PUBLIC CHARGES. HOWEVER, THE PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 THAT DENY CERTAIN BENEFITS TO THIS POPULATION, BOTH RETROACTIVE AND PROSPECTIVE, REPRESENT A COST TRANSFER TO STATE AND LOCAL GOVERNMENTS. THE GOVERNORS ARE PARTICULARLY CONCERNED ABOUT THE EFFECT OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 ON IMMIGRANTS WHO WERE IN THE UNITED STATES ON THE DATE OF ENACTMENT, BUT WHO CANNOT MEET THE CITIZENSHIP REQUIREMENTS BECAUSE OF AGE OR DISABILITY. THESE INDIVIDUALS SHOULD NOT BE BARRED FROM FEDERAL SUPPLEMENTAL SECURITY INCOME (SSI) BENEFITS AND FOOD STAMPS.

EVEN THOUGH MANDATES HAVE BEEN TERMINATED AND STATES HAVE BEEN PROVIDED THE OPTION TO ESTABLISH ELIGIBILITY FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), MEDICAID, AND SOCIAL SERVICES, IT IS NOT CLEAR THAT THE JUDICIAL SYSTEM WILL PERMIT STATES TO BAR REFUGEES AND OTHER LEGAL IMMIGRANTS WHO ARE IN NEED FROM CRITICAL SERVICES PROVIDED TO OTHER RESIDENTS OF THE STATE. AT THE LEAST, DURING AN INITIAL PERIOD OF JUDICIAL DELIBERATION, STATES COULD BE REQUIRED TO SUSTAIN BENEFITS. FURTHER, THOSE INDIVIDUALS WHO ARE RECEIVING FEDERAL BENEFITS AND WHO HAVE SUBMITTED AN APPLICATION TO NATURALIZE SHOULD CONTINUE TO BE ELIGIBLE TO RECEIVE THESE

BENEFITS WHILE THEY ARE PARTICIPATING IN THE APPROXIMATE SIX- TO NINE-MONTH NATURALIZATION PROCESS.

Because immigration and refugee policy is under the sole jurisdiction of the federal government, the Governors believe that the federal government must be prepared to bear the costs of such policy.

2.1.2 **Principles.** Because immigration decisions have a broad influence upon our society and involve the states, the Governors urge Congress to consider the following principles in the deliberation and formulation of immigration policies.

- The decision to admit immigrants is a federal one that carries with it a firm federal commitment to shape immigration policy within the parameters of available resources we as a nation are determined to provide.
- The fiscal impact of immigration decisions must be addressed by the federal government. The states, charged with implementing federal policy, have shared and are sharing in the costs; however, there should be no further shift of costs to the states.
- Immigration policy shall be developed within the context of our national interest, which takes into consideration preservation of the family, demographic trends, economic development, labor market needs, and humanitarian concerns.
- Immigration decisions shall not discriminate against nor give preference to potential immigrants because of their nationality, race, sex, or religion.
- A basic responsibility of the federal government is to collect and disseminate timely and reliable statistical information on immigration and its consequences for the United States.
- ~~The increase of the social and economic strength of our hemispheric neighbors is an efficient method to reduce migration.~~
- Immigration policies and administrative systems should be modernized and reviewed periodically to ensure that they are fair and workable.
- FEDERAL IMMIGRATION POLICIES SHOULD ENSURE THAT NEW IMMIGRANTS DO NOT BECOME A PUBLIC CHARGE TO FEDERAL, STATE, OR LOCAL GOVERNMENTS.
- A TRANSFERRED PRISONER'S EARLY RELEASE BEFORE THE BALANCE OF THE STATE-IMPOSED MAXIMUM SENTENCE IS SERVED SHOULD BE CALCULATED AND GOVERNED UNDER THE LAWS OF THAT STATE AND NOT THE PRISONER'S COUNTRY OF ORIGIN.
- THE FEDERAL GOVERNMENT MUST PROVIDE ADEQUATE INFORMATION TO AND CONSULT WITH STATES ON ISSUES CONCERNING IMMIGRATION DECISIONS THAT AFFECT THE STATES.
- STATES SHOULD NOT HAVE TO INCUR SIGNIFICANT COSTS IN IMPLEMENTING FEDERAL LAWS REGARDING IMMIGRATION STATUS AS A CONDITION OF BENEFITS.

2.1.3 **Immigration Ceiling and Preference System.** The National Governors' Association supports control of legal immigration at a level consistent with our national interest and resources, under a ceiling adjusted periodically by Congress as conditions warrant. The ceiling should continue to exclude immediate relatives of United States citizens, refugees, asylees, and aliens whose adjustment of status is not subject to immigration quotas under current or future laws.

The ceiling should provide for the separation of the two major types of immigrants—families and independent immigrants—into distinct admission categories. In designing the preference system, the principle of family unity should be preserved and the independent immigration system should reflect economic and labor market needs.

2.1.4 **Prohibition on the Hiring of Illegal Immigrants.** THE GOVERNORS AGREE THAT to help control illegal immigration, the employment of illegal immigrants should be prohibited. TO THIS END, ENFORCEMENT MECHANISMS AND VERIFICATION SYSTEMS MUST BE ENHANCED. The appropriate federal agencies selected to enforce this prohibition should have the resources necessary to carry out their task. EMPLOYERS SHOULD HAVE ACCESS TO A RELIABLE VERIFICATION SYSTEM THAT WILL ASSIST THEM IN COMPLYING WITH THE LAW. SUCH A SYSTEM SHOULD ~~The federal government should develop enforcement mechanisms that will~~ minimize the administrative burdens on employers and SHOULD ~~that do~~ not discriminate against the employment of workers and potential workers.

THE GOVERNORS ALSO SUPPORT THE DEVELOPMENT OF METHODS TO PREVENT IDENTIFICATION DOCUMENT FRAUD. HOWEVER, THE GOVERNORS DO NOT SUPPORT THE DEVELOPMENT OF THOSE METHODS THAT UNNECESSARILY INVADE THE PRIVACY OF INDIVIDUALS, INFRINGE UPON AREAS THAT TRADITIONALLY HAVE BEEN UNDER THE SCOPE OF STATE AND LOCAL AUTHORITY, OR DIRECTLY OR INDIRECTLY CREATE UNFUNDED MANDATES TO STATE AND LOCAL GOVERNMENTS.

2.1.5 **Legalization AND NATURALIZATION.** The Governors urge the following.

- ~~The federal government must provide full and timely reimbursement to state and local governments for costs incurred as a consequence of the legalization program. The Governors call upon the federal government to make available without further deferral the state legalization impact assistance funds (SLIAG) promised the states under the Immigration Reform and Control Act of 1986 (IRCA).~~
- States require maximum flexibility in determining and allocating resources to meet the needs of newly legalized aliens.
- THE IMMIGRATION AND NATURALIZATION SERVICE MUST BE DILIGENT IN ITS EFFORTS TO ENSURE THAT FELONS ARE NOT NATURALIZED AND BEING GIVEN THE BENEFITS OF CITIZENSHIP RATHER THAN BEING DEPORTED.
- THE NATURALIZATION PROCESS SHOULD BE STREAMLINED TO BE MORE EFFICIENT AND ACCESSIBLE TO ELIGIBLE APPLICANTS WISHING TO BECOME CITIZENS, WITH ALL THE RIGHTS AND RESPONSIBILITIES THEREOF. IN ADDITION, AS CONGRESS ALLOWED EXEMPTIONS TO NATURALIZATION TESTS FOR PHYSICALLY AND MENTALLY DISABLED APPLICANTS, THERE SHOULD BE AN EXEMPTION FOR THOSE INDIVIDUALS WHO ARE ELIGIBLE FOR NATURALIZATION EXCEPT FOR THE INCAPACITY TO COMMUNICATE THE DESIRE TO NATURALIZE.

- The current legalization program provides the opportunity for illegal immigrants to become lawful residents. Because of insufficient national and community outreach efforts resulting from a compressed timetable as required by law, application deadlines should be extended.

2.1.6 **Supplemental Worker Program.** In implementing any supplemental worker programs, the federal government must conduct timely labor certifications to ensure labor availability in the event of labor shortages. This program should not cause displacement of American workers.

2.1.7 **Cooperation with Western Hemisphere Countries.** A workable immigration program must recognize and involve the major sending countries. The federal government must work cooperatively with Mexico and other western hemisphere countries in the development of mutually beneficial policies. The Governors believe that trade and investment policies are critical elements to reduce illegal immigration.

2.1.8 **Research and Data Collection.** Congress should direct the federal government to develop a reliable data system and strengthen the research capacity on migration and its consequences to the United States, especially concerning the immigration flow, estimate of illegal migration, and impact of immigration on states and local communities. To do so, better coordination of federal agencies is needed.

Congress should implement the findings of the panel on immigration statistics convened by the National Research Council in 1985.

In order to provide the necessary information on immigration flows and secondary migration, alien registration by the federal government must be reinstated. In addition, data collected should be analyzed and disseminated to the states in a timely manner for the purpose of planning, implementing, and evaluating immigration policy.

2.1.9 **LEGAL Immigration Law Enforcement.** The federal government should provide sufficient funding to the Immigration and Naturalization Service and other appropriate agencies to enforce the immigration laws, modernize management, and provide for an adequate and reliable data collection system.

2.1.10 **Exclusion/Asylum Proceedings.** Individual claims for asylum should be handled in a fair and expeditious manner. Prompt efforts should be made to address the current backlog problems.

2.1.11 **Emergency Authority and Contingency Plan.** As the President has contingency planning authority, the federal government must develop a contingency plan to deal with unanticipated flows of refugees, PAROLEES, or asylum applicants. The states expect an immediate federal government response to such a situation. The Governors must be consulted in determining the role of the states. The states anticipate full federal reimbursement of any state and local costs.

2.1.12 **IMPACT AID.** SPECIAL IMPACT AID TO STATE AND LOCAL GOVERNMENTS SHOULD BE PROVIDED TO MEET UNUSUAL BURDENS ON COMMUNITIES. IMPACT AID SHOULD BE PROVIDED IN THE EVENT THAT ANY OF THE FOLLOWING OCCUR:

- A REFUGEE FLOW IS UNEXPECTEDLY LARGE OR SUDDEN;
- THE RESETTLEMENT AREA IS HIGHLY CONCENTRATED BY INITIAL PLACEMENT OF REFUGEES, INCLUDING SECONDARY MIGRANTS;
- THE RESETTLEMENT AREA HAS UNFAVORABLE ECONOMIC CONDITIONS; OR
- THE REFUGEE POPULATION HAS SPECIAL NEEDS.

2.1.12 **Coordination with States.** The Governors are concerned about the lack of information and adequate consultation on issues concerning immigration that affect the states. Federal agencies must develop

~~ongoing communication mechanisms to inform and consult with states on both legal and illegal immigration matters.~~

2.2 ILLEGAL IMMIGRATION

2.2.1 LAW ENFORCEMENT. RECOGNIZING THE NEED FOR STRONGER ENFORCEMENT AGAINST ILLEGAL IMMIGRATION, CONGRESS SHOULD CONTINUE TO PROVIDE SUFFICIENT FUNDING FOR THE IMMIGRATION AND NATURALIZATION SERVICE (INS) AND OTHER APPROPRIATE AGENCIES TO CONTROL OUR NATION'S BORDER AND TO REMOVE CRIMINAL ALIENS FROM THE UNITED STATES. THE GOVERNORS STRONGLY SUPPORT PROVISIONS IN THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 THAT WILL DOUBLE THE NUMBER OF BORDER PATROL AGENTS BY 2001, ENHANCE INVESTIGATIVE AND ENFORCEMENT AUTHORITY FOR ALIEN SMUGGLING AND DOCUMENT FRAUD, AND STREAMLINE THE PROCESS OF REMOVAL OF CRIMINAL ALIENS AND ALIEN TERRORISTS. THE GOVERNORS CALL ON THE FEDERAL GOVERNMENT TO EFFECTIVELY USE THE RESOURCES PROVIDED FOR THESE PURPOSES.

THE GOVERNORS ALSO ARE CONCERNED ABOUT THE INCREASE IN DRUG TRAFFICKING BY ILLEGAL IMMIGRANTS ALONG THE BORDERS OF THE STATES AND TERRITORIES. CONTROL OF THE FLOW OF DRUGS ACROSS OUR BORDERS IS A FEDERAL RESPONSIBILITY, AND SMUGGLING DRUGS INTO THE UNITED STATES IS A FEDERAL FELONY. THE GOVERNORS ARE CONCERNED THAT THE FEDERAL GOVERNMENT'S CURRENT DRUG-SMUGGLING POLICY IS ALLOWING A LARGE NUMBER OF PEOPLE CAUGHT SMUGGLING ILLEGAL DRUGS INTO THE UNITED STATES TO BE RETURNED TO MEXICO WITHOUT PROSECUTION. THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO REVERSE THIS POLICY AND TO VIGOROUSLY ENFORCE OUR DRUG CONTROL LAWS.

2.2.2 Prosecution and Removal of Undocumented Felons. According to a recent study published by the Urban Institute, the seven states most impacted by illegal immigration housed more than 21,000 adult CRIMINAL ~~illegal~~ aliens in their state prisons in March 1994, at an annual cost of nearly $500 million. These figures do not include the cost of incarcerating CRIMINAL ~~illegal~~ aliens in youth facilities or supervising paroled CRIMINAL ~~illegal~~ aliens.

THE GOVERNORS ARE CONCERNED ABOUT THE LACK OF RESOURCES IN THE IMMIGRATION AND NATURALIZATION SERVICE DEVOTED TO THE EARLY IDENTIFICATION OF CRIMINAL ALIENS IN STATE CRIMINAL JUSTICE SYSTEMS. CURRENTLY, A LARGE NUMBER OF CONVICTED UNDOCUMENTED FELONS DO NOT COME TO THE ATTENTION OF THE INS AND ESCAPE FORMAL DEPORTATION BECAUSE

OF A LACK OF PRESENCE OF INS OFFICIALS IN LOCAL FACILITIES. THE GOVERNORS BELIEVE THAT PROGRAMS LIKE THE EARLY IDENTIFICATION PILOT PROGRAMS CURRENTLY OPERATING IN SEVERAL STATES SHOULD BE EXPANDED SIGNIFICANTLY TO ENSURE THAT UNDOCUMENTED FELONS ARE FORMALLY DEPORTED.

IN ADDITION, THE GOVERNORS BELIEVE THAT GREATER EFFORTS SHOULD BE MADE BY THE FEDERAL GOVERNMENT TO FACILITATE THE TRANSFER OF CRIMINAL ALIEN FELONS TO THEIR HOME COUNTRIES TO SERVE THEIR SENTENCES. CURRENT TRANSFER TREATIES ARE UNWORKABLE BECAUSE THEY REQUIRE THE CONSENT OF THE PRISONER AND THEY PROVIDE LITTLE INCENTIVE FOR THE COUNTRY OF ORIGIN TO COOPERATE WITH THE UNITED STATES IN THE ENFORCEMENT OF TRANSFER TREATIES. ALTHOUGH THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 ECHOES THESE CONCERNS, CURRENT FEDERAL ACTION IN THIS AREA CONTINUES TO BE LACKING.

FOR THIS REASON, THE GOVERNORS CONTINUE TO CALL ON THE FEDERAL GOVERNMENT TO NEGOTIATE AND RENEGOTIATE PRISONER TRANSFER TREATIES TO EXPEDITE THE TRANSFER OF CRIMINAL ALIENS IN THE UNITED STATES WHO ARE SUBJECT TO DEPORTATION OR REMOVAL. THE NEGOTIATIONS FOR SUCH AGREEMENTS SHOULD FOCUS ON:

- ENSURING THAT THE TRANSFERRED PRISONERS SERVE THE BALANCE OF THEIR STATE-IMPOSED PRISON SENTENCE;
- REMOVING ANY REQUIREMENT THAT THE PRISONERS CONSENT TO BE TRANSFERRED TO THEIR COUNTRIES OF ORIGIN;
- STRUCTURING THE PROCESS TO REQUIRE THAT THE PRISONERS SERVE THE REMAINDER OF THEIR ORIGINAL PRISON SENTENCE IF THEY RETURN TO THE UNITED STATES; AND
- CONSIDERING ECONOMIC INCENTIVES TO ENCOURAGE COUNTRIES OF ORIGIN TO TAKE BACK THEIR CRIMINAL CITIZENS.

ADDITIONALLY, THE GOVERNORS BELIEVE THE FEDERAL GOVERNMENT SHOULD:

- INCREASE THE USE OF INTERIOR REPATRIATION WITH COUNTRIES CONTIGUOUS TO THE UNITED STATES;
- PLACE INS OFFICIALS IN STATE AND LOCAL FACILITIES FOR EARLY IDENTIFICATION OF POTENTIALLY DEPORTABLE ALIENS—NEARER THE POINT

OF THEIR ILLEGAL ENTRY—TO ENSURE FORMAL DEPORTATION PRIOR TO RELEASE; AND

- UPON THE REQUEST OF A STATE GOVERNOR, PLACE INS OFFICERS IN STATE COURTS TO ASSIST IN THE IDENTIFICATION OF CRIMINAL ALIENS PENDING CRIMINAL PROSECUTION.

FINALLY, THE GOVERNORS ARE CONCERNED ABOUT THE LARGE NUMBER OF DEPORTED FELONS THAT ARE RETURNING TO THE UNITED STATES. A SIGNIFICANT NUMBER OF THE CRIMINAL ALIEN FELONS HOUSED IN STATE PRISONS AND LOCAL JAILS ARE PREVIOUSLY CONVICTED FELONS WHO REENTERED THE UNITED STATES AFTER THEY WERE DEPORTED. IN CALIFORNIA, FOR EXAMPLE, REPORTS INDICATE THAT MORE THAN 300 PREVIOUSLY DEPORTED PAROLEES ARE ILLEGALLY REENTERING THE COUNTRY EACH MONTH AND COMING INTO CONTACT WITH LAW ENFORCEMENT OFFICIALS. CRIMINAL ALIEN REENTRY IS A VIOLATION OF FEDERAL LAW PUNISHABLE BY UP TO TWENTY YEARS IN FEDERAL PRISON AND SHOULD BE ENFORCED FOR ALL STATES.

THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO PROVIDE SUFFICIENT FUNDS FOR PROVEN POSITIVE IDENTIFICATION SYSTEMS, LIKE CALIFORNIA'S CRIMINAL ALIEN FLAGGING PROJECT AND THE AUTOMATED FINGERPRINTING IDENTIFICATION SYSTEM (AFIS) SYSTEM, TO ALLOW FOR THE EXPANDED USE OF THE SYSTEM IN THE REST OF THE NATION.

~~A significant number of the illegal alien felons housed in state prisons and local jails are previously convicted felons who re-entered the United States after they were deported. Though illegal alien re-entry is a violation of federal law — punishable by up to fifteen years in federal prison — it is rarely enforced by the federal government.~~

~~In addition, the Governors are concerned about the lack of resources in the Immigration and Naturalization Service (INS) devoted to early identification of illegal aliens in state criminal justice systems. Because a large number of convicted undocumented felons serve time in local facilities or are placed on probation, they do not come to the attention of INS and thus, escape formal deportation. Formal deportation is necessary to ensure that convicted aliens who re-enter can be prosecuted under federal law.~~

~~Finally, the Governors believe that more efforts should be made by the federal government to facilitate the transfer of illegal alien felons to their home countries to serve their sentences. Current transfer treaties are unworkable because they require the consent of the prisoner. Also, there is little incentive for the country of origin to cooperate with the United States in the enforcement of transfer treaties. The Governors note that economic incentives from the federal government to these countries can be more cost-effective than federal incarceration or reimbursement to state and local governments.~~

~~In response to these concerns, the federal government should undertake the following initiatives:~~

- ~~increasing enforcement of federal laws pertaining to the re-entry of illegal aliens, especially those that apply to previously convicted felons;~~
- ~~identifying potentially deportable aliens earlier in the process to ensure formal deportation prior to release from state or local facilities;~~

- ~~renegotiating prisoner transfer treaties and the removal of the requirement that prisoners consent to be transferred to their countries of origin; and~~
- ~~considering economic incentives to encourage countries of origin to take back their criminal citizens.~~

~~2.1.13 **Incarceration and Deportation Costs of Undocumented Alien Felons.** Under Section 501 of IRCA, the federal government is authorized to reimburse state and local governments for the costs associated with the incarceration of undocumented alien felons. The Governors repeatedly have called on the federal government to appropriate the funds authorized under Section 501; however, no funds have ever been appropriated to assist the states and thus fulfill this federal obligation, despite rising costs in many states. The Governors believe Section 501 has proven to be an ineffective mechanism for fulfilling the federal government's responsibility to pay the correctional costs of undocumented felons.~~

~~The Governors call on the federal government to replace or amend Section 501 so that the federal government takes custody of undocumented felons convicted of state crimes. If federal incarceration is infeasible, the Governors call on the federal government to establish a billing mechanism to allow state and local governments to bill the federal government directly for the incarceration of undocumented felons.~~

2.2.3 **Education Costs of Undocumented Aliens.** The Governors are concerned about the COSTS ASSOCIATED WITH ~~presence of~~ ever-larger numbers of undocumented children in our school systems. In a number of states, this has led to classroom overcrowding and has seriously exacerbated the funding crunch faced by public school systems. Because of the federal government's failure to provide funding for the education of undocumented children, Governors have had to cut back on other vital public services.

In the case of Plyler v. Doe, the U.S. Supreme Court upheld a lower court ruling striking down as unconstitutional a state law that denied educational services to undocumented children. The Court's narrow 5-4 decision was based in part on the absence of any "identifiable congressional policy" on the subject and "absent any contrary indication fairly discernible in the legislative record," the Court could "perceive no national policy that supports the state." The Court's dissenting opinion noted that the majority was "making no attempt to disguise that it is acting to make up for Congress' lack of effective leadership in dealing with the serious national problems caused by the influx of uncountable millions of illegal aliens across the border."

The Governors believe the Plyler decision was in fact a call for Congress to legislate in this area. Yet, since that ruling, the federal government has done nothing to set a national policy regarding the education of undocumented children. Instead, the federal government disingenuously cites Plyler as the final word. Meanwhile, state and local governments are forced to devote scarce resources to comply with a constitutional mandate born of federal inaction and irresponsibility.

The Governors are not advocating the denial of educational services to undocumented persons. HOWEVER, SOME GOVERNORS BELIEVE THAT EACH STATE SHOULD HAVE THE RIGHT TO DECIDE WHETHER IT WILL PROVIDE FREE EDUCATIONAL SERVICES TO UNDOCUMENTED PERSONS, WHILE SOME GOVERNORS BELIEVE THAT ALL CHILDREN ARE GRANTED THIS RIGHT UNDER THE U.S. CONSTITUTION. The Governors oppose being a captive source of funding for the costs of educating millions of undocumented children. Therefore, the Governors call on the federal government to recognize its exclusive responsibility for costs associated with THE UNFUNDED MANDATE THAT IS THE RESULT OF failed immigration policies by establishing a direct billing mechanism to ensure that any educational services provided to undocumented children are financed entirely by the federal government.

2.2.4 **Study of Costs of Citizen Children.** Governors across the country are providing education, health, and social services to citizen children of undocumented immigrants at extremely high costs. However, the true costs are not known, as no systematic survey has been undertaken to examine these costs and the fiscal impacts on states of providing services to citizen children of undocumented immigrants. The Governors call upon Congress and the administration, working jointly with state budget officers, to undertake a study of these costs and to report back within one year, so that an accurate assessment can be made.

2.3 **Refugee Policy**

2.3.1 **PREAMBLE.** INTERNATIONAL POLITICAL CONDITIONS OVER THE PAST TWO DECADES HAVE FORCED NUMBERS OF PEOPLE TO LEAVE THEIR HOMES AND SEEK REFUGE IN OTHER COUNTRIES. THE UNITED STATES HAS PROVIDED LEADERSHIP TO THE WORLD COMMUNITY IN ADDRESSING THE NEEDS OF REFUGEES AND DISPLACED PERSONS. THE NATION'S GOVERNORS ARE SUPPORTIVE OF THIS EFFORT TO ASSIST THOSE INDIVIDUALS WHO HAVE BEEN DISPLACED BECAUSE OF THEIR BELIEFS AND SUPPORT OF U.S. POLICY.

~~**Federal Responsibility.** The National Governors' Association has supported and will continue to support the domestic resettlement of refugees as defined by the Refugee Act of 1980, as amended.~~ WE ~~The Governors~~ believe that refugee issues are an international responsibility and that resettlement must be shared as equitably as possible. Further, there must be a genuine effort to protect refugees worldwide.

STATES PLAY A MAJOR ROLE IN REFUGEE RESETTLEMENT. THEY MUST WORK WITH THE REFUGEES TO ASSIST IN THEIR ADJUSTMENTS TO AMERICAN LIFE AND TO EXPEDITE THEIR ECONOMIC SELF-SUFFICIENCY. EFFECTIVE RESETTLEMENT OF REFUGEES REQUIRES THE DEVELOPMENT OF SYSTEMS THAT PROVIDE CULTURALLY APPROPRIATE SERVICES TO MEET THE NEEDS OF ETHNICALLY DIVERSE COMMUNITIES, AS WELL AS EXTENSIVE NETWORKING WITH EXISTING HUMAN SERVICE SYSTEMS.

THE GOVERNORS RECOGNIZE THAT RESETTLEMENT IS NOT A ONE-TIME EVENT, BUT A PROCESS OF ADJUSTMENT THAT MAY TAKE MONTHS OR YEARS. IN ORDER FOR THIS PROCESS TO BE SUCCESSFUL, FEDERAL, STATE, AND LOCAL OFFICIALS MUST WORK TOGETHER WITH THE PRIVATE SECTOR AND LOCAL VOLUNTARY AGENCIES TO BUILD A SEAMLESS CONTINUUM OF SERVICES FROM INITIAL RECEPTION THROUGH LONGER TERM NEEDS, LEADING THE WAY TO SELF-SUFFICIENCY.

2.3.2 **FEDERAL RESPONSIBILITY.** ~~For those who are resettled in this country~~, THE states are committed to working toward the rapid integration of refugees into our communities. However, the federal government has the total responsibility to meet the basic needs of refugees and entrants (e.g., cash, medical, social services, and special educational costs) for the initial three years. The federal

government also has the total responsibility for determining and accounting for secondary migration to areas of saturation.

If the federal government is unwilling to sufficiently fund the necessary services, then it is incumbent upon the federal government to decrease the flow of refugee admissions. Under no circumstances should there be any further shift of costs to state and local governments.

In recent years, there have been significant funding reductions in refugee programs. These budget reductions represent a major federal policy change that shifts fiscal responsibility for meeting the basic needs of refugees and entrants from the federal government to states and localities. This fiscal policy change occurs at a time when state and local resources have experienced significant cuts in human service programs because of federal budget balancing. Because the states do not have the authority to set immigration quotas or limit secondary migration, they are unable to effectively control the additional costs incurred because of this change in policy.

AGED AND DISABLED REFUGEES SHOULD NOT BE BARRED FROM FEDERAL SUPPLEMENTAL SECURITY INCOME BENEFITS AND FOOD STAMPS AFTER FIVE YEARS OF RESIDENCE. THE NEW WELFARE LAW NO LONGER PROVIDES FEDERAL BENEFITS TO THIS POPULATION AFTER FIVE YEARS, AND SHIFTS THE RESPONSIBILITY TO STATES TO DECIDE WHETHER TO PROVIDE STATE BENEFITS TO THESE REFUGEES ADMITTED TO THE U.S. BY FEDERAL POLICY. THE AGED REFUGEES, IN PARTICULAR, CONFRONT EXTRAORDINARY DIFFICULTIES IN BECOMING NATURALIZED CITIZENS, E.G. INABILITY TO PASS THE TESTS, OR LOSS OF DOCUMENTS. UNLIKE LEGAL IMMIGRANTS, REFUGEES DO NOT HAVE SPONSORS. EVEN THOSE REFUGEES ABLE TO NATURALIZE WOULD BE IN JEOPARDY FOR A SIX- TO NINE-MONTH PERIOD DURING THE PROCESS OF APPLYING FOR CITIZENSHIP.

RECENTLY, EFFORTS TO PRIVATIZE REFUGEE RESETTLEMENT HAVE BEEN UNDER DISCUSSION. UNDER THE WILSON-FISH AMENDMENT TO THE REFUGEE ACT, STATES HAVE THE OPTION OF IMPLEMENTING PRIVATIZED RESETTLEMENT PROGRAMS. THE GOVERNORS SUPPORT MAINTAINING THE CURRENT PREMISE THAT THE DECISION TO PRIVATIZE SHOULD BE LEFT UP TO EACH INDIVIDUAL STATE.

~~Underlying the implementation of the Refugee Act of 1980 was the recognition that if refugee resettlement programs are to be successful, they must be developed in concert with the states and communities most directly affected by federal refugee admission decisions. The Governors are committed to working with the federal government to develop new ways of implementing resettlement programs in order to reduce reliance on public assistance programs, including increased utilization of private voluntary agencies in the service delivery process. However, any new program revisions must address the increasing fiscal burden that has been unfairly placed on the states as a result of the federal government's unwillingness to appropriate funds sufficient to support the number of refugees being admitted.~~

~~Program changes currently being implemented by the Office of Refugee Resettlement are not in the best interest of the states or the refugee population. The Governors call on the administration to place an immediate moratorium on the implementation of these changes and to work with states, local governments, and voluntary agencies to develop an effective resettlement program based on the partnership that was envisioned in the Refugee Act of 1980.~~

2.3.3 **Principles.** IN KEEPING WITH THE ABOVE PRECEPTS, GOVERNORS SUPPORT THE REAUTHORIZATION OF THE REFUGEE ACT OF 1980, WITH THE FOLLOWING PRINCIPLES AS GUIDANCE FOR DEVELOPING NEW LEGISLATION. ~~In addition, the Governors emphasize that the followign principles are important components of a federal domestic assistance program.~~

- The goal of resettlement assistance efforts is to help refugees achieve self-sufficiency as quickly as possible. The key to economic self-sufficiency is entry into unsubsidized employment at a living wage at the earliest possible time with concurrent removal from dependency on public aid.
- Social services are vital to reaching the goal of self-sufficiency, and federal funding should not be decreased as a means of reducing the federal refugee or entrant budget.
- UNDER THE FASCELL/STONE AMENDMENT (SECTION 501 OF THE REFUGEE EDUCATION ASSISTANCE ACT OF 1980), CONGRESS INTENDED FOR CUBAN AND HAITIAN ENTRANTS TO BE TREATED AS REFUGEES FOR THE PURPOSES OF FEDERAL BENEFITS. CUBAN AND HAITIAN ENTRANTS SHOULD CONTINUE TO RECEIVE SIMILAR "REFUGEE" STATUS AS A TEMPORARY MEANS TO SELF-SUFFICIENCY.
- THE FEDERAL GOVERNMENT HAS REDUCED THE PERIOD OF ELIGIBILITY FOR REFUGEE SERVICES FROM THIRTY-SIX MONTHS TO EIGHT MONTHS. AT LEAST TWELVE MONTHS ARE REQUIRED TO ASSIST REFUGEES IN ACQUIRING BASIC LANGUAGE SKILLS, HOUSING, AND WORK TO ACHIEVE RUDIMENTARY SELF-SUFFICIENCY. THE FEDERAL GOVERNMENT SHOULD PROVIDE ADEQUATE RESOURCES TO ENSURE A FULL TWELVE MONTHS OF ACCESS TO REFUGEE BENEFITS.
- Stability of federal funding is crucial if states are to implement an effective resettlement program. In addition, the timely provision of funding is essential to enable states to discharge their administrative responsibilities in an expeditious manner, relative to funding decisions and program planning.
- States must be consulted in a timely manner when changes in the current program are being considered. A process for ongoing state participation in program review should be incorporated into the federal administrative structure.
- The federal government should synchronize ADMISSIONS AND APPROPRIATION CYCLES TO ALLOW FOR MORE EFFECTIVE MANAGEMENT OF THE PROGRAM. ~~the funding cycles and streamline its administrative and reporting requirements for the states to allow for more cost-effective management of the program, while maintaining state flexibility.~~
- Because the refugee program is state-administered, it is essential that all funding should flow to the states to allow for centralized program planning, administration, accountability, and coordination of local planning efforts.
- Although the states are willing to consider changes in the current program that would improve the efficiency or effectiveness of the program, the Governors would oppose any attempt to convert funding for the program to a block grant.

2.3.4 **Coordination and Consultation.** The Governors continue to be concerned about the lack of adequate consultation on the part of the voluntary agencies (VOLAGs) and their local affiliates in the initial placement of refugees and on the part of the federal government in the equitable distribution of refugees and entrants.

States have continually urged the federal government to establish a mechanism to ensure appropriate coordination and consultation. However, significant progress has not been made and the following mechanisms need to be considered to address this problem.

- There should be a requirement in the State Department/VOLAG contract to limit placement to areas conducive to resettlement. In addition, VOLAGs and their local affiliates should be required to have a letter of agreement that specifies that there has been consultation and planning for the initial placement of refugees and sets forth the continuing process of consultation. The requirement in the State Department/VOLAG contract to limit placement to areas conducive to resettlement should include concurrence by the state.
- INS, THE U.S. DEPARTMENT OF STATE (DOS), AND THE OFFICE OF REFUGEE RESETTLEMENT (ORR) SHOULD COORDINATE WITH STATES RECEIVING ENTRANTS AND REFUGEES. ENTRANTS SHOULD BE MADE ELIGIBLE FOR DOS ASSISTANCE FOR THIRTY DAYS, OR ANOTHER MECHANISM SHOULD BE DEVELOPED TO ALLOW FOR A SMOOTH TRANSITION OF ENTRANTS INTO A COMMUNITY. THE CURRENT SYSTEM, IN WHICH AN ENTRANT SIMPLY ARRIVES IN THE UNITED STATES WITHOUT ANY KNOWLEDGE OF THE STATE, CREATES A TREMENDOUS BURDEN ON THE COMMUNITY, LEAVES GAPS IN THE PROVISION OF SERVICES, AND PROVIDES NO FOUNDATION FOR PLANNING PURPOSES.
- ~~The State Department should enter into agreements with the states for the purpose of planning and consultation on refugee placement strategies within available federal resources. This should include state participation in identifying appropriate areas for resettlement.~~
- There should be a continued requirement that sponsors not be on welfare. The sponsorship program should be modified, and existing sponsorship obligations should be more strictly enforced.

~~It is essential that the U.S. Coordinator for Refugee Affairs actively coordinate the resettlement of refugees and provide Governors with relevant information on activities within their states. In addition, there needs to be a clear delineation of the roles of the U.S. coordinator, the State Department's Bureau of Refugee Affairs, and the Department of Health and Human Services' Office of Refugee Resettlement.~~

An advisory committee should be established, representing state and local government officials, VOLAGs, and the refugee community, to examine and advise Congress and federal agencies on a full range of refugee resettlement issues.

The Governors should be closely involved in the congressional consultation process through which new refugee admissions levels are determined to ensure that program funding is provided to support the level of refugee admissions.

2.3.5 **Impact Aid.** Special impact aid to state and local governments should be provided to meet unusual burdens on communities. Impact aid should be provided in the event that any of the following occur:

- a refugee flow is unexpectedly large or sudden;
- the resettlement area is highly concentrated by initial placement of refugees, including secondary migrants;
- the resettlement area has unfavorable economic conditions;
- the refugee population has special needs; or
- THERE IS A CONTINUING STREAM OF REFUGEES TO ONE GEOGRAPHIC AREA.

2.4 Habitual Residents

For clarification purposes, the immigration and refugee policy provisions also pertain to habitual residents, as defined in the compacts of free association.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Winter Meeting 1988; revised Winter Meeting 1992, Winter Meeting 1993, Winter Meeting 1994, and Winter Meeting 1995 (formerly Policy C-14).

HR-15. EMERGENCY MANAGEMENT ASSISTANCE COMPACT

DISASTERS AND EMERGENCIES OFTEN TRANSCEND POLITICAL JURISDICTIONAL BOUNDARIES, AND INTERGOVERNMENTAL COORDINATION IS ESSENTIAL TO MANAGING THEM. SOMETIMES THE RESOURCES NEEDED TO MANAGE A DISASTER OR EMERGENCY MAY NOT BE READILY AVAILABLE WITHIN THE STATE, AND OUTSIDE RESOURCES ARE NEEDED TO MAKE A PROMPT AND EFFECTIVE RESPONSE. INDIVIDUAL STATES DO NOT HAVE ALL THE RESOURCES NEEDED TO HANDLE THE VARIOUS TYPES OF EMERGENCIES OR DISASTERS THAT MAY CONFRONT THEM.

REALIZING THE NECESSITY OF SHARING MUTUAL ASSISTANCE IN TIMES OF EMERGENCIES AND DISASTERS, FOURTEEN STATES AND TERRITORIES HAVE ENTERED INTO THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC), TO FACILITATE MUTUAL ASSISTANCE AMONG THESE STATES DURING EMERGENCIES AND DISASTERS. THE U.S. HOUSE OF REPRESENTATIVES AND THE U.S. SENATE OF THE 104TH CONGRESS PASSED HOUSE JOINT RESOLUTION 193 TO GRANT THEIR CONSENT TO EMAC. IN ADDITION, EMAC HAS BEEN ENDORSED BY THE SOUTHERN GOVERNORS' ASSOCIATION, THE MIDWESTERN GOVERNORS' CONFERENCE, THE WESTERN GOVERNORS' ASSOCIATION, THE ADJUTANTS GENERAL ASSOCIATION OF THE UNITED STATES, AND THE NATIONAL GUARD ASSOCIATION OF THE UNITED STATES.

THE NATIONAL GOVERNORS' ASSOCIATION, ON BEHALF OF ALL GOVERNORS OF THE STATES AND TERRITORIES, FULLY ENDORSES EMAC, AND ENCOURAGES EVERY STATE TO CONSIDER ENTERING INTO THE COMPACT AS SOON AS IT IS PRACTICAL. PARTICIPATION IN THE COMPACT SHOULD BE VOLUNTARY, WITH THE DETERMINATION MADE BY EACH GOVERNOR AND HIS OR HER RESPECTIVE STATE. EACH GOVERNOR MUST BE GIVEN AN ADEQUATE OPPORTUNITY TO EVALUATE HIS OR HER INDIVIDUAL STATE'S NEEDS AND CAPABILITIES IN MAKING A DETERMINATION TO PARTICIPATE. THE NATION'S GOVERNORS ARE COMMITTED TO PROVIDING FOR MUTUAL ASSISTANCE AMONG THE STATES IN MANAGING ANY EMERGENCY OR DISASTER THAT IS DULY DECLARED BY THE GOVERNOR OF THE AFFECTED STATE. THE GOVERNORS UNDERSTAND THAT THE UNDERLYING PRINCIPLE OF THE COMPACT IS TO ENSURE THAT PROMPT, FULL, AND EFFECTIVE UTILIZATION OF RESOURCES OF THE PARTICIPATING STATES AND THE FEDERAL GOVERNMENT ARE AVAILABLE TO GUARANTEE THE SAFETY, CARE, AND WELFARE OF THE PEOPLE IN THE EVENT OF ANY EMERGENCY OR DISASTER IN AN AFFECTED STATE.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

DEPENDENCY TO WORK AND SELF-SUFFICIENCY. CONGRESS MUST PROVIDE FUNDING FOR CHILD CARE FOR BOTH THE DISCRETIONARY AND MANDATORY FUNDING STREAMS AT THE FULL LEVELS AUTHORIZED IN THE WELFARE LAW. ADDITIONALLY, BECAUSE THE SOCIAL SERVICES BLOCK GRANT (SSBG) IS USED IN MANY STATES TO FUND CHILD CARE FOR WORKING POOR FAMILIES, FUNDING FOR THIS PROGRAM ALSO MUST BE MAINTAINED. GOVERNORS STRONGLY OPPOSE ANY ATTEMPTS TO FURTHER REDUCE FUNDING FOR SSBG.

22.2.1 **OPERATE A SEAMLESS CHILD CARE SYSTEM.** THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 ACHIEVED THE CONSOLIDATION RECOMMENDED BY THE GOVERNORS BY COMBINING TITLE IV-A CHILD CARE FUNDING (AID TO FAMILIES WITH DEPENDENT CHILDREN, AT-RISK CHILD CARE, AND TRANSITIONAL CHILD CARE) WITH THE CHILD CARE DEVELOPMENT BLOCK GRANT TO CREATE A SINGLE CHILD CARE SYSTEM. THE NEW CHILD CARE BLOCK GRANT TO STATES WILL FACILITATE THE OPERATION OF A SEAMLESS SYSTEM OF CHILD CARE, ENABLING STATES TO SERVE FAMILIES MORE SMOOTHLY AND EFFECTIVELY WITHOUT CHANGES IN SERVICES AS FAMILIES' SITUATIONS CHANGE. CHILD CARE WILL BE PROVIDED THROUGH A SINGLE STATE AGENCY AND STATES WILL HAVE TOTAL FLEXIBILITY TO SET PAYMENT RATES FOR PROVIDERS AND PROVIDE DIFFERENT REIMBURSEMENT RATES FOR DIFFERENT CATEGORIES OF CARE AND IN DIFFERENT GEOGRAPHIC SETTINGS.

22.2.2 **INCREASE STATE FLEXIBILITY.** GIVEN THE INCREASED DEMAND FOR CHILD CARE SERVICES, FLEXIBILITY WILL BE KEY AS STATES PROVIDE CHILD CARE SERVICES UNDER THE BLOCK GRANT. AS MORE WELFARE RECIPIENTS MOVE INTO THE WORKFORCE, STATES WILL NEED TO EXPAND CHILD CARE DURING NONTRADITIONAL HOURS AND IN ALTERNATIVE SETTINGS, SUCH AS SCHOOLS AND THE WORKPLACE. STATES WILL NEED FLEXIBILITY IN SETTING CHILD CARE RATES, SUCH AS PROVIDING A "FAMILY BENEFIT" RATHER THAN A FLAT RATE PER CHILD TO FURTHER STRETCH CHILD CARE RESOURCES. THE GOVERNORS URGE THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, IN WRITING REGULATIONS, TO HONOR THE CONGRESSIONAL INTENT TO ACCORD STATES MAXIMUM FLEXIBILITY.

22.2.3 **IMPROVE PROGRAM ADMINISTRATION.** THE GOVERNORS APPRECIATE THAT SEVERAL SET-ASIDES HAVE BEEN MODIFIED OR ELIMINATED. THEY CONSIDER THE EXPANSION OF AFFORDABLE AND ACCESSIBLE CHILD CARE TO BE A PRIORITY, BUT ARE CONCERNED THAT THE 5 PERCENT ADMINISTRATIVE CAP MAY LIMIT A STATE'S ABILITY TO CREATE INNOVATIVE AND EFFECTIVE PROGRAMS. ELIGIBILITY

HR-22. CHILD CARE

22.1 PREAMBLE

AS AMERICA'S MOST VALUABLE HUMAN RESOURCE, CHILDREN DESERVE A SAFE AND HEALTHY CHILD CARE ENVIRONMENT. THE GOVERNORS RECOGNIZE THAT PARENTS ARE CHILDREN'S FIRST AND PRIMARY NURTURERS, AND GOVERNMENT POLICIES SHOULD ACKNOWLEDGE AND SUPPORT THE FAMILY AS THE PRIMARY CHILD CARE UNIT. OVER THE PAST TWO DECADES, MAJOR ECONOMIC AND SOCIAL CHANGE HAS RESULTED IN GROWING NUMBERS OF PARENTS AT ALL INCOME LEVELS SEEKING QUALITY CARE OPPORTUNITIES FOR CHILDREN. THE CHALLENGE TO PUBLIC AND PRIVATE ENTITIES IS TO RESPOND TO THIS NEED AND PRESERVE FOR PARENTS THE FUNDAMENTAL CHOICE OF HOW TO BEST MEET THE CHILD CARE NEEDS OF THEIR CHILDREN.

GOVERNORS, THE FEDERAL GOVERNMENT, THE PRIVATE SECTOR, AND FAMILIES ALL HAVE A VESTED INTEREST IN ENSURING THAT OUR NATION'S CHILD CARE SYSTEM IS PROVIDING THE SERVICES AND RESOURCES THAT WORKING FAMILIES NEED. GOVERNORS BELIEVE THAT THE PRIVATE SECTOR IS AN IMPORTANT PARTNER IN THIS EFFORT.

THE GOVERNORS BELIEVE THAT THE EXPANSION OF SAFE, AFFORDABLE, AND ACCESSIBLE CHILD CARE OPPORTUNITIES IS VITAL TO THE ECONOMIC GROWTH OF THE NATION AND CRUCIAL FOR THE WELL-BEING OF THE NATION'S FAMILIES AND CHILDREN. THE GOVERNORS ALSO RECOGNIZE THAT DRAMATIC AND ONGOING CHANGES IN OUR SOCIETY WILL CONTINUE TO FUEL A GROWING DEMAND FOR SAFE, AFFORDABLE, AND ACCESSIBLE CHILD CARE OVER THE NEXT DECADE. FOR EXAMPLE, WITH THE PASSAGE OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996, P.L. 104-193, TOUGH WORK REQUIREMENTS AND TIME-LIMITED ASSISTANCE WILL GREATLY INCREASE THE DEMAND FOR AFFORDABLE AND ACCESSIBLE CHILD CARE OVER THE NEXT SEVERAL YEARS. AS GROWING NUMBERS OF FAMILIES TRANSITION OFF WELFARE AND OTHER FAMILIES REMAIN AT RISK OF WELFARE DEPENDENCY, CHILD CARE FOR LOW-INCOME WORKING FAMILIES ALSO WILL NEED TO BE EXPANDED.

22.2 RECOMMENDATIONS

THE GOVERNORS BELIEVE THAT ADEQUATE FUNDING FOR CHILD CARE IS ABSOLUTELY ESSENTIAL IF STATE WELFARE REFORM INITIATIVES ARE TO BE SUCCESSFUL IN HELPING FAMILIES MAKE THE TRANSITION FROM WELFARE AND

DETERMINATION, CHILD CARE PLACEMENT, RECRUITMENT, LICENSING, INSPECTIONS, TRAINING, COMPUTERIZED SYSTEMS, FRONT-LINE WORKERS, AND FIELD STAFF SHOULD NOT BE CONSIDERED ADMINISTRATIVE COSTS. ALL COSTS RELATED TO MANAGEMENT INFORMATION SYSTEMS AND ONGOING DATA COLLECTION AND ANALYSIS REQUIRED UNDER THE LAW SHOULD BE OUTSIDE OF THE ADMINISTRATIVE CAP. ADDITIONALLY, STATES NEED THE FLEXIBILITY TO USE SOME PORTION OF THEIR FUNDS TO EXPAND CAPACITY THROUGH RENOVATION AND CONSTRUCTION.

22.2.4 **USE STATE STANDARDS.** STATES ARE COMMITTED TO TARGETING CHILD CARE TO THOSE MOST IN NEED AND DO NOT NEED PRESCRIPTIVE FEDERAL REQUIREMENTS. THE CHILD CARE BLOCK GRANT REQUIRES STATES TO DEVELOP HEALTH AND SAFETY STANDARDS THAT ALL PROVIDERS MUST MEET. THESE STANDARDS ARE RELATED TO PREVENTING AND CONTROLLING INFECTIOUS DISEASES, ENSURING THE SAFETY OF BUILDINGS AND PHYSICAL PREMISES, AND PROVIDING MINIMUM HEALTH AND SAFETY TRAINING. IN SOME CASES, THESE STANDARDS MAY BE INAPPROPRIATE TO THE PROVIDER SETTING. THE GOVERNORS BELIEVE THAT THE STATES ARE IN THE BEST POSITION TO SET HEALTH AND SAFETY STANDARDS AND RECOMMEND THAT FEDERALLY FUNDED PROVIDERS BE REQUIRED TO COMPLY WITH HEALTH AND SAFETY STANDARDS AS PRESCRIBED UNDER STATE LAW. THE GOVERNORS ALSO URGE THE ELIMINATION OF THE 85 PERCENT STATE MEDIAN INCOME CAP REQUIREMENT FOR ELIGIBILITY. AS CONGRESS MONITORS THE IMPLEMENTATION OF THE LAW AND OPPORTUNITIES ARISE TO MAKE MODIFICATIONS, THE GOVERNORS ASK THAT THESE CHANGES BE CONSIDERED.

~~**22.1 Preamble**~~

~~As America's most valuable human resource, children deserve a safe and healthy child care environment. The Governors recognize that parents are children's first and primary nurturers, and government policies should acknowledge and support the family as the primary child care unit. Over the past two decades, major economic and social change has resulted in parents seeking quality care opportunities for children. The challenge to all levels of government is to respond to this need and preserve for parents the fundamental choice of how to best meet the child care needs of their children.~~

~~The Governors believe that the expansion of quality child care opportunities is vital to the economic growth of the nation and crucial for the well-being of the nation's families and children. The Governors also recognize that dramatic and ongoing changes in our society will continue to fuel a growing demand for quality child care over the next decade.~~

~~In response to this growing need, the states and the federal government have created programs to provide quality child care opportunities for low-income families. One of the federal initiatives, the Child Care Development Block Grant (CCDBG) distributes funds to states to provide child care services for low-income families, as well as to support activities to improve the overall quality and supply of child care in the state. No state match is required under this program.~~

~~The Governors believe that CCDBG is a highly successful program that together with state and local initiatives has substantially increased the supply and the quality of child care services for low-income families and support its reauthorization.~~

~~22.2 Recommendations for Modifying Federal Child Care Programs~~

~~Based on the experiences and interests of states in providing high-quality child care services, the Governors offer the following recommendations to the administration and Congress in addressing issues of child care in the first session of the 104th Congress.~~

~~22.2.1 **Create a Seamless Child Care System.** The Governors urge Congress to move toward a more seamless system incorporating all of the federal child care programs. In general, they believe that CCDBG should be the foundation for that seamless system and that other federal child care programs, such as the Title IV-A and At-Risk Child Care programs, should be consolidated with CCDBG to form a single child care system operated by the states.~~

~~Such a consolidation would permit states to better coordinate state and federal child care programs at the state level and therefore operate a more seamless child care system. Based on the CCDBG requirements, the U.S. Department of Health and Human Services should work with states to develop a standardized reporting form that can be used by states for reporting on the use of federal child care funds.~~

~~In addition, the Governors call for the elimination of the 75 percent of state median income cap requirement for CCDBG eligibility and instead permit states to determine eligibility as under the At-Risk Child Care program. The Governors are committed to targeting child care programs to those families most in need. Therefore, as part of the state plan, the state can describe to the secretary of the U.S. Department of Health and Human Services its definition of an eligible family in the contexts of its own child care initiatives and overall child care needs in the state.~~

~~22.2.2 **Increase State Flexibility.** The Governors recommend that states be given total flexibility to set payment rates for providers. This will permit states to serve more families with limited CCDBG dollars and allow them to respond in the most appropriate manner based on their unique needs.~~

~~States also should be given the flexibility to set different statewide limits for different categories of care. Some categories of care, such as before-school, evening, or part-time care, often are in shorter supply and therefore can be more expensive than traditional full-time day care. By permitting states to set different statewide limits for different categories of care, states can purchase higher cost care without paying inflated rates for traditional care. In addition, states should have the option to pay providers more than the local market rate for higher quality care. This will provide an incentive for providers to increase the quality of care available in all types of categories.~~

~~The Governors call for the greatest flexibility possible in the allocation of funds for 1) the provision of child care services and activities to improve the quality and availability of child care; and 2) activities to improve the quality of child care and to increase the availability of early childhood development and before-and after-school child care services. Under the current CCDBG, funds are allocated between these two basic categories, and additional set-asides are included within the second category. The Governors believe the states are in the best position to assess the child care needs of their residents and call for the elimination of inflexible federal funding categories and set-asides. If the federal government is committed to maintaining basic funding categories, the Governors call for the greatest flexibility possible to reallocate funds between categories.~~

~~22.2.3 **Improve Program Administration.** In an effort to reduce the costs of administering CCDBG, the Governors call for enhanced federal funding to automate child care tracking and payment systems. Such an automated system could be used not only to administer child care programs, but also to coordinate child care services with other federal programs that support children and their families.~~

~~The Governors also call for greater flexibility for the states in terms of what is considered an allowable administrative expense, especially in the area of licensing and provider monitoring. Greater state administrative flexibility and the reduced costs of administering CCDBG would free up funds that would be used to expand the availability of child care.~~

~~22.2.4 **Use State Standards.** The Child Care Development Block Grant includes health and safety standards that all providers must meet. These standards are related to the prevention and control of infectious diseases, building and physical premises safety, and minimum health and safety standards appropriate to the provider setting. In some cases, these standards exceed what is required by current state law. The Governors believe the states are in the best position to set health and safety standards and recommend that providers funded by CCDBG be required to comply with health and safety standards as prescribed under state law.~~

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~
Adopted Winter Meeting 1995.

HR-36. IMPLEMENTATION OF WELFARE REFORM

36.1 PREAMBLE

THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996, P.L. 104-193, REALLOCATES RESPONSIBILITIES BETWEEN THE FEDERAL GOVERNMENT AND THE STATES AND PROVIDES STATES WITH THE OPPORTUNITY AND FLEXIBILITY TO RESTRUCTURE WELFARE AS A TRANSITIONAL PROGRAM THAT WILL ENABLE RECIPIENTS TO BECOME PRODUCTIVE, SELF-SUFFICIENT, WORKING MEMBERS OF SOCIETY. THE WELFARE LEGISLATION INCORPORATED MANY OF THE RECOMMENDATIONS SUPPORTED BY THE NATION'S GOVERNORS, INCLUDING INCREASED FUNDING FOR CHILD CARE, A CONTINGENCY FUND TO ASSIST STATES DURING PERIODS OF ECONOMIC DOWNTURN, AND A FUND TO REWARD HIGH PERFORMING STATES. THE GOVERNORS BELIEVE THAT GREATER FLEXIBILITY, BEYOND THAT PROVIDED IN THE LAW, WOULD FACILITATE IMPLEMENTATION AND ENABLE GOVERNORS TO ACCOMMODATE THE UNIQUE NEEDS OF THEIR OWN STATE'S ECONOMY AND WELFARE POPULATION.

STATES NOW FACE THE CHALLENGE OF IMPLEMENTING SWEEPING CHANGES WITHIN A LIMITED PERIOD OF TIME. THE GOVERNORS ARE COMMITTED TO ENSURING SUCCESSFUL IMPLEMENTATION OF THE LEGISLATION TO ACHIEVE THE FOLLOWING GOALS:

- INCREASE SELF-SUFFICIENCY BY MOVING FAMILIES INTO WORK AND OFF WELFARE;
- INCREASE THE SUPPORT OF BOTH PARENTS FOR THEIR CHILDREN;
- PREVENT AND REDUCE OUT-OF-WEDLOCK BIRTHS; AND
- ENCOURAGE THE FORMATION AND MAINTENANCE OF TWO-PARENT FAMILIES.

IN ORDER TO MEET THESE GOALS, THE FLEXIBILITY EMBODIED IN THE BILL MUST BE RETAINED THROUGH THE REGULATORY PROCESS AND ANY SUBSEQUENT LEGISLATIVE MODIFICATIONS TO THE BILL. THE GOVERNORS PLEDGE TO CONTINUE TO WORK WITH CONGRESS AND THE FEDERAL GOVERNMENT THROUGHOUT THE IMPLEMENTATION PROCESS SO THAT ANY PROBLEMS CAN BE IDENTIFIED EARLY AND REDRESSED QUICKLY THROUGH LEGISLATION OR REGULATION.

36.2 PRINCIPLES AND RECOMMENDATIONS FOR WELFARE REFORM IMPLEMENTATION

THE GOVERNORS BELIEVE THAT THE IMPLEMENTATION AND MONITORING OF WELFARE REFORM MUST BE COLLABORATIVE EFFORTS AMONG FEDERAL, STATE, AND LOCAL GOVERNMENTS AND THE PRIVATE SECTOR. GOVERNORS MUST BE INVOLVED IN

AND CONSULTED ON THE DRAFTING OF REGULATIONS AND PROPOSED TECHNICAL CHANGES TO THE BILL. THE GOVERNORS SUPPORT THE FOLLOWING PRINCIPLES AND RECOMMENDATIONS TO FACILITATE THE SUCCESSFUL IMPLEMENTATION OF WELFARE REFORM.

36.2.1 **ENACT TECHNICAL CORRECTIONS**. AS STATES HAVE BEGUN TO IMPLEMENT THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT AND OTHER PROVISIONS OF THE NEW WELFARE LAW, IT HAS BECOME APPARENT THAT A NUMBER OF TECHNICAL CORRECTIONS NEED TO BE MADE. MANY OF THESE CHANGES, ALTHOUGH TECHNICAL IN NATURE, AFFECT STATE DECISIONMAKING AND SPENDING AND NEED TO BE RESOLVED QUICKLY. THE GOVERNORS ARE COMMITTED TO WORKING WITH CONGRESS AND THE ADMINISTRATION TO ENSURE THAT PROMPT ACTION IS TAKEN TO ENACT A TECHNICAL CORRECTIONS BILL.

36.2.2 **MAINTAIN FUNDING AND FLEXIBILITY IN THE BLOCK GRANT.** P.L. 104-193 PROVIDES TO STATES A FIXED AMOUNT OF FUNDING FOR WELFARE IN THE FORM OF A BLOCK GRANT FOR FISCAL 1997 THROUGH FISCAL 2002. THIS TANF BLOCK GRANT IS FUNDED AS AN ENTITLEMENT TO STATES. A STATE'S TANF BLOCK GRANT IS BASED ON THE LEVEL OF FEDERAL FUNDING THAT A STATE RECEIVED IN A BASE YEAR. THE GOVERNORS SUPPORTED THE BLOCK GRANT CONCEPT FOR WELFARE FUNDING BECAUSE OF THE ADDED FLEXIBILITY IT PROVIDED. HOWEVER, THEIR SUPPORT CAME WITH THE UNDERSTANDING THAT THE FULL STATE ENTITLEMENT FUNDING WOULD BE AVAILABLE EACH YEAR. CONGRESS AND THE ADMINISTRATION MUST HONOR THEIR COMMITMENT TO PROVIDE FULL FUNDING FOR TANF AT THE MANDATORY LEVEL PROVIDED FOR IN P.L. 104-193. ADDITIONALLY, THE GOVERNORS OPPOSE ANY EFFORTS TO CREATE SET-ASIDES OR ADDITIONAL REQUIREMENTS IN THE BLOCK GRANT THAT LIMIT STATE FLEXIBILITY IN THE USE OR EXPENDITURE OF TANF FUNDS. STATES, AND NOT THE FEDERAL GOVERNMENT, SHOULD DEFINE "ELIGIBLE FAMILIES" AND "ASSISTANCE" UNDER A STATE WELFARE PROGRAM FUNDED WITH TANF DOLLARS. ANY FUTURE FEDERAL ACTIVITY—LEGISLATIVE OR REGULATORY—SHOULD ENHANCE AND NOT NARROW STATE FLEXIBILITY. THE GOVERNORS SUPPORT GREATER TRANSFERABILITY BETWEEN BLOCK GRANTS, INCLUDING THE SOCIAL SERVICES BLOCK GRANT AND IF ENACTED, A WORKFORCE DEVELOPMENT BLOCK GRANT.

36.2.3 **REMOVE FEDERAL RESTRICTIONS ON STATE DOLLARS**. THE TANF BLOCK GRANT IMPOSES A 75 PERCENT MAINTENANCE-OF-EFFORT REQUIREMENT ON STATE SPENDING IN ORDER FOR STATES TO BE ELIGIBLE FOR THEIR FULL TANF BLOCK GRANT. IT APPEARS THAT CERTAIN REQUIREMENTS IMPOSED ON ASSISTANCE FUNDED WITH

FEDERAL TANF DOLLARS—SUCH AS THE WORK REQUIREMENTS, DATA COLLECTION REQUIREMENTS, AND ASSIGNMENT OF CHILD SUPPORT RIGHTS—ALSO MAY BE IMPOSED ON STATE MAINTENANCE-OF-EFFORT DOLLARS. THE GOVERNORS STRONGLY BELIEVE THAT STATE DOLLARS SPENT TO MEET THE MAINTENANCE-OF-EFFORT REQUIREMENT—EITHER WITHIN THE STATE PROGRAM CREATED BY THE BLOCK GRANT OR IN SEPARATE STATE-ONLY FUNDED PROGRAMS—SHOULD NOT BE SUBJECT TO FEDERAL RESTRICTIONS, LIMITATIONS, OR REQUIREMENTS. THE IMPOSITION OF FEDERAL REQUIREMENTS ON STATE DOLLARS IS INCONSISTENT WITH THE PRINCIPLES OF FEDERALISM THAT UNDERLIE BLOCK GRANTS. SIMILARLY, ANY BONUS A STATE RECEIVES, EITHER FOR HIGH PERFORMANCE OR FOR REDUCING OUT-OF-WEDLOCK BIRTHS, SHOULD NOT BE SUBJECT TO TANF REQUIREMENTS. STATES SHOULD HAVE THE FLEXIBILTY TO REINVEST THESE FUNDS IN INNOVATIVE WAYS TO MEET THE GOALS OF WELFARE REFORM. ALL STATE-ONLY FUNDS SPENT BY A STATE TO MEET THE OBJECTIVES OF THE TANF PROGRAM SHOULD COUNT TOWARD THE STATE MAINTENANCE-OF-EFFORT REQUIREMENT.

36.2.4 **PROVIDE TIME-LIMITED CASH ASSISTANCE TO FAMILIES.** THE GOVERNORS BELIEVE THAT CASH ASSISTANCE TO FAMILIES WITH CHILDREN SHOULD BE AVAILABLE ONLY FOR A TIME-LIMITED PERIOD. DURING THIS PERIOD, ACTIVITIES SHOULD OCCUR TO HELP THESE INDIVIDUALS MAKE THE TRANSITION FROM WELFARE TO WORK. STATES SHOULD HAVE THE ABILITY TO EXTEND OR WAIVE THE TIME LIMIT IN APPROPRIATE CIRCUMSTANCES AS IS PERMITTED BY THE 20 PERCENT HARDSHIP EXEMPTION IN THE LAW. CASH ASSISTANCE, AND NOT ANY OTHER ACTIVITIES OR SERVICES PROVIDED UNDER TANF, SHOULD COUNT AGAINST THE TIME LIMIT. STATES SHOULD NOT BE PROHIBITED FROM PROVIDING NONCASH SERVICES WITH TANF FUNDS TO FAMILIES THAT HAVE REACHED THE SIXTY-MONTH TIME LIMIT.

36.2.5 **LIMIT OTHER TANF REQUIREMENTS TO CASH ASSISTANCE.** IN ADDITION TO THE TIME LIMIT, IT APPEARS THAT IF A FAMILY RECEIVES ANY TYPE OF ASSISTANCE UNDER TANF, THAT FAMILY WILL ALSO BE SUBJECT TO THE TWO-YEAR WORK REQUIREMENT, BE INCLUDED IN THE CALCULATION OF THE WORK PARTICIPATION RATE AND THE DATA COLLECTION REQUIREMENTS, AND BE REQUIRED TO ASSIGN THEIR CHILD SUPPORT RIGHTS TO THE STATE. THESE REQUIREMENTS WILL INHIBIT STATES' ABILITY TO PROVIDE PREVENTION-ORIENTED AND SUPPORT SERVICES THAT ARE ALLOWABLE UNDER TANF. AS WITH THE IMPOSITION OF THE TIME LIMIT, THE GOVERNORS BELIEVE THAT THE FEDERAL REQUIREMENTS AND PROHIBITIONS

IMPOSED ON ASSISTANCE UNDER THE ACT SHOULD ONLY APPLY TO RECIPIENTS OF CASH ASSISTANCE.

36.2.6 **RETAIN WAIVERS.** PRIOR TO THE ENACTMENT OF P.L. 104-193, MANY GOVERNORS HAD INITIATED COMPREHENSIVE WELFARE REFORM UNDER SECTION 1115 WAIVERS. ALTHOUGH SPECIFIC POLICIES UNDER STATES' WAIVER PROGRAMS MAY BE DIFFERENT FROM THE NEW LAW, THESE REFORMS SHARE THE SAME GOALS. INDEED, MANY OF THE PROVISIONS OF P.L. 104-193 WERE BASED ON INNOVATIONS CONTAINED IN STATES' WELFARE WAIVER PROGRAMS.

THE GOVERNORS BELIEVE THAT THE TRANSITION TO THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT SHOULD NOT DISRUPT EXISTING STATE-BASED WELFARE REFORM. STATES SHOULD BE ABLE TO CONTINUE ALL THE EXISTING PROVISIONS, TERMS, AND CONDITIONS OF THEIR WAIVERS UNTIL THE WAIVERS EXPIRE, INCLUDING PHASE-INS WITHOUT PENALTY TO EITHER THE STATE OR RECIPIENTS. ADDITIONALLY, STATES THAT CHOOSE TO CONTINUE ALL OR PART OF THEIR EXISTING WAIVERS UNDER TITLE IV-A, TITLE IV-F, MEDICAID, OR THE FOOD STAMP PROGRAM SHOULD HAVE AN OPPORTUNITY TO RENEGOTIATE WITH THE FEDERAL GOVERNMENT CONCERNING CONTROL GROUPS, EVALUATIONS, AND COST NEUTRALITY.

STATES THAT CHOOSE TO TERMINATE THEIR WELFARE WAIVERS SHOULD BE HELD HARMLESS FROM COST NEUTRALITY REQUIREMENTS UNDER TITLE IV-A AND TITLE IV-F, AS WELL AS UNDER THE FOOD STAMP PROGRAM AND MEDICAID, FOR THOSE WAIVERS THAT INCLUDED CHANGES TO THESE PROGRAMS OR HAD INTERACTIVE EFFECTS.

36.2.7 **ALLOW GREATER FLEXIBILITY IN THE WORK REQUIREMENT.** THE GOVERNORS ARE COMMITTED TO A "WORK FIRST" APPROACH THAT WILL QUICKLY MOVE RECIPIENTS INTO EMPLOYMENT WHILE PROVIDING THEM WITH OPPORTUNITIES TO DEVELOP THE SKILLS THAT WILL LEAD TO BETTER PAYING JOBS. EMPLOYERS HAVE INDICATED THAT THEY ARE WILLING TO HIRE WELFARE RECIPIENTS IF THEY ARE "JOB READY"—THAT IS, IF THEY ARE LITERATE, HAVE GOOD COMMUNICATIONS SKILLS, AND UNDERSTAND THE REQUIREMENTS OF THE WORKPLACE.

THE GOVERNORS BELIEVE THAT GREATER FLEXIBILITY WITHIN THE WORK REQUIREMENT WOULD ENABLE STATES TO BETTER MEET THE NEEDS OF RECIPIENTS AND EMPLOYERS. THE GOVERNORS RECOMMEND PERMITTING JOB SEARCH AND JOB READINESS TO COUNT TOWARD THE WORK PARTICIPATION RATE FOR AT LEAST TWELVE WEEKS EACH YEAR, ALLOWING GREATER FLEXIBILITY TO COUNT BASIC

EDUCATIONAL ACTIVITIES TOWARD THE WORK REQUIREMENT, REMOVING TEEN PARENTS FROM THE 20 PERCENT VOCATIONAL EDUCATION LIMIT, AND PERMITTING DRUG AND ALCOHOL TREATMENT TO COUNT TOWARD THE WORK REQUIREMENT. THE CALCULATION OF PARTICIPATION RATES SHOULD INCLUDE ALL HOURS OF WORK ACTIVITY FOR ALL ACTIVE PARTICIPANTS DURING THE REPORTING MONTH.

36.2.8 **PROVIDE SUITABLE CHILD CARE AND RETAIN FULL FUNDING.** AN ADEQUATE SUPPLY OF SAFE, AFFORDABLE, AND ACCESSIBLE CHILD CARE IS ONE OF THE ESSENTIAL COMPONENTS OF SUCCESSFUL WELFARE REFORM. SUITABLE CHILD CARE IS NECESSARY IF PARENTS ARE TO WORK. CONGRESS AND THE ADMINISTRATION MUST HONOR THEIR COMMITMENT TO FUND CHILD CARE AT THE LEVELS PROVIDED FOR IN P.L. 104-193.

36.2.9 **ADDRESS INFORMATION SYSTEM REQUIREMENTS.** THE LAW CREATES EXTENSIVE NEW DATA COLLECTION, REPORTING, TRACKING, AND MONITORING REQUIREMENTS UNDER THE TANF, CHILD CARE, CHILD SUPPORT ENFORCEMENT, AND FOOD STAMP PROGRAMS THAT WILL BE COSTLY AND DIFFICULT FOR STATES TO MEET. STATES DO NOT CURRENTLY HAVE THE CAPACITY TO MEET THE NEW SYSTEM REQUIREMENTS. THEREFORE, THE GOVERNORS MAKE THE FOLLOWING RECOMMENDATIONS.

- CONGRESS SHOULD STREAMLINE AND REDUCE THE REPORTING REQUIREMENTS IN THE TANF, CHILD CARE, CHILD SUPPORT ENFORCEMENT, AND FOOD STAMP PROGRAMS.
- HHS REGULATIONS SHOULD EXCLUDE FROM THE DEFINITION OF ADMINISTRATION FOR TANF ALL COSTS ASSOCIATED WITH INFORMATION TECHNOLOGY AND COMPUTERIZATION; ONGOING COSTS ASSOCIATED WITH MEETING THE DATA COLLECTION, REPORTING, TRACKING, AND MONITORING REQUIREMENTS; AND ANY EVALUATIONS REQUIRED IN LAW OR EXISTING WAIVERS.
- THE FEDERAL GOVERNMENT SHOULD PROVIDE TECHNICAL ASSISTANCE TO STATES IN DEVELOPING SYSTEMS AND FACILITATE INTERSTATE COORDINATION, PARTICULARLY IN THE TRACKING OF TIME LIMITS. STATES SHOULD NOT BE HELD RESPONSIBLE OR PENALIZED FOR FAILURE TO ENFORCE THE FIVE-YEAR LIFETIME LIMIT AND OTHER PROHIBITIONS THAT ARE DEPENDENT ON INTERSTATE SYSTEMS IF THE FEDERAL GOVERNMENT IS NOT WILLING TO PROVIDE FUNDING TO CREATE AND OPERATE AN INTERSTATE TRACKING SYSTEM.

- CONGRESS SHOULD REVISE THE CHILD CARE DATA COLLECTION AND REPORTING REQUIREMENTS OF THE CHILD CARE BLOCK GRANT TO SPECIFICALLY ALLOW SAMPLING.
- THE FEDERAL GOVERNMENT SHOULD PROVIDE ENHANCED FEDERAL FUNDING TO STATES TO IMPLEMENT THE MANAGEMENT INFORMATION SYSTEM REQUIREMENTS CREATED BY P.L. 104-193.

36.2.10 **DEFINE ADMINISTRATIVE COSTS.** P.L. 104-193 SETS A 15 PERCENT LIMITATION ON USE OF TANF FUNDS FOR ADMINISTRATIVE PURPOSES. ADMINISTRATIVE COSTS WILL BE DEFINED IN REGULATION. UNDER TANF, STATES HAVE THE ABILITY TO PROVIDE A WIDE RANGE OF SERVICES, NOT JUST CASH ASSISTANCE. WITH THE EMPHASIS ON MOVING RECIPIENTS SWIFTLY INTO WORK, STAFF WILL BE EXPECTED TO DO MUCH MORE THAN DETERMINE BENEFIT ELIGIBILITY. CASE MANAGEMENT AND EMPLOYMENT SERVICES PROVIDED TO MEET THE WORK PARTICIPATION REQUIREMENTS WILL BE LARGER COMPONENTS OF SERVICE DELIVERY AND SHOULD NOT BE CONSIDERED AS ADMINISTRATIVE COSTS. REGULATIONS DEVELOPED IN CONSULTATION WITH THE STATES MUST REFLECT THIS EXPANDED UNDERSTANDING OF SERVICE DELIVERY AND EXCLUDE FROM ADMINISTRATIVE COSTS BENEFITS, DIRECT SERVICES, AND AUTOMATION.

36.2.11 **RECOGNIZE STATES' GOOD-FAITH EFFORTS.** WITHIN A VERY SHORT PERIOD OF TIME, STATES MUST IMPLEMENT MAJOR CHANGES IN THEIR WELFARE PROGRAMS—TRANSFORMING THEIR JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) TRAINING PROGRAM INTO A WORK FIRST SYSTEM; DEVELOPING NEW AND COMPLEX MANAGEMENT INFORMATION SYSTEMS; REDESIGNING SUPPORT SERVICES; IMPLEMENTING NEW WORK REQUIREMENTS AND TIME LIMITS; AND IMPLEMENTING REQUIREMENTS ON TEEN PARENTS. ALTHOUGH THE GOVERNORS ARE FULLY COMMITTED TO SUCCESSFUL IMPLEMENTATION, IT IS POSSIBLE THAT EVERY STATE WILL NOT BE ABLE TO MEET THE REQUIREMENTS OF THE BILL, DESPITE THEIR BEST EFFORTS. STATES THAT HAVE SHOWN A GOOD-FAITH EFFORT OR HAVE A REASONABLE CAUSE FOR FAILURE TO MEET A REQUIREMENT IN THE BILL SHOULD NOT BE PENALIZED BY THE FEDERAL GOVERNMENT. AS PROVIDED FOR IN THE BILL, STATES SHOULD BE ALLOWED AN ADEQUATE AMOUNT OF TIME TO CORRECT THE VIOLATION AND COMPLY BEFORE A PENALTY IS LEVIED.

36.2.12 **MODIFY THE CONTINGENCY FUND.** THE INCLUSION OF A CONTINGENCY FUND THAT PROVIDES ADDITIONAL FEDERAL MATCHING DOLLARS TO STATES EXPERIENCING AN ECONOMIC DOWNTURN WAS A KEY RECOMMENDATION MADE BY GOVERNORS DURING

THE WELFARE REFORM DEBATE. CONGRESS ADOPTED THE GOVERNORS' RECOMMENDATION OF PROVIDING $2 BILLION IN THE CONTINGENCY FUND FOR FISCAL 1997 THROUGH FISCAL 2001. THE GOVERNORS ARE CONCERNED, HOWEVER, THAT RESTRICTIONS CONTAINED IN THE FINAL BILL DIMINISH THE VALUE OF THE FUND AND WILL RESULT IN STATES DRAWING DOWN FEWER DOLLARS. THESE RESTRICTIONS INCLUDE LIMITING THE AMOUNT A STATE MAY ACCESS IN ANY MONTH TO ONE-TWELFTH OF 20 PERCENT OF ITS TANF GRANT, IMPOSING A VERY NARROW DEFINITION OF WHAT COUNTS TOWARD MEETING THE 100 PERCENT MAINTENANCE-OF-EFFORT REQUIREMENT, AND EFFECTIVELY REDUCING THE FEDERAL MATCH RATE THROUGH AN END-OF-THE YEAR RECONCILIATION PROVISION. THE GOVERNORS URGE CONGRESS TO CONSIDER SOME MODIFICATIONS IN THESE AREAS.

36.2.13 **MEASURE PERFORMANCE.** GOVERNORS SUPPORT THE PERFORMANCE BONUS THAT WILL REWARD STATES FOR MEETING THE GOALS OF P.L. 104-193, INCLUDING REDUCING WELFARE DEPENDENCY BY INCREASING EMPLOYMENT AND EARNINGS. GOVERNORS STRONGLY URGE THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES TO WORK CLOSELY WITH NGA AND THE AMERICAN PUBLIC WELFARE ASSOCIATION, AS INSTRUCTED IN THE LEGISLATION, TO DEVELOP THE CRITERIA AND FORMULA FOR THE AWARD OF PERFORMANCE BONUSES.

THE WORK PARTICIPATION RATE THAT STATES MUST MEET IN ORDER TO RECEIVE FULL TANF FUNDING IS A PROCESS RATHER THAN AN OUTCOME MEASURE AND DOES NOT MEASURE THE NUMBER OF INDIVIDUALS WHO HAVE LEFT WELFARE FOR WORK OR WHO HAVE BEEN DIVERTED FROM THE WELFARE ROLES. STATES ARE ACTUALLY GIVEN MORE CREDIT FOR KEEPING SOMEONE IN A SUBSIDIZED JOB AND ON WELFARE THAN FOR PLACING THAT PERSON IN A JOB WITH A SUFFICIENT INCOME SO THAT THEY NO LONGER ARE ELIGIBLE FOR CASH ASSISTANCE. ALTHOUGH THE PRO RATA REDUCTION IN THE WORK REQUIREMENT ATTEMPTS TO ADDRESS THIS ISSUE BY REWARDING A STATE FOR REDUCING ITS CASELOAD, IT WILL NOT BENEFIT A STATE IF ITS CASELOAD INCREASES DURING AN ECONOMIC DECLINE, EVEN IF THE STATE IS CONTINUING TO MOVE INDIVIDUALS INTO THE WORKFORCE.

THE GOVERNORS SUPPORT MOVING TOWARD AN OUTCOME-BASED SYSTEM THAT WOULD ALLOW A STATE TO USE PERFORMANCE MEASURES TO ASSESS ITS PROGRESS TOWARD MEETING BENCHMARKS AND GOALS ESTABLISHED BY THE STATE.

36.2.14 **REPEAL THE MAINTENANCE-OF-EFFORT REQUIREMENT FOR SUPPLEMENTAL SECURITY INCOME (SSI) STATE SUPPLEMENTS.** ALTHOUGH STATES ARE GIVEN A GREAT DEAL OF FLEXIBILITY UNDER TANF, STATES ARE STILL MANDATED TO MEET

MAINTENANCE-OF-EFFORT PROVISIONS FOR THEIR SSI STATE SUPPLEMENTARY PAYMENTS OR FACE SEVERE PENALTIES. EVEN THOUGH STATES' ENTRANCE INTO THIS PROGRAM WAS OPTIONAL, CURRENT LAW LOCKS STATES INTO CONTINUING THESE SUPPLEMENTAL BENEFITS PAID FOR WITH STATE-ONLY DOLLARS. THE GOVERNORS RECOMMEND THAT THE MAINTENANCE-OF-EFFORT REQUIREMENT FOR SSI STATE SUPPLEMENTS BE REPEALED AND THAT STATES BE GIVEN THE AUTHORITY TO SET THEIR OWN STATE SUPPLEMENT LEVELS. AT A MINIMUM, STATE MAINTENANCE-OF-EFFORT LEVELS SHOULD BE PROPORTIONALLY ADJUSTED DOWNWARD FOR INDIVIDUALS WHO LOSE ELIGIBILITY BECAUSE OF FEDERAL STATUTORY CHANGES REGARDING SSI BENEFITS TO IMMIGRANTS, CHILDREN, AND ALCOHOL AND SUBSTANCE ABUSERS.

36.2.15 **PROMOTE AGENCY COLLABORATION AND COORDINATION.** SUCCESSFUL IMPLEMENTATION OF WELFARE REFORM WILL REQUIRE CROSS-AGENCY COORDINATION AND COLLABORATION AT ALL LEVELS OF GOVERNMENT. THE CHILD CARE, EDUCATION, WORKFORCE, HEALTH, CHILD WELFARE, CHILD SUPPORT, AND HOUSING SYSTEMS WILL ALL PLAY AN INTEGRAL ROLE IN WELFARE REFORM. FOR EXAMPLE, RENT SUBSIDIES SHOULD BE MORE FLEXIBLE TO SUPPORT FAMILIES MOVING FROM WELFARE TO WORK. THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO FOLLOW THE STATES' LEAD IN ELIMINATING REGULATORY AND LEGISLATIVE BARRIERS THAT IMPEDE COLLABORATIVE EFFORTS.

36.2.16 **PROVIDE PUBLIC ASSISTANCE TO SOME LEGAL IMMIGRANTS AND REFUGEES.** THE GOVERNORS RECOGNIZE CONGRESS' WELL-INTENTIONED EFFORTS IN REGARD TO LEGAL IMMIGRANTS AND AGREE THAT SPONSORSHIP REQUIREMENTS CAN HELP PREVENT IMMIGRANTS FROM BECOMING PUBLIC CHARGES. HOWEVER, THE PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 THAT DENY CERTAIN BENEFITS TO THIS POPULATION, BOTH RETROACTIVELY AND PROSPECTIVELY, REPRESENT A COST TRANSFER TO STATE AND LOCAL GOVERNMENTS. THE GOVERNORS ARE PARTICULARLY CONCERNED ABOUT THE EFFECT OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 ON IMMIGRANTS WHO WERE IN THE UNITED STATES ON THE DATE OF ENACTMENT, BUT WHO CANNOT MEET THE CITIZENSHIP REQUIREMENT BECAUSE OF AGE OR DISABILITY. THESE INDIVIDUALS SHOULD NOT BE BARRED FROM FEDERAL SSI BENEFITS AND FOOD STAMPS. FURTHER, THOSE INDIVIDUALS WHO ARE RECEIVING FEDERAL BENEFITS AND HAVE SUBMITTED AN APPLICATION TO NATURALIZE SHOULD CONTINUE TO BE ELIGIBLE TO RECEIVE THOSE BENEFITS WHILE

THEY ARE PARTICIPATING IN THE APPROXIMATE SIX- TO NINE-MONTH NATURALIZATION PROCESS.

EVEN THOUGH MANDATES HAVE BEEN TERMINATED AND STATES HAVE BEEN GIVEN THE OPTION TO ESTABLISH ELIGIBILITY FOR TANF, MEDICAID, AND SOCIAL SERVICES, IT IS NOT CLEAR THAT THE JUDICIAL SYSTEM WILL PERMIT STATES TO BAR REFUGEES AND OTHER LEGAL IMMIGRANTS WHO ARE IN NEED FROM CRITICAL SERVICES PROVIDED TO OTHER RESIDENTS OF THE STATE. STATES COULD BE REQUIRED TO SUSTAIN BENEFITS, AT LEAST DURING AN INITIAL PERIOD OF JUDICIAL DELIBERATION.

AGED AND DISABLED REFUGEES SHOULD NOT BE BARRED FROM FEDERAL SSI BENEFITS AND FOOD STAMPS AFTER FIVE YEARS OF RESIDENCE. THE NEW WELFARE LAW NO LONGER PROVIDES FEDERAL BENEFITS TO THIS POPULATION AFTER FIVE YEARS AND SHIFTS THE RESPONSIBILITY TO STATES TO DECIDE WHETHER TO PROVIDE STATE BENEFITS TO THESE REFUGEES ADMITTED TO THE COUNTRY BY FEDERAL POLICY. THE AGED REFUGEES, IN PARTICULAR, CONFRONT EXTRAORDINARY DIFFICULTIES IN BECOMING CITIZENS, E.G., INABILITY TO PASS THE TESTS OR LOSS OF DOCUMENTS. UNLIKE LEGAL IMMIGRANTS, REFUGEES DO NOT HAVE SPONSORS. EVEN THOSE REFUGEES ABLE TO NATURALIZE WOULD BE IN JEOPARDY FOR A SIX- TO NINE-MONTH PERIOD DURING THE PROCESS OF APPLYING FOR NATURALIZATION.

BECAUSE IMMIGRATION AND REFUGEE POLICY IS UNDER THE SOLE JURISDICTION OF THE FEDERAL GOVERNMENT, THE GOVERNORS BELIEVE THAT THE FEDERAL GOVERNMENT MUST BE PREPARED TO BEAR THE COSTS OF SUCH POLICY.

36.3 PROGRAMS TO SUPPORT WELFARE REFORM

36.3.1 EARNED INCOME CREDIT (EIC). THE GOVERNORS HAVE SUPPORTED EFFORTS TO MORE NARROWLY TARGET EIC. THE EARNED INCOME CREDIT SHOULD BE ADJUSTED OVER TIME SO THAT WITH FOOD STAMPS, A FAMILY OF FOUR WITH A FULL-TIME, YEAR-ROUND WORKER WILL BE BROUGHT UP TO THE POVERTY LINE. ADMINISTRATION OF EIC SHOULD BE SIMPLIFIED, OUTREACH AND EDUCATION TO ENSURE FULL PARTICIPATION SHOULD BE EXPANDED, AND WORKER CHOICE REGARDING THE FREQUENCY OF PAYMENT SHOULD BE PRESERVED. EMPLOYERS SHOULD BE ENCOURAGED TO ADVANCE EIC TO QUALIFIED EMPLOYEES. STATES SHOULD BE ALLOWED TO ADVANCE EIC TO THOSE ELIGIBLE INDIVIDUALS, INCLUDING THOSE ON PUBLIC ASSISTANCE.

36.3.2 JOB DEVELOPMENT/JOB CREATION. AS JOBS ARE CREATED IN THE ECONOMY THROUGH VARIOUS MEANS, EVERY EFFORT SHOULD BE MADE TO ENSURE THAT

EMPLOYMENT IS AVAILABLE TO THOSE MAKING THE TRANSITION FROM WELFARE TO WORK. THE PRIVATE SECTOR, THE MAJOR SOURCE OF NEW JOB OPPORTUNITIES, SHOULD BE ENCOURAGED TO TRAIN WORKERS AND TO HIRE THOSE RECIPIENTS WHO ARE READY TO WORK. GOVERNORS ARE INTERESTED IN WORKING WITH THE PRIVATE SECTOR TO IDENTIFY THE STRATEGIES THAT ARE MOST SUCCESSFUL IN CREATING JOBS FOR WELFARE RECIPIENTS. GOVERNORS ALSO ARE INTERESTED IN WORKING WITH THE PRIVATE SECTOR TO DEVELOP PROGRAMS THAT WILL ENHANCE JOB RETENTION AND PROMOTION, PROVIDE ON-THE-JOB TRAINING, AND PROVIDE ON-SITE CHILD CARE. GOVERNORS SUPPORT REMOVING OBSTACLES THAT MIGHT IMPEDE PUBLIC-PRIVATE PARTNERSHIPS THAT PROVIDE OPPORTUNITIES FOR PEOPLE TRANSITIONING FROM WELFARE TO WORK.

ANY FEDERAL PROGRAM PROVIDING FUNDS FOR JOB CREATION OR RETENTION SHOULD BE DIRECTED TO THE STATES, AS GOVERNORS ARE ACCOUNTABLE FOR MEETING THE WORK REQUIREMENT AND WILL BE PENALIZED FOR FAILURE TO DO SO. THESE FUNDS SHOULD FLOW THROUGH A STATE TO ENABLE MAXIMUM COORDINATION WITH A STATE'S WELFARE REFORM PROGRAM, WHICH WOULD ALLOW THE STATE TO TARGET AREAS WITH THE GREATEST NEEDS.

PUBLIC AGENCIES AT ALL LEVELS OF GOVERNMENT SHOULD LEAD BY EXAMPLE AND ACCEPT THEIR OBLIGATION TO EMPLOY THOSE IN TRANSITION FROM WELFARE AS JOBS ARE DEVELOPED. WHERE APPROPRIATE, PRIVATE AND NOT-FOR-PROFIT ORGANIZATIONS UNDER CONTRACT TO STATE AND LOCAL AGENCIES SHOULD ALSO BRING THESE INDIVIDUALS INTO THEIR WORKFORCES.

36.3.3 **CHILD SUPPORT.** GOVERNORS SUPPORTED MANY OF THE TOOLS PROVIDED IN THE WELFARE REFORM LAW THAT WILL GIVE STATES THE ABILITY TO ENHANCE THE COLLECTION OF CHILD SUPPORT. CHILD SUPPORT WILL BECOME AN EVEN MORE CRUCIAL PART OF ASSISTANCE TO FAMILIES AS MORE FAMILIES TRANSITION TO WORK AND TIME-LIMITS ON CASH ASSISTANCE ARE IMPLEMENTED. GOVERNORS ENCOURAGE EMPLOYERS TO WORK WITH STATES TO SUCCESSFULLY IMPLEMENT THE NEW HIRE REPORTING PROVISIONS. FINANCIAL INSTITUTIONS CAN ALSO PLAY A MAJOR ROLE IN SUPPORTING A STATE'S ABILITY TO IMPLEMENT NEW PROVISIONS PERTAINING TO MATCHING FINANCIAL RECORDS; GOVERNORS ENCOURAGE FINANCIAL INSTITUTIONS TO WORK WITH STATES ON THESE EFFORTS.

36.3.4 **CHILD SUPPORT PRIVATE RIGHT-OF-ACTION**. GOVERNORS ARE STRONGLY OPPOSED TO THE CREATION OF A PRIVATE RIGHT-OF-ACTION UNDER TITLE IV-D, CHILD SUPPORT, AND THE NATIONAL GOVERNORS' ASSOCIATION JOINED AN AMICUS BRIEF TO THE U.S.

SUPREME COURT ON BLESSING V. FREESTONE. THE GOVERNORS URGE CONGRESS TO MOVE SWIFTLY TO ADOPT AN AMENDMENT TO CLARIFY THAT NO PRIVATE RIGHT-OF-ACTION EXISTS UNDER THE SOCIAL SECURITY ACT. THE GOVERNORS ARE NOT OPPOSED TO CITIZEN SUITS BUT BELIEVE SUCH SUITS SHOULD BE BROUGHT AGAINST THE LEVEL OF GOVERNMENT ENACTING THE LAW, IN THIS CASE, THE FEDERAL GOVERNMENT.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

HR-37. PRIVATE SECTOR HEALTH CARE REFORM

~~EC-3. HEALTH CARE REFORM~~

37.1 Preamble

The health of our nation depends on the health of our people. ~~And today,~~ The United States has the most sophisticated and technologically advanced health care system in the world. However, the technological excellence of our system has come with a price. Growth in the American health care industry has exceeded growth in the overall economy for almost every one of the last thirty years, ALTHOUGH RECENTLY THERE HAS BEEN AN ENCOURAGING MODERATION IN MEDICAL INFLATION. OVER THE LAST YEAR, HEALTH CARE COST INCREASES WERE IN LINE WITH GENERAL INFLATION, THANKS IN LARGE PART TO THE COST CONTROLS AND MANAGEMENT EFFICIENCIES IMPLEMENTED IN MEDICAID AND OTHER STATE HEALTH PROGRAMS BY GOVERNORS.

~~The cost of this extraordinary growth continues to concern government, businesses, and individuals.~~ A growing number of Americans, INCLUDING CHILDREN AND ADOLESCENTS, are without PRIVATE SECTOR health coverage, with even basic care beyond the reach of many. With health care costs HAVING EXCEEDED ~~exceeding~~ general economic growth FOR DECADES, coverage HAS DECLINED ~~declining~~, and costs HAVE SHIFTED ~~shifting~~ to a smaller percentage of Americans who can afford to pay. Affordable quality care is becoming more elusive. The challenge that we face is to extend access to affordable quality care to all Americans, including those in underserved and rural areas, while containing costs.

The last several years have seen intense federal efforts to develop a consensus on national health care reform. ALTHOUGH EFFORTS TO ENACT FUNDAMENTAL NATIONAL REFORM HAVE BEEN UNSUCCESSFUL THUS FAR, IMPORTANT PROGRESS HAS BEEN MADE WITH THE PASSAGE OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT. ~~Thus far, those efforts have been unsuccessful. By contrast,~~ IN ADDITION, the reform efforts of Governors and state legislators have been much more successful THAN FEDERAL ATTEMPTS AT FUNDAMENTAL REFORM. The emphasis of Governors today is to develop state-based health care reform efforts.

In almost every state, strategies have been implemented to improve the quality and availability of health care. In most states, the reform efforts have been focused to address a specialized problem. In several notable cases, the state is engaged in a comprehensive effort that is likely to provide near-universal coverage for its citizens. In general, states are testing strategies to restructure both the health care market and the public programs that support the most vulnerable citizens.

37.1.1 Private Market. Within the private insurance market, states have acted to enhance access and improve equity for both employers and employees. In some states, for example, limits have been placed on preexisting conditions exclusions for certain market segments. Some states HAVE IMPLEMENTED

REFORMS SETTING FORTH ~~are experimenting with~~ guaranteed issue, WHICH REQUIRES INSURERS IN THE SMALL GROUP MARKET TO ACCEPT EVERY SMALL EMPLOYER WHO APPLIES FOR COVERAGE, and portability of coverage, THROUGH WHICH ~~where~~ individuals can be ensured access to coverage after changing jobs. And within the small group insurance market, a number of states are establishing modified community rating systems, while two states have moved to a pure community rating.

More than EIGHTEEN ~~sixteen~~ states are experimenting with tax incentives to increase coverage. Included among THESE strategies are transitional tax credits to small businesses and medical savings accounts. These STATE EXPERIMENTS ~~strategies~~ are applicable only to state taxes and do not affect federal tax laws.

~~Finally,~~ Some states are encouraging the establishment of purchasing alliances or group purchasing pools. By spreading risk and encouraging competition among health networks and insurers, alliances are able to offer affordable coverage to individuals, those who are self-employed, and people who work in small businesses—those who find it most difficult to purchase affordable coverage. Although these programs are still in their earliest stages, the results look promising. THE GOVERNORS CONTINUE TO BE CONCERNED ABOUT FEDERAL PREEMPTION OF STATE LAW IN THE REGULATION OF HEALTH CARE NETWORKS, AS DISCUSSED IN AN NGA LETTER DATED SEPTEMBER 28, 1995.

BY EXPERIMENTING WITH A NUMBER OF INNOVATIONS WITHIN THE PRIVATE INSURANCE MARKET, STATES HAVE TAKEN THE LEAD IN DEVELOPING AND IMPLEMENTING REFORMS DESIGNED TO EXPAND AFFORDABLE ACCESS TO INSURANCE COVERAGE WHILE CONTROLLING COSTS. THE EXPERIENCE GAINED THROUGH STATE REFORM EFFORTS LAID THE GROUNDWORK FOR THE PASSAGE OF THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.

~~37.1.2 **Public Programs.** The Medicaid program remains the only national health care program for those who are poor. Although the program serves more than 30 million beneficiaries annually, many extremely poor people do not qualify for care.~~

~~Several states have acted to eliminate this inequity by restructuring their Medicaid program. Provisions of the Social Security Act, of which Medicaid is one part, allow states to experiment with the program so that individuals not otherwise eligible for the program may become so. These provisions also have been used to ensure that Medicaid beneficiaries receive care through systems of managed care.~~

37.2 Federal Support for State-Based Health Care Reform

States have made significant progress in reforming their health care systems; however, much more needs to be done. The nation's Governors call upon the President and Congress to work with states to facilitate and accelerate the development of state reform efforts.

37.2.1 **Employee Retirement Income Security Act.** Although the Governors are extremely sensitive to the concerns of large multistate employers, the fact remains that one of the greatest barriers to some state reform initiatives is the Employee Retirement Income Security Act (ERISA).

ERISA was enacted in 1974 and applies to employee benefits plans, including employee health plans. ERISA provides for a complete federal preemption of state laws that "relate to" employee health

plans. Under the McCarran-Ferguson Act, states retain the ability to regulate insurance carriers, such as indemnity plans and health maintenance organizations. However, states are powerless to regulate or otherwise affect employee health plans that "self-insure" under ERISA rather than buy insurance.

Self-insurance was very rare when ERISA was enacted, but it now covers 51 PERCENT ~~almost half~~ of the employees in the United States who receive health benefits. This proliferation of self-insurance, coupled with the federal courts' broad interpretation of the reach of ERISA preemption, has made ERISA a formidable barrier to states wishing to implement certain health care reform.

ERISA preempts all self-insured health plans from state regulations and subjects those plans only to federal authority. As a result of judicial interpretations of ERISA, states are prohibited from:

- establishing minimum guaranteed benefits packages for all employers;
- REQUIRING ALL HEALTH PLANS TO PROVIDE STATES WITH INFORMATION CRUCIAL TO DEVELOPING A COMPREHENSIVE UNDERSTANDING OF THE STATUS OF THE STATE'S HEALTH CARE ACCESS AND DELIVERY SYSTEMS;
- ~~developing standard data collection systems applicable to all state health plans;~~
- ~~developing uniform administrative processes, including standardized claim forms;~~
- ~~establishing all-payer rate-setting systems;~~
- establishing a statewide employer mandate;
- imposing a level playing field through premium taxes on self-insured plans; and
- OVERSEEING QUALITY IN SELF-FUNDED HEALTH PLANS AND ESTABLISHING CONSUMER PROTECTIONS.
- ~~imposing a level playing field through provider taxes where the tax is interpreted as having an impermissible direct or indirect impact on self-insured plans.~~

THE DECISION IN NEW YORK STATE CONFERENCE OF BLUE CROSS & BLUE SHIELD PLANS V. TRAVELERS INSURANCE COMPANY AFFIRMED STATES' ABILITY TO ESTABLISH ALL-PAYER RATE-SETTING SYSTEMS. THE SAME CASE INDICATED THAT PROVIDER TAXES WOULD BE PERMISSIBLE, BUT CONCERNS REMAIN THAT THESE TAXES COULD BE PREEMPTED BY ERISA THROUGH EVOLVING JUDICIAL INTERPRETATION.

37.2.1.1 **Strategy for Reform.** A multidimensional approach to reform could be taken that includes flexibility for states directly in the ERISA statute, and through new waiver authority.

- **Statutory Flexibility.** Congress may act quickly to help states by including flexibility directly in statute. This may be accomplished through statutory directives to the federal executive branch regarding national uniformity. Specifically, a state would be permitted to impose requirements on self-funded plans if the state was willing either to adopt and build upon minimum national standards or work within some type of federal framework. The federal executive branch would be instructed to work with states to identify and define those standards.

  This approach has the potential for broad applicability but is most relevant to ~~administrative simplifications and insurance reform. For example, states and the business community generally agree on the need for uniform claims and data reporting procedures. In order to encourage uniformity in health plan administrative requirements, the U.S. Secretary of Labor, in consultation with the U.S. Secretary of Health and Human Services and the states, could be directed to compile, publish, and publicize existing national standards for claims processing formats and procedures for data reporting. If a state selected one of the existing~~

~~standards, it would be permitted to implement that standard and include self-funded plans. This type of directive also could be extended to~~ quality and utilization review procedures.

To facilitate the process, the legislation should be structured to rely on existing national standards. Where none exist, the legislation could direct the executive branch to develop them. However, if the executive branch finds it necessary to develop a national standard, states should be given limited flexibility during the development period so that they can move ahead with their innovations.

- **Waiver Authority.** In addition to direct statutory flexibility, Congress should establish direct waiver authority in ERISA. Waiver authority would be most applicable for states that wish to develop alternative financing and cost-control strategies that are now precluded by the statute. Waiver authority could have the following parameters.
  - The secretary of the U.S. Department of Labor would have the authority to review and grant ERISA waivers.
  - There would be no prohibition against replicating other state ERISA waivers. However, each state would have to submit a waiver application.
  - Waivers would be approved for an initial five-year period with five-year renewals thereafter.
  - Waiver applications would be submitted by the Governor.
  - As a condition for waiver approval, the state would have to demonstrate that the strategy has the support of the state's legislature.
  - For states making requests for exemptions in the areas of financing or cost control, the state's waiver application would have to include a plan for expanding coverage and MAINTAINING QUALITY, AND a strategy for documenting the state's progress toward achieving THESE GOALS ~~that goal~~.

37.2.2 **The Health Insurance Market.** With the enactment of the McCarran-Ferguson Act in the 1930s, a state's prerogative to regulate health insurers has been recognized by federal law. However, since ERISA's enactment in 1974, that delineation of state and federal responsibilities has been blurred. ERISA provides that self-funded single employer or Taft-Hartley jointly administered plans are exempt from state regulation. States cannot establish minimum solvency and capital requirements for these self-funded plans. They cannot ensure that employees and dependents in self-funded plans receive the basic consumer protections that are offered to those in commercial state-regulated plans; nor can they ensure that those in self-funded plans have remedies available when problems arise over coverage decisions and other matters. ~~States, attempting to make the private insurance market more stable and equitable, are prohibited from imposing guaranteed issue or limitations on preexisting conditions exclusions requirements on self-funded plans.~~ As such plans proliferate, they represent a growing share of the total health care market and greatly erode the ability of states to regulate the private health care market. The federal government must act to rectify the situation.

The nation's Governors call on the federal government to correct these inequities by adopting one or more of the following options.

- Congress should WORK WITH THE STATES TO establish national health care standards for self-funded plans that are similar to those imposed by states on commercial plans. If Congress is unwilling to define legislative standards in ERISA, the U.S. Department of Labor, IN CONSULTATION WITH THE STATES, should be given the authority to develop regulations that, at the very least, establish essential consumer protections and remedies standards for self-funded plans.
- Anecdotal evidence suggests that consumer protections problems are more likely to arise in small self-funded plans. Congress could limit self-funding authority to businesses above a certain size. Businesses below that limit would be required to follow state laws. The

U.S. Department of Labor would need to enforce standards for those plans that remain under its jurisdiction.

~~The Governors also support standards that result in portability of coverage, guaranteed renewability of policies, limitation on both medical underwriting and preexisting conditions exclusions, and opportunities for states to establish meaningful and equitable rating systems.~~

If Congress chooses to set minimum national standards, they should be developed with state officials in consultation with representatives of affected small businesses, insurers, and consumers.

37.2.2.1 **MULTIPLE EMPLOYER WELFARE ARRANGEMENTS.** THE GOVERNORS SUPPORT EFFORTS DESIGNED TO ENABLE SMALL EMPLOYERS TO JOIN TOGETHER TO PARTICIPATE MORE EFFECTIVELY IN THE HEALTH INSURANCE MARKET. IN FACT, STATES HAVE TAKEN THE LEAD IN FACILITATING THE DEVELOPMENT OF SUCH PARTNERSHIPS AND ALLIANCES. HOWEVER, THESE PARTNERSHIPS MUST BE CAREFULLY STRUCTURED AND REGULATED BY STATE AGENCIES. MANY STATES HAVE EXPERIENCED EXTENSIVE AND WELL-DOCUMENTED PROBLEMS WITH FRAUDULENT MULTIPLE EMPLOYER WELFARE ARRANGEMENTS (MEWAS) IN RECENT YEARS. IN MANY CASES, STATE LEGISLATION HAS BEEN ADOPTED TO PROTECT AGAINST FURTHER ABUSE.

THE GOVERNORS STRONGLY OPPOSE CONGRESSIONAL REFORMS THAT WOULD EXTEND ERISA STATUS TO MEWAS OR OTHERWISE LIMIT STATE OVERSIGHT. STATE INSURANCE REGULATION IS CRUCIAL TO ENSURING THAT SMALL BUSINESS ALLIANCES RECEIVE RELIABLE AND SECURE COVERAGE. BEFORE ANY CHANGE IS MADE IN FEDERAL STATUTE WITH REGARD TO MEWAS, THE IMPACT OF THE SMALL MARKET REFORM CHANGES SET FORTH BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 SHOULD BE CAREFULLY ANALYZED.

37.2.3 **THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.** WITH THE PASSAGE OF THIS IMPORTANT NEW LAW, THE FEDERAL GOVERNMENT HAS MADE PROGRESS TOWARD EXTENDING BASIC MARKET REFORMS TO ERISA PLANS. ALTHOUGH GOVERNORS RECOGNIZE THE IMPORTANCE OF NATIONAL PROTECTIONS AND APPLAUD THE EXTENSION OF THOSE PROTECTIONS TO ERISA PLANS, IT IS IMPORTANT TO REMEMBER THAT STATES HAVE PRIMARY RESPONSIBILITY FOR INSURANCE REGULATION. THAT ROLE MUST BE PRESERVED.

THE GOVERNORS LOOK FORWARD TO WORKING CLOSELY WITH THE FEDERAL GOVERNMENT AS IMPLEMENTATION DECISIONS ARE MADE. IN PARTICULAR, GOVERNORS WILL BE FOLLOWING VERY CAREFULLY THE PROCESS FOR DETERMINING WHETHER STATE ALTERNATIVES FOR THE REGULATION OF THE INDIVIDUAL INSURANCE MARKET ARE DEEMED ACCEPTABLE BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS). THE STATUTE PROVIDES EXAMPLES OF WHAT

CONSTITUTES AN ACCEPTABLE ALTERNATIVE, AND GOVERNORS DO NOT WANT STATE FLEXIBILITY TO BE DIMINISHED THROUGH THE REGULATORY PROCESS.

THE GOVERNORS ALSO BELIEVE STATES SHOULD BE CONSULTED EXTENSIVELY AS HHS DEVELOPS STANDARDS FOR THE ADMINISTRATIVE SIMPLIFICATION PROVISIONS IN THE NEW LAW. NATIONAL STANDARDS WILL BE ADOPTED AND ENACTED WITHIN TWENTY-FOUR MONTHS OF PROMULGATION REGARDING TRANSACTIONS, DATA ELEMENTS FOR SUCH TRANSACTIONS, AND STANDARDS FOR THE ELECTRONIC TRANSMISSION OF CERTAIN HEALTH INFORMATION. STATE PARTICIPATION IS NEEDED TO ENSURE THAT STATE DATA NEEDS ARE ADDRESSED AND THAT PATIENT PRIVACY IS PROTECTED.

~~37.2.3 **Acute Care Services for Low-Income Individuals and Families.** Irrespective of the health care reform strategy, a public sector role will remain in the financing and delivery of services to the poor, the elderly, and people with disabilities. The Medicaid program is the vehicle currently used to finance such care. Today, Medicaid struggles to serve a widely diverse population with a broad array of services. It is not only difficult to effectively administer, but also prohibitively expensive.~~

~~The Governors believe that the Medicaid system has become a rigid and overly complex program. Its bias toward institutional care prevents states from providing preventive and primary care in settings most appropriate for its beneficiaries, and eligibility for the program is dominated by arcane rules that penalize all who interact with it.~~

~~Therefore, the Governors envision a strategy that would allow the states to manage public resources in a more efficient and effective manner than is currently possible through Medicaid.~~

~~37.2.3.1 **Program Structure.** Many states believe they can make better use of their Medicaid dollars by restructuring their Medicaid programs. Specifically, some states would rather offer a core benefits package to low-income people without tying the program to eligibility for categorical programs. This may be a better approach than the current Medicaid structure, which provides a very comprehensive package to those who are categorically eligible, but leaves many low-income people without any insurance at all. In addition, some states would like to offer sliding scale subsidies so that low-income people can purchase health insurance according to their ability to pay. The federal government should encourage these innovations.~~

~~37.2.3.2 **Entitlements and Financing.** States and the federal government should share in financing this program. States should be given the option to operate this program as an individual entitlement or as an entitlement to states. As an individual entitlement, the program would operate in a manner similar to the current Medicaid program and anyone qualifying for the program would have to be served.~~

~~As an entitlement to states, the federal government's financial exposure would be established by an upper limit on available federal dollars. State contributions to this program also would be limited by the federal upper limit. In operating it as an entitlement to states, individuals could qualify for the program; however, participation would be limited by available state and federal funds. It must be clear that under this structure, the choice of an entitlement to states would be made by each individual state and not by Congress.~~

~~States could not operate these programs with funds that are subject to annual federal appropriations. Rather, the financing structure should appear in statute and be treated as a permanent appropriation.~~

~~Finally, in order to operate this program effectively, states must be given significant flexibility in program design and implementation. Moreover, the Governors can support the "entitlement to states" option only if states are given substantial statutory flexibility in defining benefits packages, eligibility requirements, payment rate setting, and other administrative requirements.~~

~~37.2.3.3 **Statutory Changes to the Social Security Act.** States have begun to look seriously at comprehensive systems of health care where the artificial categorical barriers of Medicaid are removed and where they can establish statewide networks of care for Medicaid beneficiaries. Unfortunately, there~~

~~are no provisions in the Social Security Act that can be used to establish such programs on an ongoing basis.~~

~~Currently, states have been developing these more comprehensive networks through the research and demonstration provisions of Section 1115(a) of the Social Security Act. Section 1115(a), however, was designed for research purposes and has some important limitations. States must demonstrate, through the application process, that they are testing an innovation. The law requires an evaluation that, in some cases, requires control groups. Projects approved under the 1115(a) process are approved for a limited time period, usually three to five years at the discretion of the administration, and require special statutory changes to go beyond the demonstration period. Finally, these projects must be cost-neutral over the life of the project. Section 1115(a) is essential to ensure the testing of alternative health and social policies.~~

~~However, the current statute falls short by requiring states who want to continue a successful effort to continually reapply for and renew their waivers. In short, once a state has proven that its research project works, it cannot continue without pursuing demonstration goals and waiver renewals for a programmatic effort or without special treatment in federal laws undertaken by Congress. Existing Section 1115(a) waivers should be grandfathered into this new system.~~

~~The Governors support changes to the Social Security Act to permit these types of programs to be approved in a manner similar to the "plan amendment process" under Medicaid, where the state describes the plan and, once approved, it becomes a permanent program subject to routine federal oversight. If this strategy is not chosen, the waiver application process must be streamlined, there must be no research and demonstration requirements, and the waivers must be approved for five years and be renewable no less than every five years. Moreover, the executive branch must be instructed to streamline the waiver oversight process and shorten review and approval periods.~~

37.2.4 **Medical Tort Reform.** Reform of the medical tort system should be undertaken with a view toward achieving high-quality and appropriate care. Ideally, medical tort reform will reduce the cost of defensive medicine and provide appropriate levels of compensation for patients injured by medical negligence. Toward that end, the federal government should establish national minimum tort and liability standards. States could establish more restrictive standards if they so choose. The federal government, working with states, also must consider alternative dispute resolution strategies that could be used to reduce the costs of litigation.

37.2.5 **Antitrust.** More and more Americans are receiving their care through health delivery networks. Establishing these networks requires new approaches to cooperation among providers and businesses that heretofore have been competitors. Congress and the administration must work with the states to accommodate this new health care environment while ensuring that competition remains in the marketplace.

37.2.6 **Outcome and Quality Standards.** If meaningful choices are ever to be made in health care, research must be supported to develop outcomes and quality standards for use by providers, PURCHASERS, and consumers alike. Also, information systems must be developed that include price and quality information for all providers and consumers of health care services in a given geographic area. The federal government, ~~and~~ the states, AND THE PRIVATE SECTOR (BOTH PURCHASERS AND PROVIDERS) must cooperate in the development and implementation of such standards. DATA MEASURES MUST PROVIDE INFORMATION RELEVANT TO STATE PROGRAMMATIC DECISIONS AND CONSUMER CHOICE. THE COLLABORATIVE PROCESSES OF STANDARD DEVELOPMENT AND MEASUREMENT MUST BE DESIGNED IN SUCH A WAY THAT THEY DO NOT CREATE UNREASONABLE ADMINISTRATIVE BURDENS WITHOUT YIELDING USEFUL RESULTS.

37.2.7 **Administrative Simplifications.** The administrative complexity of the current system must be reduced. THE GOVERNORS SUPPORT THE REFORMS SET FORTH IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT TO MOVE the nation ~~must move~~ toward uniform claims forms and uniform standards for electronic data interchange. HOWEVER, STATES MUST BE CLOSELY INVOLVED IN THE DEVELOPMENT OF THE NATIONAL STANDARDS TO ENSURE THAT STATE DATA NEEDS ARE MET AND INDIVIDUAL PRIVACY RIGHTS ARE PROTECTED.

37.2.8 **Public Sector Health Care Delivery.** Although the Governors support the delivery of care through the private health care system, A PUBLIC SYSTEM OF SERVICES, FUNDED BY THE STATE AND FEDERAL GOVERNMENTS, HAS ARISEN TO ADDRESS NEEDS UNMET BY THE PRIVATE SECTOR. (SEE THE GOVERNORS' PUBLIC HEALTH SERVICES POLICY, HR-7.) ~~there are some areas in the country that have an inadequate number of health care providers or services. In other areas, the private system does not provide services to low income individuals and families, and these people seek care through public clinics. In these circumstances, federal and state governments have provided for the delivery of personal health care services. The Governors believe that this public health care system should be considered in any budget strategy and coordinated with the private health care sector, wherever possible.~~

37.2.9 **Enhance Opportunities for Primary Care Practice.** DESPITE THE RECENT INCREASE IN THE PERCENTAGE OF MEDICAL STUDENTS CHOOSING TO PURSUE CAREERS IN GENERAL MEDICINE, the medical education system STILL is not preparing the providers that are needed for a health care system with a focus on preventive and primary care. States are currently experimenting with a wide variety of initiatives that address the critical ISSUES ~~issue~~ of increasing primary care practice AND IMPROVING THE DISTRIBUTION OF PRIMARY CARE PROVIDERS, especially in rural and urban medically underserved areas. These initiatives include data collection to better understand the distribution of, and need for, providers in specific locations; loan repayment programs to practitioners who practice in underserved areas; and technical assistance programs to enhance primary care delivery systems in underserved locations.

Therefore, the Governors recommend that the federal government recognize, review, and support programs currently underway in states that are successfully addressing the issue of increasing and preserving access to primary care physicians in medically underserved and rural areas. Moreover, the Governors recommend that the federal government provide incentives for students, physicians, and mid-level health professionals to serve in primary care professions, particularly in rural and underserved areas.

37.2.10 **MANAGED CARE AND QUALITY**. SEE THE GOVERNORS' MEDICAID POLICY, EC-8.

37.3 Conclusion

In many states, Governors have begun to meet the challenge of reforming their health care systems and are beginning to learn about the successes and failures. The federal government should support states as they demonstrate different approaches to achieve universal access to affordable health care and should evaluate creative comprehensive approaches to health care reform.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~
Adopted Winter Meeting 1994; revised Winter Meeting 1995.

HR-38. ~~EC-6.~~ HIV/AIDS

38.1 Preamble

The human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) are critical public health problems. No state has been untouched by the devastating human and economic costs of HIV and AIDS. U.S. Public Health Service and worldwide projections of future incidence are startling. THROUGH JUNE 1996, 548,102 AIDS CASES HAVE BEEN REPORTED IN THE UNITED STATES. SINCE THE BEGINNING OF THE EPIDEMIC, 343,000 PEOPLE HAVE DIED OF AIDS IN THIS COUNTRY. ~~In September 1994, more than 425,000 active cases of AIDS were reported in the United States. In 1991 and 1992 alone, more than 220,000 people died of AIDS.~~ State and local governments have allocated significant financial resources to this problem. ~~In fiscal 1992, states spent $401.9 million on HIV/AIDS programs and services beyond those programs funded through the Medicaid program.~~ In a number of states, state and local funds far exceed federal support. ALTHOUGH ENCOURAGING PROGRESS HAS BEEN MADE IN SLOWING THE SPREAD OF THE DISEASE, the Governors strongly believe~~, therefore,~~ that the magnitude of the HIV/AIDS epidemic calls for strong action by all levels of government, including CONTINUED SUPPORT FOR HIV/AIDS PREVENTION AND TRACKING AND FOR THE REAUTHORIZED ~~reauthorization of the~~ Ryan White CARE Act.

38.2 Education, Prevention, Counseling, and Testing

The Governors recognize that the federal government has made a significant contribution toward funding HIV/AIDS ~~research and~~ prevention activities. Although SIGNIFICANT scientific progress has been made, an effective vaccine or a cure for the disease remains years away. In the absence of a vaccine or a cure, prevention efforts such as education, public information, HIV/AIDS counseling and testing, and personal responsibility are the most effective means available to prevent the disease from spreading further.

~~In recent years,~~ State health departments have ~~assumed~~ the primary role in planning and coordinating HIV/AIDS prevention efforts. All states are engaged in HIV Prevention Community Planning with support from the U.S. Centers for Disease Control and Prevention (CDC). SINCE ~~Beginning in~~ 1994, state and territorial health departments have been required to implement a planning process through which they collaborate with their communities to identify unmet needs and establish priorities for HIV/AIDS prevention programming. WITH ~~In general,~~ federal support for prevention efforts, THIS PLANNING PROCESS HAS GIVEN THE ~~has been helpful; however, states must be given sufficient time to implement prevention strategies that evolve from these planning activities. Moreover,~~ states ~~must have~~ the flexibility to design and implement TARGETED prevention programs at the state and local level that meet STATE AND LOCALLY DETERMINED needs and are consistent with community values. FEDERAL RESTRICTIONS OR REQUIREMENTS ON THE USE OF

AVAILABLE FUNDING INTERFERE WITH THE ABILITY OF STATES TO DEVELOP COMPREHENSIVE PREVENTION STRATEGIES.

Preventive efforts directed at young people—before they reach the age when they may engage in behaviors that place them at risk of infection—also are important. The nation's youth should be MADE aware of the risk of the possible spread of HIV/AIDS through SEXUAL ACTIVITY AND THE HARM POSED BY CONTAMINATED NEEDLES~~injection of drugs~~. Information about HIV/AIDS should be an integral part of substance abuse prevention efforts.

IT IS ALSO IMPORTANT TO RECOGNIZE THE INTERRELATIONSHIPS BETWEEN HIV/AIDS AND OTHER SEXUALLY TRANSMITTED DISEASES AND COMBINE EFFORTS TO COMBAT FURTHER SPREAD OF DISEASE. ALTHOUGH THE GOVERNORS HAVE INITIATED A VARIETY OF SEXUALLY TRANSMITTED DISEASE PREVENTION STRATEGIES, WHEN HIV/AIDS IS TRANSMITTED SEXUALLY, SEXUAL ABSTINENCE IS THE ONLY 100 PERCENT EFFECTIVE MEANS OF PREVENTION AND SHOULD BE STRONGLY REINFORCED AMONG MINORS AS A WAY TO REDUCE THE RISK OF CONTRACTING HIV/AIDS.

Finally, special education efforts must be made to ensure that all members of the medical and health care community are knowledgeable and have current information about HIV/AIDS prevention. Health providers must be more diligent in identifying people who are at risk or who are infected with HIV, particularly in populations such as women and adolescents who are not as frequently recognized as at risk. GOVERNORS ALSO RECOGNIZE THE IMPORTANCE OF EDUCATING PROVIDERS ON THE APPROPRIATE USE OF EMERGING TREATMENTS AND PRIMARY PREVENTION AND CARE SERVICES WITHIN THE MANAGED CARE SETTING.

Counseling and testing have been important components of the national education and prevention effort. Access to counseling services should be an integral part of the HIV/AIDS testing effort, both before and after testing and regardless of the test results. Counseling and testing represent major opportunities to encourage, on a one-to-one basis, the behavior changes required to stop further spread of the HIV virus. Although counseling and testing remain important strategies to address this epidemic, the nation must continue to seek any and all strategies that will successfully reduce the transmission of HIV/AIDS. IN ORDER TO INCREASE EARLY ACCESS TO NEW HIV/AIDS TREATMENTS, IT IS CRITICAL THAT COUNSELING AND TESTING PROGRAMS HAVE THE ABILITY TO LINK INDIVIDUALS TO PRIMARY CARE SERVICES AS SOON AS POSSIBLE. FEDERAL LAWS SHOULD NOT CHALLENGE OR SUPERSEDE STATE LAWS AND PREFERENCES WITH RESPECT TO ISSUES SURROUNDING TESTING AND REPORTING.

The social stigma associated with HIV/AIDS has created a particular problem for the prevention and control of the disease. Out of fear of discrimination, individuals with HIV and AIDS worry about being identified. Within the context of sound public health policy, states are encouraged to review their

medical information and privacy laws and, where necessary or appropriate, update these statutes to safeguard the rights of tested individuals.

The Governors are concerned that individuals who test positive for HIV/AIDS may face discrimination, despite the fact that all medical evidence to date shows that HIV cannot be transmitted through casual contact. PROGRESS HAS BEEN MADE IN ENDING AIDS DISCRIMINATION, BUT clarification of or modifications in laws should be made where necessary to protect HIV-infected individuals from inappropriately being denied opportunities in areas such as employment and housing.

IN ADDITION TO THE RANGE OF VERY IMPORTANT PREVENTION STRATEGIES ALREADY UNDERWAY ACROSS THE COUNTRY, PREVENTION ACTIVITIES CENTERED AROUND SUBSTANCE ABUSE AND PERINATAL TRANSMISSION ARE EMERGING AS PARTICULAR PRIORITIES.

38.2.1 **SUBSTANCE ABUSE.** TRANSMISSION TIED TO INJECTING DRUG USE CONTINUES TO BE A MAJOR CAUSE OF HIV INFECTION. THIRTY-SIX PERCENT OF THE TOTAL NUMBER OF AIDS CASES REPORTED TO CDC ARE LINKED TO INJECTING DRUG USE. A key factor in containing the spread of HIV/AIDS is reducing the use of injection drugs. Programs should strive to eliminate the significant waiting time frequently facing ~~both~~ those wishing to receive treatment for drug abuse. ~~and those desiring HIV testing and counseling.~~ Yet the vast majority of drug users are not seeking treatment. Consequently, outreach should be extended to drug users who are not currently in treatment in order to get them into treatment, encourage them to be counseled and tested, and educate them about the dangers of high-risk behaviors. Additionally, appropriate models to attract drug users to treatment should be developed, WITH A PARTICULAR EMPHASIS ON FINDING EFFECTIVE METHODS FOR REACHING OUT TO LONG-TERM ABUSERS.

38.2.2 **PEDIATRIC AIDS.** THE MAJOR CAUSE OF PEDIATRIC HIV/AIDS TODAY IS PERINATAL TRANSMISSION OF INFECTION, ALTHOUGH DRAMATIC PROGRESS HAS ALREADY BEEN MADE IN REDUCING TRANSMISSION RATES. RECENT FINDINGS RELEASED BY CDC DEMONSTRATE A 27 PERCENT REDUCTION IN PERINATAL TRANSMISSION BETWEEN 1992 AND 1995. THE GOVERNORS APPLAUD THIS REDUCTION AND THE SCIENTIFIC ADVANCES AND VOLUNTARY PREVENTION STRATEGIES THAT MADE IT POSSIBLE.

THE RYAN WHITE CARE ACT AS REAUTHORIZED IN 1996 INCLUDES A NUMBER OF PROVISIONS FOCUSED ON REDUCING PERINATAL TRANSMISSION, INCLUDING TARGETED CASELOAD REDUCTIONS. FAILURE TO COMPLY WILL CAUSE A STATE'S ALLOCATION OF TITLE II FUNDING TO BE ELIMINATED. VITAL TREATMENT FUNDING WILL BE JEOPARDIZED AS A RESULT OF PREVENTION MANDATES. GOVERNORS STRONGLY OPPOSE EFFORTS TO TIE RECEIPT OF FEDERAL FUNDS TO MANDATORY TESTING LAWS.

GOVERNORS ARE STRONGLY COMMITTED TO REDUCING AND ELIMINATING HIV/AIDS IN CHILDREN THROUGH IMPLEMENTATION OF UNIVERSAL HIV COUNSELING AND VOLUNTARY TESTING GUIDELINES FOR PREGNANT WOMEN. BUT MANDATORY POSTPARTUM TESTING, AS SET FORTH IN THE RYAN WHITE CARE ACT, WILL NOT IN AND OF ITSELF REDUCE THE SPREAD OF HIV/AIDS TO NEWBORNS. IN FACT, SOME STATES FEAR THAT MANDATORY TESTING COULD DISCOURAGE AT-RISK WOMEN FROM SEEKING NEEDED HEALTH CARE. INSTEAD OF THIS FOCUS ON MANDATORY TESTING, GOVERNORS ENCOURAGE FEDERAL SUPPORT FOR THE USE OF AZT DURING PREGNANCY, WHEN INFECTION CAN BE PREVENTED.

IN AN EFFORT TO COMPLY WITH THE TARGETED PERINATAL CASELOAD REDUCTIONS MANDATED BY THE RYAN WHITE CARE ACT, EVERY STATE WILL BE FORCED TO REDIRECT FUNDS FROM OTHER EQUALLY VITAL AND MORE EFFECTIVE HIV/AIDS PREVENTION ACTIVITIES. STATES WILL NO LONGER BE ABLE TO DEVELOP COMPREHENSIVE PREVENTION STRATEGIES TO MEET THE PARTICULAR NEEDS OF THEIR COMMUNITIES. INSTEAD, FEDERAL MANDATES WILL REQUIRE STATES TO FOCUS AVAILABLE RESOURCES ON ONE PARTICULAR CATEGORY OF NEED. UNFORTUNATELY, THE SCIENCE OF PREVENTION IS NOT SO EXACT THAT THERE IS ANY GUARANTEE THAT ANY LEVEL OF INTERVENTION WILL PRODUCE THE DESIRED RESULT IN ANY STATE. GOVERNORS WOULD LIKE TO WORK CLOSELY WITH CONGRESS AND THE ADMINISTRATION TO DEVELOP PREVENTION STRATEGIES THAT ACHIEVE THE GOAL WE ALL SUPPORT OF KEEPING BABIES HEALTHY, WITHOUT JEOPARDIZING FUNDING FOR OTHER IMPORTANT HIV/AIDS PREVENTION AND TREATMENT EFFORTS.

THE GOVERNORS SUPPORT EFFORTS TO REDUCE THE TRANSMISSION OF HIV/AIDS. WE DO NOT SUPPORT THE NEW PERINATAL TRANSMISSION MANDATE IMPOSED BY CONGRESS. IN ADDITION, GOVERNORS ARE SPECIFICALLY CONCERNED THAT BECAUSE AN ALTERNATIVE MEASURE AS REQUIRED BY THE LEGISLATION HAS NOT BEEN DETERMINED BY CDC, IT WILL BE VIRTUALLY IMPOSSIBLE STATISTICALLY FOR LOW-INCIDENCE STATES AS DEFINED BY CDC TO REALIZE THE REQUIRED 50 PERCENT REDUCTION IN PERINATAL TRANSMISSION. FOR THAT REASON, GOVERNORS BELIEVE THAT WHILE MOVING TOWARD A MORE WORKABLE PERINATAL TRANSMISSION PREVENTION STRATEGY FOR ALL STATES, LOW-INCIDENCE STATES SHOULD BE HELD HARMLESS FROM THE CASELOAD REDUCTION REQUIREMENTS OF THE RYAN WHITE CARE ACT. GOVERNORS ALSO BELIEVE THAT FUTURE FEDERAL RESOURCES MADE AVAILABLE TO REDUCE PERINATAL TRANSMISSION SHOULD BE TARGETED TO HIGH-INCIDENCE STATES.

38.3 Research

A comprehensive national education and prevention program, with significant federal leadership, must be a central component of the nation's fight against HIV/AIDS. At the same time, resources must be devoted to research—both to find a vaccine for HIV/AIDS as well as to develop EFFECTIVE, ACCESSIBLE, AND AFFORDABLE ~~a treatment~~ TREATMENTS and A cure for present and future HIV/AIDS patients. The federal government has the primary role to play in funding HIV/AIDS-related research activities. The Governors urge that money appropriated for HIV/AIDS research be used expeditiously and that funding provided for HIV/AIDS research not be made at the expense of other public health priorities.

In addition to the substantial commitment made by the federal government, PRIVATE SECTOR HIV/AIDS RESEARCH HAS LED TO DRAMATIC BREAKTHROUGHS. GOVERNORS APPLAUD THE PHARMACEUTICAL INDUSTRY FOR THE RESEARCH AND DEVELOPMENT EFFORTS THAT HAVE RESULTED IN THE CREATION OF PROTEASE INHIBITORS AND OTHER USEFUL DRUG THERAPIES. ~~some states have provided leadership by funding AIDS research with state dollars.~~ The Governors urge increased coordination between federal and PRIVATE SECTOR EFFORTS ~~state initiatives in this area~~ to ensure the most efficient use of research dollars. The Governors also urge the speedy dissemination of research results to the scientific community, as well as practitioners, to ensure that research findings can be applied as expeditiously as possible. THE FOOD AND DRUG ADMINISTRATION'S EXPEDITED DRUG APPROVAL PROCESS HAS HELPED MAKE NEW TREATMENTS AVAILABLE MORE QUICKLY THAN IN THE PAST AND SHOULD BE CONTINUED.

38.4 Treatment

Over the next few years, the growing number of HIV/AIDS ~~and AIDS-related~~ cases will place an increasing strain on the nation's health care delivery system. The estimated cost of treating a person with HIV/AIDS from the time of infection to death is $119,000. ~~For those who receive no treatment until a diagnosis of AIDS is made, the cost is estimated at $69,000.~~ Now is the time to begin the fiscal and capacity planning required to address these future health care delivery needs. This should include an assessment of the appropriate burden of HIV/AIDS health care costs that should be borne by the public and private sectors.

At the same time, we need to provide appropriate services to those individuals presently suffering from HIV/ ~~infections or~~ AIDS. TREATMENT NEEDS ARE CHANGING WITH THE ADVENT OF PROMISING MULTIDRUG COMBINATION THERAPIES, WHICH ARE HELPING MANY HIV/AIDS PATIENTS LIVE LONGER AND HEALTHIER LIVES. TREATMENT PROTOCOLS RELATING TO CHRONIC DISEASE MANAGEMENT OF HIV/AIDS, DEVELOPED IN

PARTNERSHIP BETWEEN FEDERAL, STATE, AND PRIVATE EFFORTS, WILL LEAD TO CHANGES IN EXISTING SYSTEMS OF CARE.

Adequately addressing PATIENTS' ~~the~~ health care needs ~~of AIDS patients~~ requires establishment of a "continuum of care," including inpatient and outpatient hospital services, care in nursing home and alternative residential settings, home care, hospice care, psychosocial support services, and case management services. Many state and local governments have led the way in providing health care services for people with HIV/AIDS; however, more research is required to determine the most humane and cost-effective way of providing HIV/AIDS-related care. ~~The federal government has funded several demonstration projects to determine models for providing services to AIDS patients. Such demonstrations should continue.~~ Finally, as the nation moves toward networks of health care, efforts are needed to ensure that the prevention and treatment needs of people at risk for or infected with HIV/AIDS are adequately addressed in managed care settings. In addition, strategies must be developed that ensure that those in managed care arrangements also have access to other support services, such as social supports and home- and community-based services, so that the continuum of care is maintained.

38.5 Ryan White CARE Act

The Governors strongly SUPPORTED ~~support~~ the reauthorization of the Ryan White CARE Act. Funds provided through the act support a network of health care, ~~and~~ support services in cities and states, AND PRESCRIPTION DRUGS for people living with HIV infection and AIDS, especially the uninsured who would otherwise be without care. This program is a critical element in HIV/AIDS prevention, education, and treatment efforts by states.

HOWEVER, DESPITE STRONG SUPPORT OF THE RYAN WHITE CARE ACT AS A WHOLE, CERTAIN PROVISIONS OF THE ACT ARE OF CONCERN TO GOVERNORS. AS PREVIOUSLY MENTIONED, THE PERINATAL TRANSMISSION MANDATE RESTRICTS STATE FLEXIBILITY TO ALLOCATE LIMITED FEDERAL FUNDING. IN ADDITION, THE AIDS DRUG ASSISTANCE PROGRAM (ADAP) FUNDING MADE AVAILABLE THROUGH THE RYAN WHITE CARE ACT HAS NOT KEPT UP WITH THE INCREASING COSTS OF THE EXPENSIVE NEW DRUG THERAPIES. ACCORDINGLY, AN INCREASING PERCENTAGE OF THE COST OF THE NEW THERAPIES IS SHIFTING FROM THE FEDERAL GOVERNMENT TO THE STATES. GOVERNORS CALL UPON THE FEDERAL GOVERNMENT TO WORK IN PARTNERSHIP WITH STATES AND THE PRIVATE SECTOR TO REDUCE THE COSTS OF TREATMENT AND TO MAINTAIN FUNDING THAT ADEQUATELY REFLECTS THE GROWING COST OF DRUG THERAPIES.

ADAP SERVICES CURRENTLY ARE DELIVERED BY STATES IN A NUMBER OF DIFFERENT, COST-EFFECTIVE WAYS, SUCH AS MINNESOTA'S SUCCESSFUL HIGH-RISK

INSURANCE POOL FOR HIV/AIDS PATIENTS. GOVERNORS BELIEVE THAT WHILE MANY OF THESE STRATEGIES ARE COST EFFECTIVE, FURTHER STUDY IS NEEDED TO HELP STATES IDENTIFY AND LEARN FROM THE BEST PRACTICES IN THE FIELD.

GOVERNORS ALSO BELIEVE THAT CDC AND THE HEALTH RESOURCES AND SERVICES ADMINISTRATION SHOULD WORK VERY CLOSELY WITH STATES WHEN DETERMINING WHETHER A GOOD-FAITH EFFORT HAS BEEN MADE TO COMPLY WITH THE NEW MANDATE IN THE RYAN WHITE CARE ACT REQUIRING STATES TO NOTIFY THE SPOUSES OF INDIVIDUALS WITH HIV INFECTION. GOVERNORS FEEL STRONGLY THAT NO STATE SHOULD LOSE ACCESS TO THEIR RYAN WHITE CARE ACT FUNDS AS THIS NEW MANDATE IS IMPLEMENTED.

IN IMPLEMENTING THE RYAN WHITE CARE ACT AND IN CONFRONTING THE HIV/AIDS EPIDEMIC MORE GENERALLY, GOVERNORS BELIEVE THAT THE BEST RESULTS WILL BE ACHIEVED IF THE FEDERAL GOVERNMENT, THE STATES, PRIVATE INSURERS, THE MEDICAL AND PHARMACEUTICAL INDUSTRIES, AND INTERESTED MEMBERS OF OUR COMMUNITIES WORK TOGETHER IN CLOSE PARTNERSHIP.

Time limited (effective WINTER MEETING 1997–MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Annual Meeting 1987; reaffirmed Winter Meeting 1992; revised Winter Meeting 1995 (formerly Policy C-17).

HR-39. ENCOURAGING MENTORING

THE NATION'S GOVERNORS RECOGNIZE THAT GOVERNMENT ALONE CANNOT SOLVE THE SOCIAL AND ECONOMIC PROBLEMS THAT THREATEN THE FUTURE OF OUR CHILDREN AND YOUTH. PARTNERSHIPS WITH LOCAL COMMUNITIES, BUSINESSES, AND GOVERNMENT WILL BE REQUIRED TO HAVE THE GREATEST SUCCESS IN DEVELOPING SOLUTIONS.

ONE PROMISING LOCAL STRATEGY IS MENTORING. A RECENT PUBLIC/PRIVATE VENTURES STUDY FOUND THAT CHILDREN AND YOUTH INVOLVED IN A MENTORING PROGRAM DID BETTER IN SCHOOL, WERE LESS VIOLENT, AND WERE LESS LIKELY TO USE DRUGS AND ALCOHOL. AS LEADERS IN WELFARE REFORM, GOVERNORS ALSO HAVE FOUND THAT MENTORING PROGRAMS, BY ASSISTING WITH BASICS SUCH AS WORK SKILLS, CAN HELP WELFARE FAMILIES SUCCESSFULLY MAKE THE TRANSITION FROM DEPENDENCY TO SELF-SUFFICIENCY.

THE NATION'S GOVERNORS APPLAUD THE INDIVIDUALS WHO HAVE LONG BEEN INVOLVED IN MENTORING AND COMMUNITY-BASED MENTORING PROGRAMS. HOWEVER, THE DEMAND FOR MENTORS FAR OUTWEIGHS THE AVAILABILITY OF ADULTS WHO HAVE VOLUNTEERED TO GIVE THE GIFT OF THEIR TIME TO A CHILD IN NEED. FAR TOO MANY CHILDREN AND YOUTH ARE ON MENTOR PROGRAM WAITING LISTS IN COMMUNITIES THROUGHOUT THE NATION. WELFARE REFORM WILL ADD EVEN GREATER DEMANDS.

THE NATION'S GOVERNORS CALL ON COMMUNITY AND BUSINESS LEADERS TO EXPAND CURRENT EFFORTS TO ENCOURAGE PARTICIPATION IN MENTORING PROGRAMS AND LEVERAGE EXISTING RESOURCES THROUGH NEW, INNOVATIVE PARTNERSHIPS. IN ADDITION, FEDERAL, STATE AND LOCAL GOVERNMENT OFFICIALS SHOULD PROVIDE LEADERSHIP THROUGH EXAMPLE BY SERVING AS MENTORS, BY PROMOTING PERSONNEL POLICIES THAT ALLOW FLEXIBLE TIME FOR MENTORING ACTIVITIES, AND BY ENCOURAGING MENTORING AMONG THEIR EMPLOYEES AND WITHIN THEIR COMMUNITY.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

REAFFIRM

HR-1. GOVERNORS' PRINCIPLES TO ENSURE WORKFORCE EXCELLENCE*

The Governors are vitally concerned with the competitive economic position of our states and the nation. A world-class economy requires both high-performance firms and workers. U.S. firms must upgrade production processes, improve products, seek new markets, and invest in workforce skills to compete successfully. Government should support these private sector modernization and quality improvement efforts, and must radically restructure its own strategies for delivering education and training services in order to build a world-class workforce. To ensure that these efforts succeed, we must strengthen partnerships among business, labor, education, and all levels of government and make workforce development an integral component of national, state, and local economic development policies. The Governors recommend the following principles to help ensure workforce excellence.

- States and the federal government should promote the development of high-performance work organizations by providing technical, financial, and training assistance to firms seeking to implement quality management improvement and modernization initiatives. Firms negatively affected by federal policy decisions, including defense downsizing and trade policy, should receive adjustment assistance. Federal assistance should be provided through state-based networks and build on existing state and local programs.
- Wholesale change in the nation's approaches to workforce development is needed in order to create a coherent, customer-driven, results-oriented workforce development system. This system should be understandable, accessible, and responsive to the needs of local and regional businesses, workers, job seekers, and students. Customers should be able to receive information about the full array of services available and be able to easily enter and re-enter the system at any point. This state-based system should be comprehensive, flexible, ACCOUNTABLE, and designed to build on current strengths, and it should be managed at the local level to achieve desired results. A comprehensive national human investment policy should guide and support state and local efforts to implement such a system.
- Job training and education programs should be available to the entire workforce and business community as part of a continuum of lifelong learning. At every stage in their lives, people should have the opportunity to equip and re-equip themselves for productive work through school and work-based learning.
- Pathways for career development are needed for all young people. The workforce development system should effectively link education and work through career guidance, youth apprenticeship, and other options that enable young people to achieve the academic, occupational, and work-readiness skills needed for employment. Employers, unions, schools, colleges and universities, community-based organizations, and all levels of government must share the responsibility to ensure that such a system succeeds.
- Broadly agreed-upon, world-class workforce standards are essential to raising the level of achievement of individuals and to promoting continuous improvement in the quality of services provided. Measurable national standards developed by business, education, labor, and government should specify the knowledge and skills needed to succeed in the modern workplace. Assessment of individual and institutional performance should be based BOTH on these standards AND ON STATE AND LOCALLY DEVELOPED STANDARDS.

- National and state programs and policies should promote expanded private sector investment in workforce development and enhance the capacity of small and medium-sized firms to train their workers. Federal efforts should be designed to support state-based programs.
- Legislative action is needed to integrate multiple, targeted, federal workforce development programs into a comprehensive and flexible system. Specifically, current and proposed worker readjustment programs should be consolidated and delivered through this system.
- Federal workforce development programs should be streamlined to eliminate barriers to effective service delivery caused by inconsistent definitions, planning and reporting requirements, and accountability measures. Incentives, including access to waiver authority and additional federal funds, should be provided to state and local governments to establish a comprehensive workforce development system.

~~* Identical to Policy EDC-1. The Committee on Human Resources and the Committee on Economic Development and Commerce have joint jurisdiction over this policy.~~

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Winter Meeting 1993; reaffirmed Winter Meeting 1995.

REAFFIRM

HR-6. ARMY AND AIR NATIONAL GUARD

6.1 Preamble

Just as the federal government's relationship to all other aspects of state activity has matured and become institutionalized over the years, so has the state and federal role of the National Guard ripened into a stable and eminently sensible system for living up to the letter and spirit of the U.S. Constitution against a backdrop of the variety and the special characteristics that mark each of the states of the Union. Because the conduct of military operations has evolved into a centrally directed function under the federal government, the role of the National Guard as the foremost "reserve of the Army and the Air Force" is so powerful and significant, that it is sometimes forgotten that the guard, in peacetime, is under the command of the Governors; and that the guard is the only military force that a Governor has available in time of disasters and emergencies. The states have an enormous stake in the ongoing effectiveness and efficiency of their National Guard.

NGA notes that national strategy presumes that in a combat emergency, the Army and Air National Guard will be capable of fighting with the active forces. In keeping with the "Total Forces Policy," many active units cannot enter into combat as effective units unless accompanied by mobilized elements of the National Guard. The National Guard must be properly equipped, efficiently trained, and fully staffed to meet these responsibilities.

6.2 Training

NGA supports annual training exercises of National Guard units. However, the requirements for training and military education should be consistent with the needs of the military force, and should recognize the serious responsibility to members of the guard as "citizen soldiers," to their families, to their employers, and to their communities. This should be kept in mind when developing the right mix of monthly and annual training exercises for the guard. An exception to this might be expected in the special training of certain units, but this must be the exception and not the rule, and on a voluntary basis.

We ask the employers of National Guard men and women to recognize their need to be away during times of training or when activated by the Governor or federal authorities. The services that they perform enhance all of our lives.

6.3 Control of the Guard

The Governors wish to emphasize that, unless activated in federal service, the National Guard is under state control with Governors as commanders-in-chief. We call attention to the U.S. Constitution, Article I, Section 8, clause 16, which enables Congress:

> to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress . . .

Subsequently, Congress enacted Title 32 of the United States Code (USC), which gives the Governors control over the National Guard in peacetime without any restraints such as those pertaining to the Posse Comitatus Act. NGA believes that in peacetime under title 32 of the USC, the nation's Governors are clearly in command and control of the National Guard in their respective states. Congress, likewise enacted a separate title 10 of the USC to handle the active military, and to deal with war and national crises. In this instance, the guard is activated as a part of the regular forces under the command of the President of the United States.

6.4 Training and Equipment

NGA commends the Army and the Air Force for the efforts that are being made to enhance training and to better equip the National Guard in recognition of its vital contribution to our national defense. The guard today CONTINUES TO MAINTAIN ITS ~~stands at an all-time~~ peacetime READINESS ~~high in strength~~. However, it is still underequipped, although it is better equipped than ever before in its history. It is still lacking in the area of modernization, but a great effort has been made, and continues to be made, to ensure that units that will deploy early in the stages of any future mobilization are being provided with support on the same basis as active units that deploy early.

From the days of the militia to the present, the National Guard reflects the genius of our system of government. In the evolution since colonial days, through the revolutionary war era, through the wrenching experience of the civil war, it has been an instrument through which citizens voluntarily made their contribution to the common defense of their land, their values, and their heritage.

The Total Forces Policy restored the guard to its more traditional place in the nation's defense strategy. NGA believes that a strong National Guard, which the president can mobilize in time of national crisis, serves to remind friend and foe of our national commitment to freedom and to the system of government for which we are famous and even envied.

Today's active forces, constrained in size and scope by the enormous cost of personnel and material, must rely on National Guard augmentation. Realizing that approximately half of the defense budget is attributed to personnel cost, the guard, which receives only a fraction of a month's pay, represents a most cost-effective way to protect our national security and provide for a professionally trained and committed ARMY AND AIR FORCE ~~Air Force and Army~~ for the defense of the nation.

The nation's Governors are proud that the National Guard is able and capable of performing tasks in the interest of national defense and security, and is available at their command to assist the citizens of the states, should the time arise.

6.5 Reorganizing and Restructuring of Military Forces

Changes in Eastern Europe and the arms negotiations have caused the U.S. Department of Defense to evaluate force structure in light of budgetary constraints. ~~It is recognized that there will be military force structure cuts and some of these cuts may be in National Guard units.~~

~~Further,~~ Governors believe that military force reductions prorated across the entire military structure may not be the most cost-effective means of achieving a strong national defense in peacetime. Moving from the active military components into the reserve components could achieve budget savings while continuing to provide for the defense of the nation in a national emergency. Historically, our nation has relied on the National Guard as a mobilization base. National Guard units have achieved high readiness levels, providing a real mobilization asset on short notice. Some units, such as military police, Army and Air Guard air defense, tactical air units, and air transportation units, provide excellent immediate capability for lower peacetime operating costs than active service units.

The Governors support an Army National Guard force structure allowance of 405,000, as approved by the U.S. Secretary of Defense in the "bottom-up" review and the Army "offsite" agreement.

The Governors remain committed to a National Guard that provides the Governors of the states and territories with sufficient forces that have the organic chains of command, equipment, and capabilities necessary to meet the federal and state missions of the nation. The Governors believe that the 405,000-force structure is the minimum prudent number.

The National Guard has not been immune from post-Cold War force reductions. In fact the National Guard today is at the same force structure level as prior to World War II. With the support of the President, the U.S. Secretary of Defense, and the U.S. Secretaries of the Army and Air Force, we have been able to maintain an Army and Air National Guard that is capable of meeting our national

security needs and of ensuring that the Governors have under their command the right mix and numbers of forces to meet the myriad emergency and domestic missions that are unique to the National Guard. The Governors believe the National Guard will continue to be the primary reserve force in our country and will continue to play a critical role in peace and war.

The National Guard is at the right level to accomplish its missions here at home and in support of the active forces. The Army and Air Force are encouraged to commit to the full preparation of and maximum, practical utilization of the National Guard in peacetime and wartime missions. The National Guard's strengths are its people, its unique state and federal ties, its unique dual mission, and its cost-effectiveness and combat readiness. It is the national insurance policy for domestic and foreign emergencies.

6.6 Equal Opportunity in the National Guard

The National Guard is composed of men and women of all races, colors, creeds, and religions from more than 3,600 communities in the states.

The National Guard Bureau has established equal opportunity in the guard as one of its primary goals. It is attempting to ensure fair and equal access to all positions in the National Guard.

The Governors, as commanders-in-chief of the National Guard, fully support equal opportunity in all state programs and institutions under the guard regardless of race, sex, or religion; endorse the National Guard Bureau's goal; and pledge full support in achieving equal opportunity in all aspects of the guard.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Annual Meeting 1986; revised Annual Meeting 1990, Winter Meeting 1991, Annual Meeting 1992, Winter Meeting 1994, and Winter Meeting 1995 (formerly Policy B-5).

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1997 Winter Meeting

EXECUTIVE COMMITTEE

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Governor George V. Voinovich, Vice Chair

Raymond C. Scheppach, Executive Director

Proposed Changes in Policy

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Reaffirmation of Existing Policy

EC-10	Political Status for Guam	Page 27
EC-12	Out-of-State Sales Tax Collections	Page 28

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

The Executive Committee recommends the consideration of one new policy position, amendments to four existing policy positions, one resolution, and the reaffirmation of two existing policy positions. Policy proposals are time-limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. Principles for State-Federal Relations (Amendment to Permanent Policy)

   This amendment urges Congress to adopt legislation that would require congressional committees and executive agencies to consider Tenth Amendment issues in drafting legislation and the implementing regulations.

   The fiscal impact is uncertain.

2. Political Self-Determination for Puerto Rico (Amendments to EC-2)

   This policy urges Congress to enact legislation providing a mechanism for political self-determination by the American citizens who reside in Puerto Rico. It also states that this should occur before the 1998 centennial of U.S. sovereignty over Puerto Rico.

   The fiscal impact of this policy would be consistent with current federal budget controls.

3. Long-Term Care (Amendments to EC-7)

   These proposed amendments express the Governors' belief that by examining the needs of Medicaid and Medicare jointly, a more coordinated and cost-effective system of care can be developed to better prepare the programs for the retirement of the "baby boomers." The policy expresses continued interest in the private long-term care insurance market and also calls on Congress and the administration to permit interested states to experiment with mandatory managed care pilot projects for the dually eligible.

   This proposal has a positive fiscal impact on the federal government.

4. Medicaid (Amendments to EC-8)

   These proposed amendments make a series of recommendations designed to promote the efficiency and cost-effectiveness of the Medicaid program, including repealing the Boren Amendment, facilitating managed care, increasing flexibility to develop home- and community-based care programs, and promoting efficiency and cost controls. New sections of the policy begin to address the need to jointly consider the long-term viability of the Medicaid and Medicare programs, discuss the development of managed care quality standards, and explore issues associated with outreach targeted at children eligible for Medicaid but not currently enrolled.

   This proposal has a positive fiscal impact on the federal government.

5. Protecting Victims' Rights (New Policy Position, EC-23)

This policy calls for a constitutional amendment guaranteeing victims' rights, including restitution, protection, and access to information, hearings, and sentencing procedures. It also calls on Congress, in implementing this amendment, to recognize states' victims' bills of right.

The policy would have a fiscal impact depending upon each state's implementation of the amendment.

6. Consumer Price Index (Resolution, based upon Policy EC-18)

This resolution reaffirms current policy EC-18, which calls on Congress and the President to adopt a consumer price index that accurately reflects the real rate of inflation.

If enacted, the change would save on entitlement costs.

7. Reaffirmation of Existing Policy

The committee recommends the reaffirmation of EC-10, Political Status for Guam, which urges the federal government to establish a new relationship of mutual consent.

In addition, the committee recommends the reaffirmation (with minor technical amendments) of EC-12, Out-of-State Sales Tax Collections, which outlines principles for federal legislation that would grant the states authority to collect their own taxes owed on interstate mail transactions.

Note: The Executive Committee transferred Policies EC-1, Indian Gaming, and EC-20, The Effect of the Seminole Decision on IGRA Implementation, to the Committee on Economic Development and Commerce. In addition, the committee transferred Policies EC-3, Health Care Reform, and EC-6, HIV/AIDS, to the Committee on Human Resources.

PRINCIPLES FOR STATE–FEDERAL RELATIONS

1 **Preamble**

2 **Protecting State and Local Borrowing Capacity**

3 **Creating a Consensus for Action**

4 **Defining the Future Federal Role**

5 **Ensuring Program Flexibility and Accountability**

6 **Administering Intergovernmental Programs**

7 Avoiding Federal Preemption of State Laws and Policies

The U.S. Constitution assigns certain responsibilities to the federal government and reserves the balance to states. The federal government is a government of limited, enumerated powers. Accordingly, the federal government is without authority to legislate in areas reserved to the states or the people. There should be highly compelling reasons to justify federal actions that require changes in policies adopted by state and local officials, who are accountable to the same voters and whose performance is reviewed by them at least as often as the performance of Congress and the President. Congress should limit the scope of its legislative activity to those areas that are enumerated and delegated to the federal government by the U.S. Constitution.

In cases where Congress determines that federal preemption of state laws is in the national interest, the federal statute should accommodate state actions taken before its enactment. Provision should be made to permit states that have developed stricter standards to continue to enforce them and to permit states that have developed substantially similar standards to continue to adhere to them without change.

The principle of avoiding preemption by the federal government in areas of primary state responsibility is applicable across the board, covering issues such as education; insurance regulation; crime control; preservation of the dual banking system; preservation of state securities regulation, including registration, licensing, and enforcement activities; and management of state personnel programs. The federal legislative and executive branches should exercise prudential restraint by refraining from enacting legislative and regulatory measures that preempt the states' ability to craft innovative solutions in areas of state responsibility. Lacking such prudential restraint, the federal courts should restore the Tenth Amendment as a substantive limit on federal intrusions into areas of state and local concern and should place meaningful limits on the federal government's scope of authority under the commerce clause.

The federal courts, as well as the U.S. Department of Justice, must practice restraint when determining states' responsibility versus deprivation of constitutional rights. As a result of litigation, states have been required to impose restrictive standards in state institutions and facilities that go far beyond the guarantee of constitutional rights. Court-ordered remedies must be more respectful of state responsibilities and authority. In particular, injunctive relief should be limited in time and scope and should extend no further than is necessary to restore the exercise of constitutional rights. If federal courts prove unwilling or unable to exercise restraint, Congress should consider appropriate action with respect to the courts' jurisdiction and/or their ability to grant equitable relief in areas of primary state responsibility.

To avoid state preemption, whenever the federal government is a party to litigation to secure federal constitutional guarantees, in the area of primary state responsibility, the U.S. Department of Justice should vigorously pursue termination of the litigation as soon as constitutional concerns are alleviated.

The federal courts also should exercise forbearance in policy areas that have traditionally been state responsibilities. The courts should recognize that the problems facing our states and nation will require innovative solutions and that experimentation in the laboratories of democracy must be allowed to proceed,

within constitutional boundaries, for effective solutions to develop. The courts should refrain from substituting their judgments for those of the state legislatures and the Governors absent violations of the U.S. Constitution.

Integral to the operation of state government is the freedom to structure state revenue systems. It is essential that the federal government not preempt, either directly or indirectly, sources of state revenues, state tax bases, or state taxation methods.

For example, increases to federal excise taxes, by raising prices, reduce demand and therefore revenue from existing state excise taxes. At the same time, the federal tax preempts the tax base, restricting future state use.

Similarly, new federal excise taxes on raw materials risk distorting the prices of final products, reducing economic growth, and causing industries and states to bear costs unequally.

When considering excise taxes or increases in excise taxes, Congress should carefully consider the fact that these options have an adverse impact on states' ability to raise revenue or result in a disproportionate burden among various states. Where federal court decisions restrict state tax actions, Congress should review these decisions and provide legislative relief when appropriate.

THEREFORE, THE GOVERNORS URGE CONGRESS TO CONTINUE THEIR EFFORTS TO RETURN PARITY TO STATE-FEDERAL RELATIONS BY ADOPTING LEGISLATION WITH THE FOLLOWING CONCEPTS:

- SUPPORTS A SPECIFIC CONGRESSIONAL FINDING THAT THE TENTH AMENDMENT MEANS WHAT IT SAYS;
- SPECIFIES THAT FEDERAL LAWS MAY NOT INTERFERE WITH STATE OR LOCAL POWERS UNLESS CONGRESS DECLARES ITS INTENT TO DO SO AND CONGRESS CITES ITS SPECIIFC CONSTITUTIONAL AUTHORITY;
- GIVES MEMBERS OF THE HOUSE AND SENATE THE ABILITY TO RAISE A POINT OF ORDER CHALLENGING A BILL THAT LACKS SUCH A DECLARATION OR THAT CITES INSUFFICIENT CONSTITUTIONAL AUTHORITY;
- REQUIRES THAT FEDERAL AGENCY RULES AND REGULATIONS NOT INTERFERE WITH STATE OR LOCAL POWERS WITHOUT SPECIFIC AUTHORITY FROM CONGRESS; AND
- FURTHER DIRECTS THE APPROPRIATE COURTS TO STRICTLY CONSTRUE FEDERAL LAWS AND REGULATIONS THAT INTERFERE WITH STATE POWERS, WITH A PRESUMPTION IN FAVOR OF STATE AUTHORITY AND AGAINST FEDERAL PREEMPTION.

8 Preserving Intergovernmental Communication

9 Conclusion

Permanent policy.
Adopted Annual Meeting 1993; revised Winter Meeting 1994, Annual Meeting 1994, Annual Meeting 1995, and Winter Meeting 1996.

EC-2. POLITICAL SELF-DETERMINATION FOR PUERTO RICO

The people of Puerto Rico, AS ~~who are~~ natural-born citizens of the United States, POSSESS ~~enjoy~~ the same individual liberties as DO all OTHER American citizens, including the right to protect and NURTURE ~~enhance~~ their local culture ~~cultural~~ and linguistic heritage and the right to conduct their affairs in accordance with a local constitution compatible with AND SUBORDINATE to the U.S. Constitution. MOST ~~Many~~ Governors represent constituencies that include American citizens of Puerto Rican descent. Tens of thousands of Puerto Ricans have served our nation with distinction in every U.S. military conflict of this century, earning numerous decorations, including four posthumous medals of honor, and rising in several instances to the ranks of general and admiral. ~~The residents of none of the fifty states, prior to their~~ WITHOUT admission to the Union, THE RESIDENTS OF PUERTO RICO HAVE sustained ~~as~~ many combat casualties defending U.S. interests ~~as have the American citizens of Puerto Rico~~ in World War I, World War II, Korea, ~~and~~ Vietnam, AND THE PERSIAN GULF. Athletes, scholars, artists, entrepreneurs, professionals, and laborers of Puerto Rican origin have BEEN CONTRIBUTING THROUGHOUT THIS CENTURY ~~contributed, and continue to contribute,~~ to the spiritual and SOCIOECONOMIC ~~physical~~ enrichment of the United States.

IT IS ESSENTIAL THAT THE FINAL, PERMANENT POLITICAL STATUS OF PUERTO RICO BE DEMOCRATICALLY SELECTED BY THE AMERICAN CITIZENS WHO RESIDE THERE. ~~The final and permanent political status of Puerto Rico remains under discussion among the island residents, and it is essential that the American citizens of Puerto Rico decide for themselves their political status.~~ The National Governors' Association recognizes and endorses the right of the people of Puerto Rico to FREELY EXERCISE political self-determination ~~made freely~~ by majority vote ON OPTIONS RANGING FROM U.S. STATEHOOD TO SOVEREIGN INDEPENDENCE. ~~of the people of Puerto Rico, either as a state of the Union, a commonwealth, or independent status~~.

AN ABSOLUTE MAJORITY OF PUERTO RICO'S VOTERS SUPPORTED A PLATFORM SEEKING CONGRESSIONAL SPONSORSHIP OF A POLITICAL STATUS PLEBISCITE FOR PUERTO RICO. THE RESPONSIBILITY FOR MAKING "ALL NEEDFUL RULES AND REGULATIONS RESPECTING THE TERRITORY OR OTHER PROPERTY BELONGING TO THE UNITED STATES" IS VESTED IN THE U.S. CONGRESS BY ARTICLE IV, SECTION 3 OF THE U.S. CONSTITUTION.

THEREFORE, IN HARMONY WITH ITS LONG-STANDING ACKNOWLEDGEMENT OF THE IMPORTANCE OF SELF-DETERMINATION BY THE PEOPLE OF PUERTO RICO AS TO THE STATUS OF PUERTO RICO, THE NATIONAL GOVERNORS' ASSOCIATION URGES THE 105TH U.S. CONGRESS TO ENACT LEGISLATION THAT WILL, NO LATER THAN THE 1998 CENTENNIAL OF THE U.S. SOVEREIGNTY OVER PUERTO RICO, PROVIDE A MECHANISM

FOR POLITICAL SELF-DETERMINATION BY THE AMERICAN CITIZENS WHO RESIDE IN PUERTO RICO.

~~The National Governors' Association supports and recognizes the importance of self determination by the people of Puerto Rico as to the status of Puerto Rico. The National Governors' Association also supports a plebiscite proposed for after 1996 to allow the expression of the will of the people of Puerto Rico. The National Governors' Association urges the U.S. Congress to enact legislation responsive to the will of the people of Puerto Rico.~~

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Annual Meeting 1978; revised Winter Meeting 1989; revised and reaffirmed Winter Meeting 1993; reaffirmed Winter Meeting 1995 (formerly Policy A-6).

EC-7. LONG-TERM CARE

7.1 Preamble

The U.S. population is aging; people are living longer and improvements in medical technology have extended life for many with severe disabilities. These demographic trends and technological advances, when considered together, suggest that the need for long-term care will continue to grow for the next half century. As this demand grows, so will the demand for well-designed private savings and long-term care insurance instruments, carefully integrated with responsive, publicly funded programs. Typically, the frail elderly and people with disabilities require basic support for normal everyday activities. This long-term care may be provided ~~either~~ through A VARIETY OF HOME- AND COMMUNITY-BASED CARE SERVICES OR institutions (i.e., nursing homes, residential facilities for people with mental illness, and residential facilities for people with mental retardation). ~~or a variety of home- and community-based care services.~~ It also is important to appreciate that there is a significant amount of family and other private caregiving on behalf of many chronically ill and functionally impaired individuals that should be acknowledged and supported, rather than necessarily replaced, as both public and private policy options for long-term care are developed.

Among publicly funded long-term care programs, there are four primary populations served—the frail elderly, INDIVIDUALS WITH PHYSICAL DISABILITIES, INDIVIDUALS WITH CHRONIC MENTAL ILLNESSES, AND INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES. ~~the physically disabled, the chronically mentally ill, and the developmentally disabled.~~ Because of a long tradition of developing public programs around certain population categories, the funding streams and delivery systems for these populations are distinct and tend to reflect the unique needs of individuals in each subpopulation.

Virtually all publicly financed long-term care programs are administered at the state or local level, with the largest share funded by the Medicaid program. To pay for services, states often use a combination of funds from Medicaid, the Supplemental Security Income (SSI) program, the Social Services Block Grant, the Older Americans Act, the Community Mental Health Services Block Grant, and the Developmental Disabilities Assistance and Bill of Rights Act, as well as state general revenues. Because people who need long-term care also may need specialized housing assistance, states also use Housing and Urban Development (HUD) resources, as well as SSI, to pay for care in facilities (such as board and care) that does not meet institutional Medicaid definitions.

Although a variety of public programs provide long-term care, most, including Medicaid, are available only to those with limited income and assets. Unfortunately, with a high demand for these services and severe limits on state and federal funding, many Americans do not qualify for care. As such, the burden and the cost of long-term care primarily fall on individuals and their families. Most Americans become aware of the prohibitive costs of prolonged institutional or community-based long-term care only when confronted by family illness. Few alternatives exist to help pay for institutional care; even fewer alternatives exist to pay for home- and community-based care. In most cases, the high costs of care ultimately force people to spend their life savings and then turn to Medicaid for financial assistance.

Current federal policies are fragmented and emphasize institutional care. Although institutional care must be available to and affordable for those who need it, federal policies must be redesigned to

encourage availability of a continuum of services, including home- and community-based care, with the goal of preventing or delaying admission into an institution for as long as possible. The independence of the individual must be maintained and enhanced to the maximum extent possible; family efforts to assist the individual also must be supported. Moreover, federal policy must encourage Americans to plan for their long-term care needs. In addition to public programs, the federal government should coordinate with states to stimulate viable, private sector long-term care insurance products and other means to assist individuals and families in securing private sources of protection against at least part of the potential costs of long-term care.

7.2 A Comprehensive Long-Term Care System

ONE OF THE MOST IMPORTANT PRIORITIES OF THE 105TH CONGRESS WILL BE ENSURING THE CONTINUED FINANCIAL VIABILITY OF MEDICARE. MEDICARE FACES SIGNIFICANT CHALLENGES RELATED TO THE SHORT-TERM FINANCIAL STATUS OF THE HOSPITAL TRUST FUND, AS WELL AS LONGER-TERM DEMANDS TIED TO THE AGING OF THE BABY BOOMER GENERATION. FROM THE PERSPECTIVE OF THE GOVERNORS, THE NEEDS OF MEDICAID AND MEDICARE MUST BE CONSIDERED TOGETHER, BECAUSE THE TWO PROGRAMS ARE FUNDAMENTALLY INTERRELATED DEMOGRAPHICALLY, PROGRAMMATICALLY, AND FINANCIALLY.

REGARDLESS OF WHETHER CONGRESS AND THE WHITE HOUSE DECIDE TO ADDRESS MEDICARE REFORM DIRECTLY OR THROUGH A COMMISSION, MEDICAID LONG-TERM CARE SHOULD BE PART OF THE DISCUSSION. BY EXAMINING THE NEEDS OF THE TWO PROGRAMS JOINTLY, REFORM OFFERS THE POTENTIAL OF CREATING A MORE COORDINATED AND COST-EFFECTIVE SYSTEM OF CARE. TO UNDERTAKE MEDICARE REFORM WITHOUT CONSIDERATION OF THE IMPACT OF CHANGES ON MEDICAID EXPOSES MEDICAID TO THE RISK OF COST SHIFTING AND MISSES AN OPPORTUNITY TO FUNDAMENTALLY IMPROVE AN INEFFICIENT STATUS QUO.

7.2.1 NURSING HOME CARE AND HOME- AND COMMUNITY-BASED CARE. ~~In recent years, a number of federal proposals would have established a new federal publicly financed home- and community-based services program. Such a program would fill a major gap in the financing of long-term care and would offer consumers an alternative to nursing homes. Although a new program would go a long way toward addressing an unmet demand, the need for a comprehensive approach that integrates community-based and institutional long-term care remains.~~

EXISTING DISTINCTIONS BETWEEN MEDICARE AND MEDICAID POLICIES RELATED TO COVERAGE OF AND ELIGIBILITY FOR NURSING HOME CARE AND HOME- AND COMMUNITY-BASED CARE ARE PARTICULARLY COMPLICATED. SIMPLIFICATION WOULD BE AN IMPORTANT COMPONENT OF A MORE RATIONAL LONG-TERM CARE SYSTEM, PROMOTING COORDINATION OF CARE ACROSS SERVICE SETTINGS. The most comprehensive approach to SIMPLIFICATION WOULD BE AN INTEGRATED MODEL, WHICH ~~such integration~~ would offer a choice of services in a range of settings and would provide a UNIFIED plan of care. ~~to all in need. A reformed system could combine individual resources, private resources,~~

~~and public financing streams and remove the bias toward institutional care. Under this comprehensive approach, states would receive funding from a single source—Medicaid, or a new program that incorporates Medicaid long-term care services—to integrate nursing facility and home- and community-based services in a single program. States would have the flexibility to use this new funding stream to support care provided to people who live in nursing homes, in other congregate settings, or in their own homes. States could administer the program as one integrated program serving all populations in need or through two or more state agencies serving specific populations.~~ To accommodate such a strategy, Congress, the administration, and the states should work together to:

- encourage a consumer-focused system of long-term health care;
- eliminate the institutional bias of current long-term care programs;
- increase the supply of long-term care options, including a range of community-based and in-home services;
- integrate delivery systems for institutional, residential, and community and in-home services;
- ensure that adequate consumer protections are established for beneficiaries;
- emphasize cost-effective treatment in the least restrictive setting;
- integrate federal, state and, where possible, PERSONAL RESOURCES, INCLUDING PRIVATE SECTOR LONG-TERM CARE INSURANCE POLICIES, ~~private financing streams~~ to provide continuity of care;
- integrate health AND social service~~, and housing~~ funding streams; and
- stimulate development of a viable private long-term care insurance product market AND ENCOURAGE INDUSTRY DEVELOPMENT OF STRATEGIES TO ATTRACT YOUNGER BUYERS OF LONG-TERM CARE INSURANCE.

~~The system must be available to individuals of all ages who need assistance in their activities of daily living, and it must be capable of providing a broad range of services, including home- and community-based care.~~

7.2.2 Managed Care and Long-Term Care

THE MOST OBVIOUS CATEGORICAL CONNECTION BETWEEN THE MEDICAID AND MEDICARE PROGRAMS IS THE DUALLY ELIGIBLE POPULATION. THE DUALLY ELIGIBLE QUALIFY FOR BOTH PROGRAMS AND RECEIVE A FULL PACKAGE OF BENEFITS FROM EACH. BECAUSE THE TWO PROGRAMS ARE SO CLOSELY LINKED, CHANGES MADE IN ONE DIRECTLY IMPACT THE OTHER. FOR EXAMPLE, REDUCTIONS IN MEDICARE REIMBURSEMENT RATES FOR HOSPITALS COULD LEAD TO EARLIER HOSPITAL RELEASES, RESULTING IN INCREASED NURSING HOME ENROLLMENT. FOR THE DUALLY ELIGIBLE, THAT LEADS TO A TRANSITION FROM MEDICARE COVERAGE OF HOSPITAL BENEFITS TO MEDICAID COVERAGE FOR NURSING HOME CARE.

SUCCESSFUL MANAGEMENT OF THE PROGRAMMATIC CONNECTIONS BETWEEN MEDICAID AND MEDICARE WOULD RESULT IN THE CREATION OF A MORE SEAMLESS

SYSTEM OF BENEFITS FOR RECIPIENTS, MAKE HOME- AND COMMUNITY-BASED CARE A MORE VIABLE ALTERNATIVE TO INSTITUTIONAL PLACEMENTS, AND REDUCE COST SHIFTING. ONE MANAGEMENT STRATEGY MANY GOVERNORS WOULD LIKE THE FLEXIBILITY TO PURSUE IS MANDATORY MANAGED CARE FOR THE DUALLY ELIGIBLE.

~~With the proliferation of networks of care, the next likely area for the development of integrated health care networks is in long-term care.~~ Three general strategies exist for the application of managed care practices to long-term care. The first is the integrated care model, which attempts to combine both primary and preventive care, as well as home- and community-based and institutional care, into a single integrated system. The second is the primary/acute care model, which focuses solely on primary and preventive care but excludes long-term care services. This model, while technically not long-term care, is extremely important because health care networks do not have much experience providing primary and preventive care to the frail elderly and people with developmental or physical disabilities—individuals with unique and demanding health care needs. The third strategy is the long-term care model, which focuses on integration of home- and community-based care and institutional care but excludes primary and preventive care. Common to all three models is the goal of providing quality and cost-efficient care in the MOST APPROPRIATE ~~least restrictive~~ setting.

~~Although in its infancy,~~ States and the federal government HAVE BEGUN ~~are conducting~~ demonstrations to assess the efficacy of each of these three general approaches. HOWEVER, A NUMBER OF SIGNIFICANT OBSTACLES, BOTH STATUTORY AND ADMINISTRATIVE, HAVE ARISEN TO CONDUCTING EFFECTIVE MANAGED CARE EXPERIMENTS. THE GOVERNORS CALL UPON CONGRESS AND THE ADMINISTRATION TO PERMIT INTERESTED STATES TO EXPERIMENT WITH MANDATORY MANAGED CARE PILOT PROJECTS FOR THE DUALLY ELIGIBLE. THIS AUTHORITY TO EXPERIMENT COULD BE CLARIFIED EITHER THROUGH AN EXPLICIT LEGISLATIVE SANCTION OF MANDATORY MANAGED CARE PROGRAMS FOR THE DUALLY ELIGIBLE OR THROUGH THE CREATION OF SUBSTANTIAL MEDICARE WAIVER AUTHORITY SIMILAR TO THE WAIVER OPTIONS THAT CURRENTLY EXIST IN MEDICAID.

MEDICAID FILLS THE GAPS IN MEDICARE COVERAGE FOR LOW-INCOME SENIOR CITIZENS AND CERTAIN PEOPLE WITH DISABILITIES. WHEN A MEDICARE HEALTH MAINTENANCE ORGANIZATION (HMO) OPTION IS NOT AVAILABLE OR DOES NOT OFFER PRESCRIPTION DRUG COVERAGE, MEDICAID ASSUMES THE COST OF PROVIDING THIS IMPORTANT BENEFIT. AS CONGRESS AND THE ADMINISTRATION MAKE DECISIONS REGARDING MEDICARE HMO RATES, SPECIAL CONSIDERATION SHOULD BE GIVEN TO THE DISPARITIES THAT EXIST BETWEEN THE RATES PAID TO HMOS IN RURAL AND URBAN AREAS AND THE IMPACT OF THOSE DISPARITIES ON THE RANGE OF OPTIONS

AND SERVICES AVAILABLE TO BENEFICIARIES. ADJUSTMENTS TO HMO PAYMENT METHODOLOGIES SHOULD BE CONSIDERED THAT ENCOURAGE EXPANSION OF MEDICARE MANAGED CARE IN STATES WHERE LOW PAYMENTS HAVE RESTRICTED OPTIONS AND SERVICES AND HAVE LED TO LOW PARTICIPATION. ~~The Governors call on Congress and the administration to ensure that there is sufficient flexibility in federal Medicare and Medicaid statutes so that continued testing of these models can occur. Moreover,~~

The Governors are committed to working with Congress, the administration, and health care providers and beneficiaries to ensure that networks of care are practical and viable for people with developmental and physical disabilities, AS WELL AS FOR PEOPLE WITH CHRONIC MENTAL ILLNESSES. ALL INTERESTED PARTIES MUST BUILD ON THE LESSONS LEARNED FROM EXISTING PILOT PROJECTS TO DESIGN INTEGRATED SERVICE DELIVERY MODELS TO MEET THE SPECIAL NEEDS OF THESE POPULATIONS.

7.3 Private Long-Term Care Insurance

In recent years, there has been growth in the availability of private long-term care insurance. Although the growth of this market has been slow and has had mixed success, for those who have access to and can afford such coverage, it may represent a reasonable alternative to public financing. Of particular interest are new efforts in some states to create a private-public partnership for long-term care insurance that allows individuals to purchase state-certified private policies and then have a portion of their assets protected once the private benefits are paid out and public financing becomes necessary. CURRENTLY, FOUR STATES ARE OPERATING THESE PROGRAMS, BUT FURTHER EXPANSION HAS BEEN RESTRICTED. THESE EXISTING public-private partnerships must be permitted to continue, and federal barriers must be eliminated. In addition, authority to implement such programs must be expanded to all states.

Although public-private initiatives must be supported, the Governors have been ~~remain~~ concerned about the quality of many of the private long-term care policies that are ~~currently~~ available. HOWEVER, THE PASSAGE OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPA) EXTENDS IMPORTANT QUALITY PROTECTIONS TO THE LONG-TERM CARE INSURANCE MARKET. THE GOVERNORS CALL UPON THE FEDERAL GOVERNMENT TO WORK CLOSELY WITH STATES WHEN IMPLEMENTING THESE QUALITY STANDARDS TO ENSURE THAT BENEFICIARIES RECEIVE THE BENEFITS THEY HAVE PURCHASED WHEN THEY NEED THEM.

DESPITE THE REAL IMPROVEMENTS SET FORTH IN HIPA, THE GOVERNORS CONTINUE TO HAVE SEVERAL CONCERNS REGARDING LONG-TERM CARE INSURANCE. Often, the policies have limited coverage for home care. ~~and lack adequate consumer protection~~

~~provisions.~~ IN ADDITION, ~~For example,~~ they often have high lapse rates, require medical underwriting, AND are unavailable to people with existing disabilities. ~~, or are not protected against inflation.~~ Also, some insurers have not been forthcoming in paying out benefits. LONG-TERM CARE INSURANCE POLICIES ~~In addition, they~~ are often so expensive to purchase that they are unaffordable for a large segment of the general population. HOWEVER, HIPA CONTAINS SEVERAL PROVISIONS THAT SHOULD MAKE POLICES MORE AFFORDABLE, INCLUDING TAX DEDUCTIBILITY AND INFLATION PROTECTION. THE GOVERNORS HOPE THESE PROVISIONS WILL MAKE LONG-TERM CARE INSURANCE POLICIES BROADLY ACCESSIBLE.

The Governors, with the state insurance commissioners, will work with the insurance industry, Congress, and consumer groups to ensure that coverage is available for home- and community-based services, that ~~model~~ consumer protection standards are ~~adopted and~~ followed, that policies are available that are reasonable in cost, that effective outreach is conducted regarding these policies, and that public education programs are available regarding the importance of early individual planning for long-term care needs.

The Governors recognize that private long-term care insurance is not a panacea for the nation's long-term health care problems. In light of the longevity of the population, the growing need for home- and community-based care, the average length of stay for institutional care, and the fixed incomes of those most at risk of needing long-term care, the Governors further recognize that a solution is not easily achievable and that interventions that provide appropriate care, real protections, and fiscal guarantees must be crafted.

7.4 Conclusion

As the BABY BOOM GENERATION BEGINS TO RETIRE IN 2010, ~~nation enters the twenty-first century,~~ the population needing long-term care will ~~continue to~~ grow DRAMATICALLY. Federal and state action is needed now to plan for this certainty. Some time remains to develop and assess policies that could lead to cost-efficient, quality medical and support services. However, if this time is not used wisely, the costs in terms of quality of life for individuals and their families, and in state and federal spending, could be quite substantial.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~
Adopted Winter Meeting 1995.

EC-23. PROTECTING VICTIMS' RIGHTS

23.1 PREFACE

THE RIGHTS OF VICTIMS HAVE ALWAYS RECEIVED SECONDARY CONSIDERATION WITHIN THE U.S. JUDICIAL PROCESS, EVEN THOUGH STATES AND THE AMERICAN PEOPLE BY A WIDE PLURALITY CONSIDER VICTIMS' RIGHTS TO BE FUNDAMENTAL. PROTECTION OF THESE BASIC RIGHTS IS ESSENTIAL AND CAN ONLY COME FROM A FUNDAMENTAL CHANGE IN OUR BASIC LAW: THE U.S. CONSTITUTION.

23.2 THE CURRENT STATUS OF VICTIMS AND VICTIMS' RIGHTS

AS CRIME CONTINUES TO PLAGUE OUR SOCIETY, THE GOVERNORS ARE AT THE FOREFRONT OF ADDRESSING THE PROBLEMS OF CRIME AND ARE REFORMING THE STATE CRIMINAL CODES BY ENACTING STRONG ANTICRIME LEGISLATION. THE GOVERNORS SEE FIRST-HAND THE EFFECTS OF CRIME ON LOCAL COMMUNITIES, PRISONS, AND VICTIMS.

IN 1995 CRIMINALS VICTIMIZED NEARLY 40 MILLION AMERICANS. IN TOTAL, VICTIMS INCURRED FINANCIAL LOSSES IN EXCESS OF $19.5 BILLION. ALL INDIVIDUALS ARE VULNERABLE TO BECOMING VICTIMS OF CRIME.

SINCE THE CONVENING OF THE PRESIDENTIAL TASK FORCE ON VICTIMS OF CRIME IN 1982, STATES HAVE MADE A CONCERTED EFFORT TO PROTECT VICTIMS' RIGHTS. TODAY, FORTY-SEVEN STATES HAVE VICTIMS' BILLS OF RIGHTS IN PLACE, AND TWENTY-NINE STATES HAVE PASSED CONSTITUTIONAL AMENDMENTS TO PROTECT THOSE RIGHTS. BETWEEN FEDERAL, STATE, AND LOCAL LEGISLATION, THERE ARE MORE THAN 20,000 STATUTES RELATING TO THE RIGHTS AND INTERESTS OF CRIME VICTIMS.

DESPITE THESE WIDESPREAD STATE INITIATIVES, THE RIGHTS OF VICTIMS DO NOT RECEIVE THE SAME CONSIDERATION OR PROTECTION AS THE RIGHTS OF THE ACCUSED. THESE RIGHTS EXIST ON DIFFERENT JUDICIAL LEVELS. VICTIMS ARE RELEGATED TO A POSITION OF SECONDARY IMPORTANCE IN THE JUDICIAL PROCESS.

23.3 NECESSITY TO PROTECT VICTIMS' RIGHTS

THE GOVERNORS BELIEVE IN THE PRESUMPTION OF INNOCENCE UNTIL PROVEN GUILTY, THE MOST DEEPLY HELD PHILOSOPHICAL PILLAR OF OUR NATION'S JUDICIAL SYSTEM. BUT THEY ALSO BELIEVE THAT PROTECTING THE RIGHTS OF THE ACCUSED SHOULD NOT COME AT THE EXPENSE OF THE RIGHTS OF THE VICTIMS. THESE RIGHTS

MUST COEXIST ON THE SAME CONSTITUTIONAL LEVEL, WITH EQUAL CONSIDERATION GIVEN TO BOTH. THIS EQUAL TREATMENT CAN ONLY OCCUR WHEN VICTIMS' RIGHTS ARE ELEVATED TO THE SAME CONSTITUTIONAL LEVEL AS THE RIGHTS OF THE ACCUSED.

THE U.S. CONSTITUTION SHOULD NOT BE CHANGED FOR LIGHT AND TRANSIENT REASONS. BUT DESPITE THE EXISTING PROTECTIONS IN THE STATES, VICTIMS OF CRIME SEEKING JUSTICE ARE OFTEN IGNORED BY THE CRIMINAL JUSTICE SYSTEM. INCLUDING VICTIMS' RIGHTS IN THE U.S. CONSTITUTION WILL GUARANTEE ENFORCEMENT BY JUDGES, ATTORNEYS, POLICE OFFICERS, AND OTHER AGENTS OF THE JUDICIAL SYSTEM.

23.4 VICTIMS' CONSTITUTIONAL PROTECTIONS

TO REQUIRE EQUAL CONSIDERATION FOR THE RIGHTS OF VICTIMS AND OFFENDERS, THE NATION'S GOVERNORS URGE THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES TO PASS A U.S. CONSTITUTIONAL AMENDMENT GUARANTEEING VICTIMS' RIGHTS. THE AMENDMENT SHOULD PROTECT A VICTIM'S RIGHT TO:

- RECEIVE INFORMATION ABOUT CRIMINAL PROCEEDINGS AND THE RELEASE OR ESCAPE OF AN OFFENDER;
- APPEAR AT PROCEEDINGS RELATED TO A CRIME;
- MAKE A STATEMENT, ORAL OR WRITTEN, BEFORE AN OFFENDER OFFERS A PLEA BARGAIN AND BEFORE AN OFFENDER IS SENTENCED;
- RECEIVE FULL RESTITUTION OR COMPENSATION FROM AN OFFENDER; AND
- RECEIVE REASONABLE PROTECTION FROM HARM OR THREAT OF HARM BY AN OFFENDER.

TO PROTECT DUE PROCESS RIGHTS, THE GOVERNORS MAINTAIN THAT NO VIOLATION OF THE RIGHTS ENUMERATED ABOVE AUTHORIZES SETTING ASIDE A CONVICTION OR SENTENCE OR CONTINUING OR POSTPONING A CRIMINAL PROCEEDING.

23.5 CONCLUSIONS

THESE RIGHTS ARE NOT OUTRAGEOUS OR EXTREME. THEY ARE COMMON SENSE, BASIC, AND NATURAL. THE GOVERNORS RECOGNIZE THE NEED FOR CONSTITUTIONAL GUARANTEES, AS DO VICTIMS AND POTENTIAL VICTIMS OF CRIMES. THESE RIGHTS

GIVE BEREAVED VICTIMS A CHANCE TO GRIEVE AS THEY STRUGGLE TO OVERCOME INSUPERABLE INNER TORMENT. THEY PROVIDE A WAY FOR OUR NATION TO HEAL ITSELF THROUGH ITS STRONGEST RESOURCE: ITS PEOPLE.

THEREFORE, THE GOVERNORS ALSO CALL UPON CONGRESS TO WORK WITH THEM IN DEVELOPING LEGISLATION THAT RECOGNIZES EXISTING STATE LAWS AND STATE CONSTITUTIONS' VICTIMS' BILLS OF RIGHTS.

Time limited (effective effective Winter Meeting 1997–Winter Meeting 1999).

RESOLUTION*

CONSUMER PRICE INDEX

THE GOVERNORS COMMEND THE WILLINGNESS OF BOTH THE CONGRESSIONAL LEADERSHIP AND THE PRESIDENT TO NEGOTIATE A BALANCED BUDGET PACKAGE.

AS THESE NEGOTIATIONS BEGIN, THE GOVERNORS REAFFIRM THE NATIONAL GOVERNORS' ASSOCIATION POLICY EC-18, WHICH RECOMMENDS ADOPTION OF A CONSUMER PRICE INDEX (CPI) THAT ACCURATELY REFLECTS THE REAL RATE OF INFLATION TO U.S. CITIZENS. AN INDEX THAT NEITHER OVERESTIMATES OR UNDERESTIMATES INFLATION IS IMPORTANT NOT ONLY TO FEDERAL SPENDING, BUT ALSO FOR STATE SPENDING ON MANY PROGRAMS. AS AN ILLUSTRATION, A 0.5 PERCENT ADJUSTMENT IN THE CPI COULD REDUCE THE DEFICIT BY ABOUT $140 BILLION, WHILE A 1.0 PERCENT ADJUSTMENT COULD REDUCE THE DEFICIT BY AS MUCH AS $280 BILLION OVER SEVEN YEARS.

THE POLICY URGES THAT THE DEFICIT SAVINGS FROM SUCH AN ADJUSTMENT SHOULD BE USED TO REDUCE THE BUDGET REDUCTIONS IN THE FOLLOWING FOUR AREAS: MEDICAID, CHILD CARE, THE EARNED INCOME TAX CREDIT, AND MEDICARE.

* Based upon Policy EC-18, Consumer Price Index.

Time limited (effective Winter Meeting 1997–Winter Meeting 1998).

EC-18. CONSUMER PRICE INDEX

The National Governors' Association recommends that Congress and the President adopt a consumer price index (CPI) that accurately reflects the real rate of inflation to U.S. citizens. An index that neither overestimates or underestimates inflation is important not only to federal spending, but also for state spending on many programs.

The deficit savings from such an adjustment should be used to reduce the budget reductions in the following four areas: Medicaid, child care, the Earned Income Tax Credit (EITC), and Medicare.

Time limited (effective Winter Meeting 1996–Winter Meeting 1998).
Adopted Winter Meeting 1996.

REAFFIRM

EC-10. POLITICAL STATUS FOR GUAM

In 1898, Guam became an unincorporated territory of the United States. At that time, Congress was also given a mandate to address Guam's political status. Today the people of Guam are seeking that political status, as Guam's standing as an unincorporated territory is no longer suitable or appropriate. Moreover, the people of Guam have voted to move forward in defining their political relationship with the United States.

The National Governors' Association, in keeping with the basic principle of American democracy that the sovereignty of a government be derived from a consensus of its citizens, urges the administration and Congress to work with the government of Guam to establish a relationship that recognizes Guam's unique needs and that is based on mutual consent.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Winter Meeting 1985; reaffirmed Annual Meeting 1991; revised Winter Meeting 1995 (formerly Policy A-11).

REAFFIRM

EC-12. OUT-OF-STATE SALES TAX COLLECTIONS

The National Governors' Association supports state efforts to pursue, through NEGOTIATIONS, ~~both~~ the courts, and federal legislation, provisions that would require large out-of-state mail order firms to collect sales and use taxes from their customers. Such action is necessary to restore fairness to competition between community and out-of-state mail transactions and to provide a means for the states to collect taxes that are owed under existing law.

PAST ~~Recent~~ court cases—in particular, the North Dakota Supreme Court's decision regarding the Quill Corporation—have acknowledged the dramatic changes in direct marketing over the past twenty-four years by requiring that certain mail-order merchants collect a state's sales tax from their customers. ~~The Governors call on states to continue their efforts to restore equity to the tax system by pursuing court action.~~

Federal legislation should conform to the following principles:

- apply to only large firms with national or single state sales of tangible personal property in excess of reasonable de minimus levels nationally and in each state;
- apply to firms engaged in regular, systematic solicitation of sales in a state;
- be imposed only when the state has established a uniform rate for the state, including any minimum, statewide, local sales tax rates;
- include reasonable return and remittance requirements of not more than quarterly; and
- apply the tax to the sales or use of tangible personal property.

The Governors call upon Congress to exercise its powers to regulate interstate commerce to grant the states authority to collect their own tax owed on these interstate mail transactions. Such action would restore fairness to competition between community and out-of-state mail transactions and provide a means for the states to collect already-owed taxes.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Annual Meeting 1987; revised Annual Meeting 1991; reaffirmed Winter Meeting 1995 (formerly Policy A-12).

MIKE

January 23, 1997

To: Policy Wizards:

From: Paul Weinstein

Yes, it is that time of year again, when the Gov's come to town and we treat them like legislators. Attached are the infamous NGA resolutions. Please review the assigned resolutions. If you think we need to respond to the resolution and provide advice to the President, please write no more than a half page, concise recommendation. If you believe we should concur with the NGA resolution or amendment, a simple "concur" should suffice.

Elena wants to see your recommendations by close of business. Sorry for the short notice.

Concur

MaC.

NATIONAL GOVERNORS' ASSOCIATION

Bob Miller
Governor of Nevada
Chairman

George V. Voinovich
Governor of Ohio
Vice Chairman

Raymond C. Scheppach
Executive Director

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ADOPTION OF POLICY STATEMENTS IN PLENARY SESSIONS

Article IX of the National Governors' Association Articles of Organization and the Rules of Procedure determine the procedures necessary to adopt policy statements. In accordance with these Rules, enclosed are the Committee policy positions, amendments, and resolutions proposed for the NGA Winter Meeting. Proposed policy statements are submitted by the Standing Committees and are transmitted to all Governors 15 days before the plenary session at which they will be considered.

These policies and amendments primarily focus on current NGA priorities and, unless otherwise noted, are time limited to two years.

1. Germane Committee amendments and floor amendments by individual Governors to these proposed Committee policies require a two-thirds vote. Final adoption of a Committee amended policy statement requires a two-thirds vote.

2. Individual Governors must submit proposed policy statements to the Executive Director at least 45 days in advance of the plenary session. These proposals are transmitted to the appropriate NGA Standing Committee for further action.

   If an individual Governor's proposal is not adopted by the Standing Committee and therefore not included in this 15-day advance mailing to all Governors, it is subject to the suspension of the rules if the individual Governor or the Committee chooses to resubmit the proposal at the plenary session.

3. Any proposed new policy or resolution by a Committee or an individual Governor that is not included in this advance mailing requires a three-fourths vote to suspend the rules, a three-fourths vote for final passage, and a three-fourths vote for any amendment.

4. Resolutions do not address new policy, but affirm existing policy and/or recognize certain persons, places, and events. They remain in effect for one year.

5. Notice procedures: Motions for the suspension of the Rules of Procedure shall be distributed to all Governors present by the end of the calendar day before such motion is put to a vote. The Chairman may request that copies of floor amendments also be available for distribution.

6. Non-debatable motions: Table -- majority vote; Previous Question -- two-thirds vote; Suspend the Rules -- three-fourths vote.

7. A motion to postpone is debatable on the entire policy only and requires a majority vote.

8. Voting may be by voice, show of hands, or roll call. A roll call vote shall be called by a show of hands of ten members.

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1997 Winter Meeting

COMMITTEE ON NATURAL RESOURCES

Governor Christine T. Whitman, Chair
Governor E. Benjamin Nelson, Vice Chair

Thomas W. Curtis, Group Director

Proposed Changes in Policy

NR-4	Superfund	Page 3
NR-7	The Clean Air Act	Page 8
NR-9	Farm and Agriculture Policy	Page 13
NR-13	Safe Drinking Water	Page 17
NR-18	Pollution Prevention	Page 19
NR-19	Low-Level Radioactive Waste Disposal	Page 21
NR-20	Federal Response to Drought	Page 22

Reaffirmation of Existing Policy

NR-2	Solid Waste	Page 25
NR-14	Recreation Resources	Page 29
NR-15	Geologic Mapping	Page 31

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

The Committee on Natural Resources recommends the consideration of three new policy positions, amendments to four existing policy positions, and the reaffirmation of three existing policy positions. Policy proposals are time-limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. Superfund (Amendments to NR-4)

   The proposed amendments to the existing policy would support changes to the statute allowing capable states to be authorized or delegated full or partial management of the program; ensuring that parties at sites that are not on the National Priorities List are released from federal liability if they are released from state liability; supporting continuing federal commitment to cleaning up sites; and supporting the ability of states to manage remediation waste under state remedial action plans instead of Resource Conservation and Recovery Act permits.

   The proposed amendments are intended to have a neutral or positive fiscal impact on the states.

2. The Clean Air Act (Amendment to NR-7)

   The proposed amendment to the existing policy would address the recent proposed rulemaking by the U.S. Environmental Protection Agency that recommends making the current standards for ozone and particulate matter more stringent. The sunset date of this policy will remain the 1997 Annual Meeting.

   The amendment expresses concern over the costs that would be incurred by states in meeting the revised standards. However, the amendment itself does not impact the states fiscally.

3. Farm and Agriculture Policy (Amendment to NR-9)

   The proposed amendment to the existing policy would urge the U.S. Department of Agriculture to discontinue the use of the National Cheese Exchange as the primary factor in the pricing of dairy products. The sunset date of this policy will remain the 1998 Annual Meeting.

   There is no direct state or federal fiscal impact for this policy.

4. Safe Drinking Water (Amendments to NR-13)

   The proposed amendments recognize the enactment of the 1996 amendments to the Safe Drinking Water Act and offer principles that the U.S. Environmental Protection Agency should incorporate in rulemakings as they implement the act.

   Although this policy conveys no direct state or federal fiscal impact, implementing the 1996 amendments to the act is expected to result in significant savings to water systems and to impose some additional costs to state governments.

5. Pollution Prevention (New Policy Position, NR-18)

The proposed new policy recognizes the benefits that have been realized through pollution prevention efforts and initiatives and the potential that they have for bringing the nation closer to its environmental goals. The proposal also recommends that the federal government recognize state efforts to implement pollution prevention initiatives.

Implementation of pollution prevention initiatives in states will, if successful, reduce the state costs of environmental management in areas such as remediation and enforcement.

6. Low-Level Radioactive Waste Disposal (New Policy Position, NR-19)

The proposed new policy recognizes that states possess the technical and administrative capacity to manage low-level waste, and encourages Congress to cooperate in a timely manner with ratification and amendments to state compacts so that states can fulfill their responsibilities under the Low-Level Radioactive Waste Policy Act.

Although there is no direct state or federal fiscal impact, prompt action by Congress may reduce overall costs for state governments as they carry out their responsibilities under the law.

7. Federal Response to Drought (New Policy Position, NR-20)

The proposed new policy would encourage Congress to create a national drought policy that would recognize the unique disaster characteristics of drought and coordinate a federal response that meets the needs of affected states.

If implemented, potential state costs of recovery may decrease and the costs to the federal government may increase as it plays a greater role in drought relief.

8. Reaffirmation of Existing Policy

The committee recommends the reaffirmation of NR-15, Geologic Mapping, with a clarifying, technical amendment.

In addition, the committee recommends that the sunset dates of NR-2, Solid Waste, and NR-14, Recreation Resources, be extended for six months so that amendments can be developed for consideration at the 1997 Annual Meeting in Las Vegas, Nevada.

There is no fiscal impact on states from this action.

NR-4. SUPERFUND

4.1 Preamble

Superfund, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), is under debate in Congress.~~because of the December 31, 1995, expiration of the taxing authority for the cleanup fund.~~ In recent years, Superfund has come under increasing scrutiny by the U.S. Environmental Protection Agency (EPA), states, environmental groups, and the business community. Although these stakeholders often have widely divergent views about what is right and wrong with Superfund and how it should be changed, they all share concerns about the efficiency, effectiveness, and equity of Superfund cleanups. Clearly, a variety of legislative remedies and regulatory and administrative changes are needed to improve the program's ability to expeditiously clean up the nation's worst hazardous waste sites. MOREOVER, THE TAXING AUTHORITY USED TO SUPPORT THE TRUST FUND HAS EXPIRED, LENDING URGENCY TO THE NEED TO REAUTHORIZE THE PROGRAM.

It is imperative that Congress recognize that under the current system, most cleanup work underway is occurring under state programs. The 1,300 sites on the National Priority List (NPL) represent only a fraction of the nation's cleanup sites. Changes to CERCLA will impact both NPL sites and cleanup work moving forward at the state level. Therefore, the Governors strongly believe that changes to CERCLA must NOT JEOPARDIZE THE CONTINUED EFFECTIVENESS OF STATE PROGRAMS.~~reflect the total universe of cleanups in the nation.~~ The Governors look forward to participating in this process and to playing a major role in the implementation of the national hazardous waste site cleanup effort.

4.2 Streamlining Remedy Selection

The Governors believe that centralized decisionmaking has unnecessarily slowed the Superfund program and that the protection of public health and ecosystems demands quicker response actions. The site assessment and remedial action programs are particularly cumbersome. They should be streamlined by focusing Superfund regulations and guidance more on specifying the desired end results of cleanup actions and less on the process for determining such results. The Governors believe the following changes would result in more cost-effective cleanups, a simpler remedy selection process, and a more results-oriented approach.

- ~~A single national risk exposure goal should be set for cleanups. This would provide both national consistency and a starting point for establishing cleanup standards.~~
- Cleanup standards should be developed with consideration of different types of land uses. When appropriate, feasible, and cost-effective, these standards should allow unrestricted use of the remediated site.
- "Presumptive" remedies should be available to narrow analysis of alternative remedies at sites fitting certain land use, generic contamination, population, and hydrogeologic conditions.
- States must be able to apply their own standards at sites within the state to accommodate specific environmental conditions and public views. A more streamlined process should be devised for incorporating these standards into the final remedy.

Risk assessment and cost-benefit analysis can be useful tools in selecting cleanup remedies under certain conditions. First, these tools should be used only to select among remedies designed to meet a

specified cleanup standard. Second, the use of risk assessment and cost-benefit analysis should be based on generally accepted and uniform procedures and should clearly articulate underlying assumptions and the impact of alternative assumptions, include public participation, and acknowledge nonquantifiable benefits and costs. Third, these techniques should not provide opportunities for preenforcement review.

4.3 State-Federal Role

The impacts of hazardous waste sites are felt primarily at the state and local levels. Therefore, the state role in the program needs to be strengthened. States should have a stronger voice in Superfund decisionmaking, and EPA should be required to authorize or delegate full or partial management of the remedial and emergency removal programs to all capable states interested in administering cleanups. This will accelerate cleanup, avoid duplication of effort, increase efficiency for government and the private sector, reduce transaction costs, provide greater certainty in the program, and maximize the effectiveness of limited state and federal resources.

EPA's role should be to ensure the proper implementation of the program throughout the nation by establishing ~~minimum~~ program requirements for ~~authorization and~~ delegation. ~~and by periodically auditing state programs, instead of involving itself in site-by-site oversight.~~ EPA's role also should be to provide technical assistance, to manage part or all of the cleanup program at priority sites in states choosing not to pursue full authorization or delegation, and to ensure that adequate funding is available to states for program implementation. Full authorization or delegation should provide the maximum flexibility necessary to meet state needs and objectives without undue or unnecessary federal oversight. The process for securing ~~authorization or~~ delegation should involve as little administrative burden as possible. IN THE CASE OF AUTHORIZATION, WHICH WOULD ALLOW STATES TO OPERATE THEIR PROGRAMS IN LIEU OF THE FEDERAL PROGRAM, CERCLA SHOULD ESTABLISH, THROUGH STATUTORY PROVISIONS, PROGRAM CRITERIA FOR A STATE-INITIATED SELF-CERTIFICATION PROCESS TO ENSURE THAT THE PROGRAM ADEQUATELY PROTECTS HUMAN HEALTH AND THE ENVIRONMENT. EPA SHOULD PERIODICALLY REVIEW STATE PERFORMANCE, INSTEAD OF INVOLVING ITSELF IN SITE-BY-SITE OVERSIGHT.

CERCLA should be amended to allow interested states to develop a statewide response program for all contaminated sites in the state, and the administrator of EPA should be required to approve such programs within a reasonable period or show cause as to why he or she has not done so. EPA approval should be based on reasonable performance criteria that are developed with state participation and ensure outcomes substantially consistent with the goals of the federal program. Once this program has been approved, the state should be permitted to assume full and complete responsibility for management of the cleanup effort at all sites listed by the state as requiring cleanup. Such responsibility should include establishing priorities, undertaking remedial investigations/feasibility studies, selecting remedies, selecting contractors, and conducting remedial cleanups. Authorized states should nominate sites for federal cleanup funds, and EPA should allocate available funds based on competing national and regional priorities.

4.4 Liability

The liability scheme employed in any hazardous waste cleanup program is critical to the success of that program. The current CERCLA liability scheme serves some purposes well. Its effectiveness at encouraging better waste management is beyond dispute and it has provided resources for waste site cleanups. On the other hand, the Governors believe the current system is flawed in several important respects. Among others, it too often leads to expensive litigation and transaction costs.

The current liability scheme is under scrutiny in Congress and the Governors recognize that the outcome of the debate on federal liability will have significant, direct effects on state cleanup programs.

The program must be responsive to the needs of all parties, including the regulated community, taxpayers, and communities threatened by pollution. The Governors would like to work constructively with Congress in revising the current scheme.

Any resulting liability scheme must:

- ensure that adequate funds are available for cleaning up waste sites and that no unfunded mandates are created for the states;
- allocate cleanup costs fairly and equitably among those responsible for pollution. The liability AND TRANSACTION COSTS of small contributors~~, lenders,~~ and municipalities must be addressed;
- minimize transaction costs to the greatest extent possible. We must ensure that changes to the existing system do not create new transaction costs or additional opportunities for extensive litigation of new or previously well-settled issues that will only further delay cleanups;
- encourage pollution prevention and improved waste management;
- continue to provide substantial incentives for responsible parties to negotiate cleanup settlements before government enforcement action is necessary;
- complement existing state programs;
- ensure that sites are cleaned up promptly and efficiently; and
- ENSURE THAT AT NON-NPL SITES, A RELEASE OF LIABILITY UNDER STATE CLEANUP LAWS PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT CONSTITUTES, BY OPERATION OF LAW, A RELEASE FROM FEDERAL LIABILITY.

4.5 State Program Grants

The Governors believe that Superfund cleanup will be faster and more effective if states have adequate capacity to plan and implement the program. To develop such capacity, the fund should be used to support grants to states for program development, site identification and assessment, enforcement, site remediation, oversight, and administrative expenses at all sites.

4.6 State Match

The Governors believe that there is no justification for requiring a larger state match for Superfund cleanup at sites that are publicly operated than for private sites. CERCLA should be amended to provide that the match required for REMEDIAL ~~cleanup~~ actions is 10 percent at all sites, whether or not they are operated by the state or a political subdivision. THERE SHOULD CONTINUE TO BE NO COST SHARE REQUIRED FOR REMOVAL ACTIONS. The 10 percent state share for sites operated by states or political subdivisions should be considered a final settlement of all liability under CERCLA for the state or political subdivision. The Governors support the continued ability of states to apply in-kind services toward the state match requirement.

4.7 Operation and Maintenance Expenses

CERCLA should be clarified to provide that the response trust fund can be used to support operation and maintenance activities during the period in which they are required. It should be clear that these expenditures are subject to the same state match requirements as cleanup actions.

4.8 Natural Resource Damage Claims

The natural resource damage provisions of CERCLA allow federal, state, and tribal natural resource trustees to require the restoration of natural resources injured, lost, or destroyed as the result of

a release of hazardous substances into the environment. The Governors believe this is an important program that must be maintained. The Governors urge Congress to strengthen the program by amending the statute of limitations to run three years from completion of a damage assessment; removing the prohibition on funding natural resource damage assessments from Superfund; and providing for judicial review of trustee decisions on the administrative record, subject to the arbitrary and capricious standard. Further, the Governors urge Congress to resist efforts to weaken the program by capping liability for natural resource damages at some level per site or eliminating COMPENSATION FOR NON-USE VALUES. ~~the use of contingent valuation methodology to assess damages. The liability scheme for natural resource damages should be consistent with the financial liability requirements of CERCLA.~~

4.9 Federal Facilities

The Governors continue to support legislation that ensures a strong state role in the oversight of federal facility cleanups. Federal facilities and former federal facilities are among the worst contaminated sites in the nation. This condition is a legacy of the lack of regulatory oversight at these sites for most of their history. The double standard of separate rules applying to private citizens and the federal government continues to have a detrimental effect on public confidence in government at all levels. Federal facilities should be held to the same standard of compliance as other parties.

Because EPA cannot effectively enforce CERCLA, or any other environmental statute against other federal agencies, it is critical that states have clear authority to do so. Therefore, the Governors urge Congress to include in any CERCLA reauthorization bill provisions authorizing states to require and oversee response activities at federal facilities, including former federal facilities.

In virtually every other environmental statute, Congress has waived sovereign immunity and allowed qualified states to enforce state environmental laws at federal facilities. Such authority has been provided in the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act. As recently as 1992, when the Federal Facility Compliance Act was enacted, Congress once again confirmed its commitment to state enforcement of environmental laws at federal facilities. We urge this Congress to ensure that CERCLA also follows this sound policy.

4.10 Voluntary Cleanups

The Governors believe that voluntary cleanup activities can make a significant contribution toward the nation's hazardous waste cleanup goals. A number of states have developed highly successful voluntary cleanup programs that have enabled sites to be remediated more quickly and with minimal governmental involvement. CERCLA should be amended to give credit, in the form of a legal release, to volunteers who have cleaned a site to protection standards IN ACCORDANCE WITH ~~under~~ a ~~qualified~~ state voluntary cleanup ~~program.~~ LAW PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT. ~~The states, in conjunction with EPA, should develop performance criteria for determining which state programs are qualified programs.~~ These changes will encourage voluntary cleanup and thus increase the number of cleanups completed. In addition, CERCLA should encourage and provide clear incentives, such as tax exemptions and liability protections for nonculpable parties, for so-called "brownfields" programs at the state level to encourage potentially responsible parties, and for prospective purchasers to reuse and redevelop these contaminated properties.

4.11 NATIONAL PRIORITIES LIST

THE NPL SHOULD BE USED TO FACILITATE THE CLEANUP OF CONTAMINATED SITES AND TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT. GOVERNORS SHOULD BE GIVEN THE STATUTORY RIGHT TO CONCUR WITH THE LISTING OF ANY NEW NPL SITES IN THEIR STATES. THE GOVERNORS ARE CONCERNED ABOUT PROPOSALS TO LEGISLATIVELY CAP OR LIMIT THE NPL BECAUSE OF DIFFERENCES IN CAPACITIES AMONG STATES, THE COMPLEXITY AND COST OF SOME CLEANUPS, THE AVAILABILITY OF RESPONSIBLE PARTIES, ENFORCEMENT CONSIDERATIONS, AND OTHER FACTORS. THERE MUST BE A CONTINUING FEDERAL COMMITMENT TO CLEAN UP SITES UNDER SUCH CIRCUMSTANCES. EMPHASIS SHOULD BE ON PRIORITIZING CLEANUP FUND EXPENDITURES TO PROVIDE THE GREATEST HUMAN HEALTH AND ENVIRONMENTAL BENEFITS. IN THE EVENT EPA DISCOVERS AN IMMINENT AND SUBSTANTIAL THREAT TO HUMAN HEALTH AND THE ENVIRONMENT, IT MAY CONTINUE TO USE ITS EMERGENCY REMOVAL AUTHORITY, BUT ANY ASSIGNMENT OF LIABILITY MUST BE CONSISTENT WITH LIABILITY ASSIGNED UNDER STATE CLEANUP LAWS.

4.12 REMEDIATION WASTE

THE GOVERNORS SUPPORT THE ABILITY OF THE STATES TO MANAGE REMEDIATION WASTE UNDER STATE REMEDIAL ACTION PLANS (RAPS) IN LIEU OF TRADITIONAL RESOURCE CONSERVATION AND RECOVERY ACT PERMITS AND LAND DISPOSAL TREATMENT REQUIREMENTS. STATE RAPS SHOULD BE DEVELOPED AND ADMINISTERED IN ACCORDANCE WITH STATE LAWS PERTAINING TO PUBLIC PARTICIPATION, REMEDY SELECTION, AND STATE OVERSIGHT. A STREAMLINED AUTHORIZATION PROCESS SHOULD BE ESTABLISHED THROUGH STATUTORY PROVISIONS, IDENTIFYING PROGRAM CRITERIA FOR A STATE-INITIATED SELF-CERTIFICATION PROCESS TO ENSURE THAT THE PROGRAM ADEQUATELY PROTECTS HUMAN HEALTH AND THE ENVIRONMENT. EPA SHOULD PERIODICALLY REVIEW STATE PERFORMANCE, INSTEAD OF INVOLVING ITSELF IN RAP-BY-RAP OVERSIGHT.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Annual Meeting 1995–Annual Meeting 1997~~

Adopted Annual Meeting 1993; revised Annual Meeting 1995.

NR-7. THE CLEAN AIR ACT

7.1 Preamble

Americans want, need, and deserve clean air to breathe, yet more than 53 million people live in areas of the country that do not meet health-based air standards. The Governors strongly support the goals and implementation of the Clean Air Act Amendments of 1990 as part of a national effort to ensure cleaner air for all Americans. However, the act contains many provisions, including a number of mandates, that have created enormous difficulties for government and the private sector, both of which desire a workable act. The complexity of the act requires a strong federal-state partnership, and the Governors recommend that the principles described below guide this intergovernmental relationship. Not all of the issues can be addressed effectively on a case-by-case basis, and the Governors urge that through this partnership, an organized process be established to explore all options for achieving the goals of this policy. The Governors look to the U.S. Environmental Protection Agency (EPA) to provide as much administrative flexibility as the law allows in order to achieve clean air goals in the most cost-effective and efficient manner. Notwithstanding such flexibility, however, the act itself may need to be revisited, and the Governors urge the administration, Congress, and others to work with them to identify those areas of the law that may require revision.

7.2 Principles

7.2.1 **Flexibility.** Inflexible standards and requirements can lead to inadequate protection and wasted resources. EPA should provide flexibility in meeting standards and requirements, as long as equal environmental protection is provided. Federal policies structured to offer incentives, choices, and flexibility will encourage the use of innovative strategies in the states for obtaining environmental benefits at the lowest cost. The Governors call for the application of sound science and risk-reduction principles, including the appropriate use of cost-benefit analysis to ensure that funds expended on environmental protection address the greatest risks first and provide the greatest possible return on investment. Employee-commute-option programs, episodic controls, transportation conformity, enhanced inspection and maintenance, achievement of air standards in high-growth areas, and the meeting of deadlines in general are all areas of the act that have created particular challenges and would benefit from increased flexibility.

7.2.2 **Meeting Deadlines.** The Clean Air Act Amendments contain numerous deadlines for federal and state actions. The ability of states to meet deadlines under the act, however, is often dependent upon the issuance of federal rules, models, guidance, and timely state implementation plan review by EPA. When EPA fails to meet a deadline, it is impossible for states to make up the lost time and meet their deadlines. A chain reaction then begins in which industry misses its deadlines, sanctions go into place, clean air goals are not met, and everyone loses. It is essential that EPA meet its commitments under the act so that legislative requirements can be met while state legislatures are in session, and so that state and local governments can incorporate federal guidance and standards in developing their implementation plans.

When these federal regulations are delayed or modified, states are forced to make important policy decisions in a reduced timeframe and without the ability to take advantage of the emissions reductions that the federal regulations may offer. This limits a state's ability to consider all of its options, thereby severely limiting the flexibility that the 1990 amendments contemplated, and may leave states faced with choosing less cost-effective measures. In addition, states also must assume greater program responsibilities when the federal government fails to issue guidance and regulations on time. This additional cost to states in time and money is not an efficient use of government resources and must be avoided.

Where EPA is late in developing federal rules that provide necessary modeling data or guidance, such as those related to nonroad vehicle standards, the Governors recommend that states be permitted to take credit in their implementation plans for the anticipated emissions reductions resulting from the pending rule or guidance. EPA should advise states on the amount of credit to be taken. Timely input also is required from EPA on boundary air quality conditions. EPA must recognize and account for the

problems states encounter in developing complete implementation plans when this information is lacking.

The Governors strongly urge EPA to work with the states to pursue flexible alternatives to enhance the ability of states to meet the goals of the Clean Air Act. The federal government should take all appropriate measures to ensure that states do not face reduced or unrealistic timeframes or sanctions as a result of its failure to deliver rules, data, or guidance in a timely manner. The federal government also should not impose sanctions when states are engaged in a good-faith effort to comply with the goals of the act.

7.2.3 **State Role.** The Governors affirm that the states must have the primary responsibility and authority for the control and abatement of air pollution. States must not be precluded from setting standards that are more stringent than federal minimum standards or from acting in the absence of federal standards. Because some states are prohibited by their constitution from setting more stringent standards, the federal government should ensure that federally established air quality standards adequately protect public health.

7.2.4 **Federal Grants.** Although the states have established permit-fee programs for stationary sources under the Clean Air Act Amendments, this income covers only permit-related activities. The Governors recommend that states be allowed to use funds raised through mandatory permit-fee requirements as the state's share for grant funds under the act. There also are many other federally mandated activities in the act that impose significant state costs, and the Governors recommend that the federal government provide grant money to cover these state expenses.

[Note: The following language is unresolved pending discussion by the Governors. Two suggestions have been set forth.]

[Option A*]

7.3 NATIONAL AMBIENT AIR QUALITY STANDARDS

THE GOVERNORS REMAIN STEADFASTLY COMMITTED TO REGULATORY STANDARDS THAT PROTECT HUMAN HEALTH AND THE ENVIRONMENT AND SUPPORT THE PERIODIC REVIEW OF THESE STANDARDS AS REQUIRED UNDER THE CLEAN AIR ACT. GOVERNORS, WORKING WITH OTHER STATE, FEDERAL, AND LOCAL GOVERNMENT OFFICIALS AND IN COOPERATION WITH THE PRIVATE SECTOR, HAVE PLAYED A CENTRAL ROLE IN ENSURING THE SUCCESS OF FEDERAL CLEAN AIR PROGRAMS.

THOSE EFFORTS, UNDERTAKEN AT CONSIDERABLE COST TO ALL LEVELS OF GOVERNMENT AND THE AMERICAN PUBLIC, HAVE BEEN MET WITH REMARKABLE SUCCESS. AIR QUALITY IN THE UNITED STATES HAS IMPROVED SIGNIFICANTLY DURING THE PAST SEVERAL DECADES AND CONTINUES TO IMPROVE UNDER EXISTING PROGRAMS. HOWEVER, THE GOVERNORS ALSO RECOGNIZE THAT CHALLENGES REMAIN TO CONTINUING THE IMPROVEMENT OF AIR QUALITY. NATURALLY, THERE ARE DIFFERENT REGIONAL PERSPECTIVES TO MEETING THESE CHALLENGES. CONSENSUS-BASED PROCESSES THAT INVOLVE STATES SHOULD BE USED TO RESOLVE THESE DIFFERENCES.

THE PROPOSED NEW NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) FOR OZONE AND PARTICULATE MATTER WOULD HAVE A SIGNIFICANT IMPACT ON THE

ECONOMY AND THE ABILITY OF STATE AND LOCAL OFFICIALS TO MEET OTHER URGENT PRIORITIES. THEREFORE, THE GOVERNORS SUPPORT A COMMENT PERIOD OF SUFFICIENT DURATION (A TOTAL OF 120 DAYS) THAT WILL ALLOW ALL KEY PARTIES OF THE ENVIRONMENTAL PARTNERSHIP—CONGRESS, VARIOUS OFFICIALS FROM ALL LEVELS OF GOVERNMENT, THE REGULATED COMMUNITY, ALL INTERESTED PARTIES, AND THE PUBLIC AT LARGE—ADEQUATE TIME TO ANALYZE THE PROPOSALS AND TO FORMULATE THOUGHTFUL, CONSTRUCTIVE COMMENTS. IN ORDER FOR THE PUBLIC TO CONDUCT SUCH ANALYSES, EPA SHOULD MAKE AVAILABLE ALL DATA AND INFORMATION THAT IT USED TO FORMULATE THE PROPOSALS.

THE PUBLIC REASONABLY EXPECTS THAT PUBLIC AND PRIVATE INVESTMENTS IN EMISSION CONTROL STRATEGIES WILL PRODUCE SIGNIFICANT IMPROVEMENTS IN PUBLIC HEALTH AND THE ENVIRONMENT. THE GOVERNORS HAVE ASSERTED THAT IN DEVELOPING REGULATIONS, EPA SHOULD EXERCISE SOUND JUDGMENT, USE REALISTIC ASSUMPTIONS AND PEER-REVIEWED SCIENCE, WEIGH ALL REASONABLE ALTERNATIVES, AND, CONSIDERING THE AFOREMENTIONED FACTORS, STRIKE AN APPROPRIATE BALANCE BETWEEN THE QUALITATIVE AND QUANTITATIVE COSTS AND BENEFITS. IN ORDER FOR STATES TO BE ABLE TO ASSESS THESE PROPOSALS, A THOROUGH DEMONSTRATION OF HOW THESE PRINCIPLES HAVE BEEN REFLECTED IN THE PROPOSED NAAQS RULEMAKING IS NEEDED. FAILURE TO MAKE SUCH A DEMONSTRATION THREATENS TO UNDERMINE PUBLIC CONFIDENCE IN AND COMPLIANCE WITH THE NEW RULES, AS WELL AS CONFIDENCE IN PROGRAMS THAT ARE ALREADY IN PLACE AND WORKING TO REDUCE EMISSIONS.

THE NATION'S GOVERNORS URGE THE 105TH CONGRESS TO HOLD IMMEDIATE HEARINGS IN WASHINGTON, D.C., AND AROUND THE COUNTRY ON THE PROPOSED REVISIONS TO THE OZONE AND PARTICULATE MATTER STANDARDS. THESE HEARINGS SHOULD AFFORD EPA AN OPPORTUNITY TO EXPLAIN THE RATIONALE BEHIND ITS TWO NAAQS PROPOSALS AND WILL HELP GOVERNORS DETERMINE WHETHER ADDITIONAL LEGISLATIVE ACTION IS NEEDED.

[Option B*]

7.3 NATIONAL AMBIENT AIR QUALITY STANDARDS

THE GOVERNORS REMAIN STEADFASTLY COMMITTED TO REGULATORY STANDARDS THAT PROTECT HUMAN HEALTH AND THE ENVIRONMENT AND SUPPORT THE PERIODIC REVIEW OF THESE STANDARDS AS REQUIRED UNDER THE CLEAN AIR ACT. GOVERNORS, WORKING WITH OTHER STATE, FEDERAL, AND LOCAL GOVERNMENT

OFFICIALS AND IN COOPERATION WITH THE PRIVATE SECTOR, HAVE PLAYED A CENTRAL ROLE IN ENSURING THE SUCCESS OF FEDERAL CLEAN AIR PROGRAMS.

THOSE EFFORTS, UNDERTAKEN AT CONSIDERABLE COST TO ALL LEVELS OF GOVERNMENT AND THE AMERICAN PUBLIC, HAVE BEEN MET WITH REMARKABLE SUCCESS. AIR QUALITY IN THE UNITED STATES HAS IMPROVED SIGNIFICANTLY DURING THE PAST SEVERAL DECADES AND CONTINUES TO IMPROVE UNDER EXISTING PROGRAMS. HOWEVER, THE GOVERNORS ALSO RECOGNIZE THAT CHALLENGES REMAIN TO CONTINUING THE IMPROVEMENT OF AIR QUALITY. NATURALLY, THERE ARE DIFFERENT REGIONAL PERSPECTIVES TO MEETING THESE CHALLENGES. CONSENSUS-BASED PROCESSES THAT INVOLVE STATES SHOULD BE USED TO RESOLVE THESE DIFFERENCES.

THE PROPOSED NEW NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) FOR OZONE AND PARTICULATE MATTER WOULD HAVE A SIGNIFICANT IMPACT ON THE ECONOMY AND THE ABILITY OF STATE AND LOCAL OFFICIALS TO MEET OTHER URGENT PRIORITIES. THEREFORE, THE GOVERNORS SUPPORT A COMMENT PERIOD OF SUFFICIENT DURATION (**AN ADDITIONAL SIXTY** ~~A TOTAL OF 120~~ DAYS) THAT WILL ALLOW ALL KEY PARTIES OF THE ENVIRONMENTAL PARTNERSHIP—CONGRESS, VARIOUS OFFICIALS FROM ALL LEVELS OF GOVERNMENT, THE REGULATED COMMUNITY, ALL INTERESTED PARTIES, AND THE PUBLIC AT LARGE—ADEQUATE TIME TO ANALYZE THE PROPOSALS AND TO FORMULATE THOUGHTFUL, CONSTRUCTIVE COMMENTS. IN ORDER FOR THE PUBLIC TO CONDUCT SUCH ANALYSES, EPA SHOULD MAKE AVAILABLE ALL DATA AND INFORMATION THAT IT USED TO FORMULATE THE PROPOSALS.

THE PUBLIC REASONABLY EXPECTS THAT PUBLIC AND PRIVATE INVESTMENTS IN EMISSION CONTROL STRATEGIES WILL PRODUCE SIGNIFICANT IMPROVEMENTS IN PUBLIC HEALTH AND THE ENVIRONMENT. THE GOVERNORS **BELIEVE** ~~HAVE ASSERTED~~ THAT IN DEVELOPING REGULATIONS, EPA SHOULD EXERCISE SOUND JUDGMENT, USE REALISTIC ASSUMPTIONS AND PEER-REVIEWED SCIENCE, WEIGH ALL REASONABLE ALTERNATIVES, AND, CONSIDERING THE AFOREMENTIONED FACTORS, STRIKE AN APPROPRIATE BALANCE BETWEEN THE QUALITATIVE AND QUANTITATIVE **IMPLICATIONS** ~~COSTS AND BENEFITS~~. IN ORDER FOR STATES TO BE ABLE TO ASSESS THESE PROPOSALS **AND TO FACILITATE THE DEVELOPMENT OF CONSENSUS AMONG GOVERNORS REGARDING THESE PROPOSALS**, A THOROUGH DEMONSTRATION OF HOW THESE PRINCIPLES HAVE BEEN REFLECTED IN THE PROPOSED NAAQS RULEMAKING IS NEEDED. **SUCH A DEMONSTRATION IS NECESSARY IN ORDER TO**

MAINTAIN ~~FAILURE TO MAKE SUCH A DEMONSTRATION THREATENS TO UNDERMINE~~ PUBLIC CONFIDENCE IN AND COMPLIANCE WITH THE NEW RULES, AS WELL AS CONFIDENCE IN PROGRAMS THAT ARE ALREADY IN PLACE AND WORKING TO REDUCE EMISSIONS.

THE NATION'S GOVERNORS URGE THE 105TH CONGRESS TO HOLD ~~IMMEDIATE~~ HEARINGS **DURING THE COMMENT PERIOD** IN WASHINGTON, D.C., AND AROUND THE COUNTRY ON THE PROPOSED REVISIONS TO THE OZONE AND PARTICULATE MATTER STANDARDS. THESE HEARINGS SHOULD AFFORD EPA AN OPPORTUNITY TO EXPLAIN THE RATIONALE BEHIND ITS TWO NAAQS PROPOSALS.~~, AND WILL HELP GOVERNORS DETERMINE WHETHER ADDITIONAL LEGISLATIVE ACTION IS NEEDED.~~

* The differences in the language in Option B from the language in Option A are reflected by bolding language and crossing out language in Option B.

Time limited (effective Annual Meeting 1995–Annual Meeting 1997).
Adopted Annual Meeting 1980; revised Winter Meeting 1982, Annual Meeting 1983, Winter Meeting 1984, Annual Meeting 1984, Winter Meeting 1985, Winter Meeting 1987, Winter Meeting 1989, and Winter Meeting 1990; reaffirmed Winter Meeting 1994; revised Annual Meeting 1994 and Annual Meeting 1995 (formerly Policy D-3).

NR-9. FARM AND AGRICULTURE POLICY

9.1 Preamble

Agriculture, including the wide variety of industries involved in farm inputs and outputs, constitutes one of the largest sectors of the U.S. economy. In 1992 the food and fiber industries, which include producers of farming equipment and supplies, processors, transporters, manufacturers, retailers, and the financial and insurance services industries that serve them, comprised almost 16 percent of the gross national product. The agriculture industry also is notable for maintaining a consistent positive balance of trade. The Governors believe that this position should be enhanced to allow producers to take advantage of new international market opportunities in light of the new trade agreements. Environmental stewardship and rural development also should be featured in farm policy, with an increased emphasis on coordinating the myriad federal programs and requirements. The Governors recommend that Congress establish pilot programs to explore innovative policy options for future consideration. Congress must also afford states greater flexibility and an increased role in the allocation of federal grant monies to accommodate state priorities. This new strengthened state-federal partnership is critical to more efficient and effective delivery of programs.

9.2 Recommendations

9.2.1 **Commodity Programs.** Although budget issues are an overriding factor in the current political and economic environment, it would be a great disservice to the American farmer and the American taxpayer to allow budget cuts alone to dictate agricultural policy. U.S. agricultural policy attempts to achieve a variety of often conflicting goals. These goals include efforts to:

- minimize distortions in the marketplace;
- foster efficient, family-based agriculture;
- avoid interference with international market opportunities; and
- pursue natural resource conservation goals.

Harmonizing these goals in the context of a shrinking budget is a challenge for ~~the 104th~~ Congress.

The Governors support a comprehensive review of agricultural policy to ensure that farm programs incorporate the most efficient means of accomplishing established goals. The Governors endorse farm support programs that foster a rural America that includes family-based productive capacity and that are consistent with resource conservation goals. The Governors support increased flexibility in agricultural programs to allow farmers to make market-responsive production and marketing decisions.

With respect to dairy programs, the Governors urge that the Federal Milk Marketing Order system be reformed. The current system is complex and outdated and should be modified to reflect changes in technology and costs. The Governors also recommend that Congress give states flexibility to create multistate marketing agreements in order to enhance farm prices within their borders. Such authority would not be intended to permit states to erect trade barriers.

FURTHER, THE GOVERNORS URGE THE U.S. DEPARTMENT OF AGRICULTURE (USDA) NOT TO USE THE NATIONAL CHEESE EXCHANGE TO DETERMINE THE BASIC FORMULA PRICE FOR FEDERAL MILK MARKETING ORDERS, BUT TO BASE THE PRICE ON THE SUPPLY OF AND DEMAND FOR MILK USED IN THE MANUFACTURE OF DAIRY PRODUCTS.

ALTHOUGH LESS THAN 2 PERCENT OF ALL CHEESE IS SOLD ON THE NATIONAL CHEESE EXCHANGE, IT IS THE DOMINANT FACTOR IN THE BASIC FORMULA PRICE ESTABLISHED BY THE U.S. DEPARTMENT OF AGRICULTURE. THE GOVERNORS ALSO ASK THE COMMODITY FUTURES TRADING COMMISSION AND THE FEDERAL TRADE COMMISSION TO REEVALUATE THEIR REGULATORY AUTHORITIES REGARDING THE NATIONAL CHEESE EXCHANGE.

9.2.2 **Natural Resources Conservation and Stewardship.** Farmers, by the nature of their work, are close to the land and deserve their reputation as the "first environmentalists." Nonetheless, the multitude of existing environmental requirements and the need to ensure genuine stewardship of the nation's natural resources pose one of the most significant challenges and opportunities facing agriculture today.

The Governors believe that the Conservation Reserve Program (CRP) has been of significant value to farmers, communities, the nation, wildlife, and the environment itself, and that it should be reauthorized at current funding levels. In addition, the U.S. Department of Agriculture operates a number of other environmentally oriented programs, such as the Wetlands Reserve Program and watershed protection programs, that also should be reauthorized at current funding levels. All of these programs should be combined with CRP into one integrated program with consolidated funding. It should be fully integrated with the goals and objectives of the Clean Water Act, with a presumption that an interested state can operate the program, in whole or in part, under delegation, with maximum flexibility given to Governors for implementation. The focus of this integrated program should include environmentally sensitive lands such as prior converted wetlands, existing wetlands, riparian zones, and areas sensitive to groundwater contamination. The program should allow farmers and ranchers to develop a holistic farm resource management plan and obtain "one-stop" approval. Program priorities should be set by the states, giving first consideration to the protection of drinking water supplies. Program funds should be targeted to farmers and ranchers for projects that provide natural resource and water quality benefits. Farmers and ranchers who participate in such a program should be entitled to certainty that if they implement measures consistent with the state program, they will be protected against program revisions or additional requirements for a reasonable period.

The Governors believe that this concept could be expanded to include endangered species as well as other natural resource-related programs.

9.2.3 **Market Promotion.** Passage of the North American Free Trade Agreement and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) greatly expands trade opportunities for the agriculture industry. Timely and effective marketing and development programs must be supported and modified to meet the new demands and changes in the domestic and international markets as the nation moves into the next century. The Governors recommend the following principles to guide those efforts.

- The role of the states and USDA in market promotion must be clarified to ensure complementary work and to reduce duplication of effort.
- Emphasis should be placed on marketing high-value and processed agricultural products and building a strong food processing base.
- Domestic and foreign marketing programs should be better connected.
- Application and reporting processes should be streamlined for export promotion programs.
- Results-driven, long-term, sales-oriented programs should be encouraged.
- State agriculture agencies should be authorized on behalf of USDA to certify shipments.
- The Animal and Plant Health Inspection Service and Food Safety and Inspection Service should be better integrated into export efforts.

With respect to program funding, the Governors recommend the following.

- Funding for the Export Enhancement Program (EEP) should be maintained at maximum GATT levels and USDA should be allowed to shift funds from EEP to the Market Promotion Program and Foreign Market Development Program to stimulate and expand the country's value-added market share.
- Agricultural export credit guarantee programs should include shorter term (i.e., less than one year) credit guarantees.
- Support for state market development and promotion and for regional marketing associations should be increased to the extent allowed under international treaties.
- Adequate support should be maintained for research and development of new uses of agricultural products, including the continuation of the Alternative Agricultural Research and Commercialization Center.

9.2.4 **Rural Development and Farm Credit.** Farm legislation should launch a national rural development policy that clearly defines rural and economic development initiatives and goals, including more

effective targeting of federal resources through greater reliance on states, increased flexibility for states in using federal programs, and improved coordination between federal programs and state services. One important goal should be a stable source of farm credit that meets the needs of a new generation of producers and rural communities working to diversify their economies.

Specifically, the federal government should do the following.

- Consolidate today's individual federal rural development programs, which are administered by numerous federal agencies, into fewer, more flexible programs to provide states development grants, loans, research grants, and technology transfer support for rural development. States can more effectively direct funds to priority needs that vary across the country, but that represent the best use of scarce public resources.
- Continue support for the National Rural Development Partnership, which today boasts more than thirty-nine state rural development councils. This state-federal partnership can help to more effectively target both state and federal resources.
- Permit states to utilize regional partnerships in the use of federal rural development programs. Federal programs should permit flexibility for "cross-border" uses and joint strategic planning when states so choose.
- Federal rural development programs exist in more than one federal agency. Consequently, the secretary of agriculture needs to be given authority to ensure that all federal efforts can be coordinated at the state level. The National Rural Development Partnership is an important step toward coordination, but USDA needs greater authority as a lead agency to enforce this coordination to promote greater efficiency.
- The beginning farmers' loan program should be expanded and the guaranteed loan program's qualification requirements and loan limits should be reviewed to meet critical needs for credit at reasonable rates. Also the Internal Revenue Service prohibition on intrafamily transfers of farm assets under the beginning farmers' agricultural bond program should be eliminated.

9.2.5 **Research and Development.** Because sound scientific research and technology transfer are the foundation for the continued success of American agriculture, the Governors support renewed efforts to strengthen agricultural research and extension programs and urge USDA to maintain an emphasis on its technology transfer mission to farmers. The Governors also urge that support be maintained for land-grant universities and agriculture experiment stations.

9.2.6 **Nutrition and Food Safety.** Hunger continues to be a problem for millions of Americans, despite ongoing government programs and private efforts. The Governors believe that changes are needed to improve the Food Stamp Program and have endorsed a number of recommendations in their policy statement on income security.

The Governors strongly urge that farm policy allow all food products, including dairy, meat, and poultry, to be shipped interstate if they have been approved by a state inspection program meeting federal standards. This will allow small business owners to enjoy the same market benefits enjoyed by large corporations.

Federal standards should be amended to establish a negligible risk standard for pesticide residues in processed foods. This standard would permit the scientific evaluation of risk in decisions for protecting the safety of the food supply and would be compatible with the standards that exist for unprocessed food products.

9.2.7 **Pesticides.** The debate on farm and agriculture legislation also may encompass issues related to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Modifications to this law should preserve and maintain the current balanced cooperative partnership between the U.S. Environmental Protection Agency (EPA) and the states in the administration and enforcement of FIFRA. Any expanded or additional requirements delegated to the states should be readily attainable by the states and accompanied by sufficient funding.

Minor crops, including many fruit, vegetable, nursery stock, and horticultural products, contribute more than $30 billion to the farm-level agricultural economy. Because sales from minor use pesticides do not pay for the high cost of generating the data required by EPA, for economic reasons, pesticide manufacturers are voluntarily dropping smaller volume minor use products scheduled for registration under the compressed schedule of FIFRA and deferring registering new products for uses for minor

crops. The minor crop pesticide issue should be resolved by correcting this unintended consequence of the reregistration process established in the 1988 pesticide legislation. The Governors recommend that this be accomplished by extending the time period for gathering data required for reregistration and by extending registrants' exclusive data rights to such pesticides.

9.2.8 **Forestry.** The Governors support reauthorization of the state and private forestry title of the farm bill. The Governors have found that the programs authorized under this title have been effective in the areas of community and landowner assistance, forestry incentives, and fire protection.

9.2.9 **Strategic Farmland.** Farmland that is the basis of a healthy local economy, provides critical environmental benefits, or is of exceptional value for food production should be protected from conversion to nonagricultural uses. The Governors recommend that the Farms for the Future program be continued and changed to authorize one-to-one federal matching grants to states and state-approved local jurisdictions. These funds would enhance the implementation of the Farmland Protection Policy Act across all federal departments and agencies.

9.2.10 **USDA Structure and Organization.** The Governors support USDA's ongoing reorganization efforts and urge the department to place a high priority on improving federal coordination in the delivery of services to producers and the public. The Governors also encourage the use of alternative dispute resolution techniques for the prompt and informal resolution of financial and environmental disputes.

9.2.11 **Crop Insurance.** The 1996 farm bill took the federal government out of managing crop risks and placed the risk on farmers and insurers through a system of crop insurance. The Governors support that system, but they are concerned that crop insurance must be based on all relevant data and be actuarially sound. The Governors urge the federal government to conduct a thorough review of the crop insurance system in consultation with farmers and state officials to ensure that it is sound, meaningful, and workable.

Time limited (effective Annual Meeting 1996–Annual Meeting 1998).
Adopted Annual Meeting 1989; revised Winter Meeting 1990; reaffirmed Winter Meeting 1994; revised Winter Meeting 1995 and Annual Meeting 1996 (formerly Policy G-10).

NR-13. SAFE DRINKING WATER

13.1 Preamble

The Governors are strongly committed to aggressively protecting public health THROUGH EFFECTIVE IMPLEMENTATION OF THE SAFE DRINKING WATER ACT. ~~and environmental quality.~~ They consider full and effective implementation of THIS ACT TO BE ~~environmental programs~~ a NEW AND STRONGER partnership in which the federal government is responsible for conducting research and setting standards and the states are responsible for program implementation.

~~The Governors, however, are troubled by obstacles to state compliance with federal environmental requirements. First, the Governors note a rapidly increasing disparity between demands placed on states and localities and the resources provided to meet those demands. Federal environmental programs delegated to states must allow Governors the flexibility to implement them in accordance with state and local public health priorities. In addition, federal programs must provide adequate resources for state program management and the water supply community's capital needs to comply with new requirements.~~

~~Second, the values of risk-based rulemaking and risk assessment principles have not been adequately incorporated into the law. This has led to costs that outweigh benefits and to requirements that are not justified by the risks to public health or the environment.~~

~~The Safe Drinking Water Act program is an unfortunate illustration of these two obstacles to state compliance. Congress originally expected the act to apply to some 40,000 water systems, but by 1977 the states had identified more than 220,000 systems subject to federal regulation. As of September 1993, state and local governments were required to implement U.S. Environmental Protection Agency (EPA) regulations controlling eighty-four contaminants. That number will jump to 111 by December 1995.~~

~~States and localities have made substantial progress in improving the protection of drinking water supplies. However, because of limited federal financial assistance, states currently are facing an annual shortfall of more than $200 million in the funds needed to cover the regulatory costs of this program. The shortfall can only become more serious as the states attempt to respond to the additional rules. In addition, this figure does not include the program's capital or operational costs—significant expenses generally reflected in user fees.~~

~~States and localities are struggling to sustain the progress they already have made and to focus any additional available resources on contaminants that pose the greatest risk to users of public water supplies.~~

~~This challenge is particularly difficult now because implementation of the Safe Drinking Water Act must compete not only with other environmental programs required under, for example, the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act, but also with increasing demands for health care, education, correctional facilities, and other social programs at a time when most state budgets are shrinking or growing only modestly.~~

~~Despite these stresses, the states believe that it is possible to devise a drinking water program that protects public drinking water supplies but remains affordable. Such a program must revolve around risk-based priority setting, focusing on the most serious health risks and avoiding requirements that result in little health benefit; allow states increased discretion in allocating resources; and place a greater emphasis on pollution prevention.~~

13.2 Recommendations

THE GOVERNORS SUPPORT THE LETTER AND SPIRIT OF THE 1996 AMENDMENTS TO THE SAFE DRINKING WATER ACT. THESE AMENDMENTS PROVIDED FOR:

~~The Governors propose the following recommendations to revitalize implementation of the Safe Drinking Water Act. This program will require a new and stronger partnership among the states, EPA, and Congress.~~

~~Although each of the recommendations would help resolve current problems, the entire proposal must be adopted to ensure the American public adequate protection of drinking water supplies. If only some points are adopted, implementation efforts are likely to continue to falter. In particular, the Governors fear that their desire to retain primacy will be thwarted unless these recommendations are adopted in full. It will not be possible to make the Safe Drinking Water Act work properly without congressional action. The Governors believe that Congress should reauthorize the Safe Drinking Water Act as soon as feasible and approve amendments to provide for the following:~~

- a revised process to select contaminants for regulation based on their occurrence in drinking water and health effects data, as opposed to PREVIOUS ~~existing~~ requirements for the U.S. Environmental Protection Agency (EPA) to regulate specific contaminants on a schedule mandated in the statute;
- a revised standard-setting process to ensure that EPA considers risk reduction benefits and costs when setting federal drinking water standards;
- enhanced state authority to provide monitoring relief to systems for contaminants that do not actually occur in water at levels of public health concern;
- assistance for small systems by requiring EPA to identify the "best available technology" for small and medium-sized drinking water systems when developing drinking water regulations;
- a newly created drinking water state revolving fund (SRF) program for states to provide loans to communities for drinking water infrastructure projects;
- gubernatorial authority to transfer monies between the drinking water SRF and the clean water SRF based on state and local priorities; and
- INCREASED funding authorization for state management of drinking water programs. ~~-; beginning at $100 million.~~

The Governors believe that, despite ~~current~~ resource limitations, these AMENDMENTS GIVE ~~initiatives will~~ shape TO a practicable program through which federal, state, and local governments can work together to ensure that public drinking water supplies are safer for all Americans in the most efficient possible manner. THE GOVERNORS CALL ON EPA TO CONSULT CLOSELY WITH THE STATES IN DEVELOPING REGULATIONS FOR THE NEW LAW, AND URGE EPA TO ALLOW STATES THE GREATEST POSSIBLE DEGREE OF FLEXIBILITY FOR IMPLEMENTATION, CONSISTENT WITH THE LAW.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~
Adopted Annual Meeting 1992; revised Winter Meeting 1995 (formerly Policy D-17).

NR-18. POLLUTION PREVENTION

18.1 PREAMBLE

POLLUTION PREVENTION IS AN INTERNATIONALLY RECOGNIZED STRATEGY TO REDUCE AND ELIMINATE THE WASTE GENERATED BY THE EXTRACTION AND USE OF RAW MATERIALS AND THE PRODUCTION AND CONSUMPTION OF GOODS. IN THE UNITED STATES, THERE ARE NUMEROUS POLLUTION PREVENTION PROGRAMS AND INITIATIVES THAT ENCOURAGE A REDUCTION IN THE QUANTITY AND TOXICITY OF WASTE BEFORE IT ENTERS THE ENVIRONMENT. THE GOVERNORS SUPPORT THE IMPLEMENTATION OF WELL-PLANNED, VOLUNTARY POLLUTION PREVENTION STRATEGIES, INCLUDING THOSE THAT ENCOURAGE PROCESS SUBSTITUTION, AND THAT REDUCE RISK TO PUBLIC HEALTH, PROTECT THE ENVIRONMENT, AND CONSERVE OUR NATURAL RESOURCES.

THE GOVERNORS BELIEVE THAT EFFORTS TO SUSTAIN ECONOMIC ACTIVITY AND GROWTH NEED TO ENSURE THAT WE ARE IMPROVING AND MAINTAINING OUR ENVIRONMENT, SO AS NOT TO PASS ALONG AN UNMANAGEABLE ENVIRONMENTAL LEGACY TO FUTURE GENERATIONS. THE GOVERNORS FURTHER BELIEVE THAT POLLUTION PREVENTION PROMOTES A ROBUST AND EXPANDING ECONOMY. WELL-PLANNED AND IMPLEMENTED POLLUTION PREVENTION PROGRAMS WILL HAVE POSITIVE ECONOMIC AND ENVIRONMENTAL RESULTS AT ALL LEVELS OF SOCIETY.

POLLUTION PREVENTION SHOULD BECOME CENTRAL TO THE EFFORT TO ENHANCE ENVIRONMENTAL QUALITY IN AMERICA FOR PRESENT AND FUTURE GENERATIONS.

18.2 RECOMMENDATIONS

THE FEDERAL GOVERNMENT SHOULD COOPERATE WITH AND RECOGNIZE STATE EFFORTS TO CREATE INCENTIVES FOR BUSINESS AND INDUSTRY TO ADOPT POLLUTION PREVENTION MEASURES AND MANAGEMENT SYSTEMS. THE GOVERNORS RECOMMEND THAT THE GOAL OF SUCH SYSTEMS SHOULD BE TO REDUCE THE ENVIRONMENTAL IMPACT THROUGHOUT THE LIFE CYCLE OF PRODUCTS, TO IMPROVE OVERALL ECOLOGICALLY SOUND DEVELOPMENT, AND TO ENSURE THE OVERALL REDUCTION OF THE QUANTITY AND IMPACTS OF WASTE GENERATED AND RELEASED. POLLUTION PREVENTION AND OTHER ENVIRONMENTALLY PROTECTIVE INNOVATIVE PROGRAMS MUST BE INTEGRATED INTO FEDERAL, STATE, AND LOCAL ENVIRONMENTAL PROTECTION PROGRAMS SO THAT GOVERNMENT CAN MORE EFFECTIVELY FACILITATE POLLUTION PREVENTION.

COOPERATIVE EFFORTS OF GOVERNMENT, BUSINESS AND INDUSTRY, AND NONGOVERNMENTAL ORGANIZATIONS SHOULD BE AIMED AT DEVELOPING WORKABLE

POLLUTION PREVENTION STRATEGIES AS WELL AS EDUCATION AND TRAINING. THE GOVERNORS BELIEVE THAT IN ORDER FOR POLLUTION PREVENTION STRATEGIES TO BE SUCCESSFUL, THE MERITS AND METHODS OF INCORPORATING POLLUTION PREVENTION STRATEGIES INTO OUR EVERYDAY LIVES WILL HAVE TO BE MADE WIDELY KNOWN.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

NR-19. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

19.1 PREAMBLE

THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT WAS ENACTED IN 1980 AND AMENDED IN 1985 TO MAKE STATES RESPONSIBLE FOR THE DISPOSAL OF COMMERCIAL LOW-LEVEL RADIOACTIVE WASTE (LLRW) AND TO ALLOW STATES TO FORM COMPACTS FOR LLRW DISPOSAL AT REGIONAL FACILITIES TO BE LOCATED WITHIN EACH COMPACT. AS EARLY AS 1980, THE GOVERNORS HAD A POLICY ON LLRW. THE GOVERNORS HAVE LONG RECOGNIZED THAT STATES POSSESS THE TECHNICAL AND ADMINISTRATIVE CAPACITY TO MANAGE LOW-LEVEL WASTE, AND HAVE URGED CONGRESS TO EXERCISE RESTRAINT WITH RESPECT TO INTERPOSING ITS OWN VIEWS ON THE SUBSTANCE OF LLRW COMPACTS SUBMITTED FOR CONGRESSIONAL COMPACT RATIFICATION.

MORE THAN A DECADE AFTER THE 1985 AMENDMENTS TO THE ACT, THE STATES AND THEIR COMPACTS STILL REQUIRE, TO VARYING DEGREES, THE COOPERATION OF THE FEDERAL GOVERNMENT AS THE STATES SEEK TO CARRY OUT THEIR RESPONSIBILITIES UNDER THE ACT. IN THE CASE OF THE TEXAS-MAINE-VERMONT COMPACT, RATIFICATION BY CONGRESS IS NECESSARY BEFORE THE LICENSING OF A FACILITY CAN MOVE AHEAD. IN THE CASE OF THE SOUTHWESTERN COMPACT (SERVING ARIZONA, CALIFORNIA, NORTH DAKOTA, AND SOUTH DAKOTA) THE FEDERAL GOVERNMENT'S COOPERATION IS REQUIRED TO ACCOMPLISH THE TRANSFER OF PUBLIC LAND IN WARD VALLEY TO THE STATE OF CALIFORNIA FOR A DISPOSAL FACILITY.

19.2 RECOMMENDATIONS

THE GOVERNORS URGE THAT AS STATES PRESENT COMPACTS, AND AMENDMENTS TO EXISTING COMPACTS, FOR THE DISPOSAL OF LLRW TO CONGRESS, CONGRESS AND THE PRESIDENT SHOULD DEMONSTRATE THEIR SUPPORT FOR PROMPT RATIFICATION OF THOSE COMPACTS.

THE GOVERNORS ALSO URGE THE PROMPT TRANSFER OF THE WARD VALLEY SITE TO THE STATE OF CALIFORNIA, EITHER IMMEDIATELY THROUGH ADMINISTRATIVE ACTION, OR THROUGH RAPID ENACTMENT OF CONGRESSIONAL LEGISLATION.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

NR-20. FEDERAL RESPONSE TO DROUGHT

20.1 PREAMBLE

DROUGHT IS NOT AN UNCOMMON EVENT. IT IS ALWAYS OCCURRING TO SOME DEGREE SOMEWHERE IN THE WORLD. THROUGHOUT THE HISTORY OF THE UNITED STATES, WIDESPREAD REGIONAL DROUGHTS HAVE TAKEN PLACE PERIODICALLY. BEGINNING IN 1992, A SEVERE AND LONG-TERM DROUGHT BECAME EVIDENT IN THE WESTERN UNITED STATES. IN 1996 THE EXTREME DROUGHT CONDITIONS IN ALL OR PARTS OF ARIZONA, COLORADO, NEVADA, NEW MEXICO, OKLAHOMA, TEXAS, UTAH, AND OTHER WESTERN STATES CAUSED A BROAD VARIETY OF IMPACTS INCLUDING LIFE-THREATENING SITUATIONS, AS WELL AS FINANCIAL BURDENS FOR BOTH GOVERNMENT AND INDIVIDUALS.

THE DROUGHT IMPACTS EXPERIENCED DURING 1996 IN THE WESTERN STATES INCLUDED:

- EXTREMELY DRY CONDITIONS THAT LED TO NUMEROUS FOREST AND RANGELAND FIRES THAT COST HUNDREDS OF MILLIONS OF DOLLARS TO FIGHT, BURNED MILLIONS OF ACRES OF LAND, DESTROYED HUNDREDS OF HOMES, DEVASTATED MANY COMMUNITIES, AND ELIMINATED CRITICAL HABITATS FOR WILDLIFE AND GRAZING LANDS FOR LIVESTOCK;
- ENVIRONMENTAL IMPACTS RANGING FROM CRITICALLY LOW STREAM FLOWS THAT THREATENED ENDANGERED SPECIES OF FISH TO REDUCED WATER QUALITY CAUSED BY SEDIMENT-LOADING FROM ASH AND POSTFIRE RUNOFF;
- ECONOMIC LOSSES IN SEVERAL SECTORS OF THE ECONOMY, INCLUDING TIMBER, TOURISM, AND ESPECIALLY IN THE AGRICULTURE AND RANCHING COMMUNITIES (TEXAS AGRICULTURE LOSSES EXCEEDED $2.1 BILLION); AND
- THREATS TO AND FAILURES OF MUNICIPAL WATER SUPPLIES, CAUSING MANY COMMUNITIES TO INSTITUTE WATER RESTRICTIONS AND RATIONING MEASURES.

UNLIKE FLOODS, HURRICANES, AND OTHER SUDDEN NATURAL DISASTERS, THE EFFECTS OF DROUGHT CREEP UP OVER A PERIOD OF TIME, SOMETIMES SEVERAL YEARS. PERHAPS AS A RESULT OF THE NATURE OF DROUGHT, THE FEDERAL GOVERNMENT'S RESPONSE TO THIS NATURAL DISASTER HAS BEEN SLOW AND FRAGMENTED. NO NATIONAL POLICY ON DROUGHT EXISTS AND RECENT CHANGES IN FEDERAL PROGRAMS (E.G., REVISIONS TO FEDERAL AGRICULTURE PROGRAMS) HAVE EXACERBATED THE IMPACTS OF DROUGHT FOR CERTAIN SECTORS. THE ROLES AND

RESPONSIBILITIES OF THE VARIETY OF FEDERAL AGENCIES INVOLVED IN WATER SUPPLY AND QUALITY, AGRICULTURE, NATURAL RESOURCE MANAGEMENT AND PROTECTION, AND EMERGENCY RESPONSE AND ASSISTANCE ARE OFTEN UNCLEAR AND POORLY COORDINATED.

FEDERAL AGENCIES CURRENTLY HAVE THE AUTHORITY TO OPERATE THIRTY PROGRAMS THAT PROVIDE SOME TYPE OF ASSISTANCE TO INDIVIDUALS, LOCALITIES, OR STATES DURING DROUGHT CONDITIONS. HOWEVER, MANY OF THESE PROGRAMS HAVE BEEN TEMPORARILY SUSPENDED, ARE TOO CUMBERSOME OR RESTRICTIVE TO BE OF HELP, OR ARE NOT BEING ADEQUATELY FUNDED. MOREOVER, MOST OF THESE PROGRAMS ARE BANDAGES TO HELP AFTER DROUGHT HAS MADE ITS IMPACT, RATHER THAN SUPPORT FOR PREVENTIVE ACTIONS THAT CAN REDUCE THE IMPACT OF DROUGHT.

THE FEDERAL GOVERNMENT NEEDS TO EXAMINE HOW IT PREPARES FOR AND RESPONDS TO WIDESPREAD DROUGHT. IT MUST CREATE AND IMPLEMENT A NATIONAL DROUGHT POLICY THAT PROVIDES APPROPRIATE SUPPORT TO THOSE IMPACTED AND MUST PROMOTE CONTINGENCY AND MITIGATION PLANNING TO REDUCE THE IMPACTS OF DROUGHTS BEFORE THEY OCCUR. STATES MUST WORK TO PLAN FOR AND IMPLEMENT MEASURES THAT WILL PROVIDE RELIEF FROM AND MITIGATE THE EFFECTS OF DROUGHTS, WHICH WILL INEVITABLY OCCUR. HOWEVER, THERE IS A NEED FOR A COMPREHENSIVE, INTEGRATED RESPONSE TO DROUGHT AT THE FEDERAL LEVEL TO SUPPORT STATES' EFFORTS AND, WHEN NECESSARY, PROVIDE ASSISTANCE TO STATES AND INDIVIDUALS IN AN EFFECTIVE AND EFFICIENT MANNER.

20.2 RECOMMENDATIONS

THE NATION'S GOVERNORS ENCOURAGE CONGRESS TO PURSUE THE DEVELOPMENT AND IMPLEMENTATION OF A NATIONAL DROUGHT POLICY THAT ESTABLISHES A VISION OF HOW THE FEDERAL GOVERNMENT WILL PROVIDE A COMPREHENSIVE, INTEGRATED RESPONSE TO DROUGHT IN THE FUTURE WITHOUT DIMINISHING THE RIGHTS OF STATES TO CONTROL WATER THROUGH THEIR LAWS. A NATIONAL POLICY, DEVELOPED IN CONSULTATION WITH STATE, LOCAL, AND TRIBAL GOVERNMENTS, SHOULD IDENTIFY THE APPROPRIATE RESPONSE TO DROUGHT BY THE FEDERAL GOVERNMENT. IN ADDITION, IT SHOULD CLEARLY IDENTIFY AND INTEGRATE THE ROLES AND RESPONSIBILITIES OF EACH FEDERAL AGENCY; STATE, LOCAL, AND TRIBAL GOVERNMENTS; AND PRIVATE CITIZENS, WITH REGARD TO MONITORING AND DETECTION, PLANNING AND MITIGATION, AND PROVISION OF TECHNICAL, FINANCIAL, AND OTHER ASSISTANCE. WHEN EMERGENCY ASSISTANCE IS NECESSARY, A

COMPREHENSIVE AND INTEGRATED APPROACH SHOULD BE DEVELOPED SO THAT AID CAN BE PROVIDED IN A TIMELY, EFFECTIVE, AND EFFICIENT MANNER. THE POLICY SHOULD SEEK TO FOCUS FEDERAL RESPONSE ACTIVITIES AND INFORMATION SO THAT STATES HAVE A SINGLE CONTACT TO ACCESS INFORMATION AND ASSISTANCE.

TO IMPLEMENT A NATIONAL DROUGHT POLICY THAT WILL IMPROVE THE EFFICIENCY AND COORDINATION OF THE FEDERAL GOVERNMENT'S RESPONSE TO DROUGHT, THE GOVERNORS BELIEVE A FEDERAL INTERAGENCY DROUGHT GROUP SHOULD BE ESTABLISHED. SUCH A GROUP SHOULD INCLUDE REPRESENTATIVES OF MULTIPLE FEDERAL AGENCIES (E.G., THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE U.S. DEPARTMENT OF AGRICULTURE, THE SMALL BUSINESS ADMINISTRATION, THE U.S. DEPARTMENT OF COMMERCE, AND THE U.S. DEPARTMENT OF THE INTERIOR) AND BE GUIDED BY A DESIGNATED LEAD FEDERAL AGENCY.

FINALLY, THE NATION'S GOVERNORS ENCOURAGE THE FEDERAL GOVERNMENT TO STRONGLY SUPPORT AND ACTIVELY PARTICIPATE IN THE WESTERN STATES' REGIONAL DROUGHT POLICY AND COORDINATING COUNCIL, AS RECOMMENDED IN THE 1996 WESTERN GOVERNORS' ASSOCIATION'S (WGA) DROUGHT RESPONSE ACTION PLAN. THE REGIONAL DROUGHT POLICY AND COORDINATING COUNCIL WOULD DEVELOP SUSTAINABLE POLICY, MONITOR DROUGHT CONDITIONS AND STATE RESPONSES, IDENTIFY IMPACTS AND ISSUES FOR RESOLUTION, FACILITATE INTERSTATE ACTIVITIES, AND WORK IN PARTNERSHIP WITH THE FEDERAL GOVERNMENT TO ADDRESS NEEDS BROUGHT ON BY DROUGHT. IF SUPPORTED, THE WESTERN DROUGHT POLICY AND COORDINATING COUNCIL WILL SERVE AS A MODEL FOR DROUGHT MITIGATION AND RESPONSE FOR OTHER REGIONS OF THE COUNTRY AND PROVIDE VALUABLE INPUT INTO THE DEVELOPMENT OF A NATIONAL DROUGHT POLICY.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

REAFFIRM

NR-2. SOLID WASTE

2.1 Preamble

One of the major environmental policy issues confronting our nation in the next ten years will be devising and implementing a workable strategy for safe and efficient management of solid waste. Solid waste management remains primarily a state and local issue and presents a unique challenge to policymakers at all levels of government and within the private sector.

In order to ensure that the actions of the federal and state governments in solid waste management are coordinated and address important emerging issues of concern to the public and to states, the Governors recommend that Congress amend the legislative framework in which solid waste management planning is conducted and implemented.

The overarching goals in managing solid waste should be to reduce by almost half the amount of solid waste requiring incineration or disposal by 2000, and to ensure that all wastes are handled in an environmentally sound manner. Specific goals include the following.

2.2 Source Reduction

2.2.1 **The Growth in Per Capita Waste Generation Should Be Reversed and the Toxicity of Consumer Products Should Be Reduced.** The nation should commit to an immediate reduction in the amount of waste each individual generates to 1986 levels, and maintain or lower this level further throughout the decade. This effort could cut future waste stream volumes by almost 10 percent. This goal also calls for the reduction or elimination of many toxic components now found in household waste. Achieving reductions in waste volumes and toxicities will require significant changes in the design and manufacture of numerous products, consumer purchasing habits, home disposal practices, and waste management in the workplace.

The U.S. Environmental Protection Agency (EPA) should facilitate and coordinate industry efforts in source reduction by helping identify specific, measurable goals and guidelines that can be adopted by industry. Industry should be encouraged to voluntarily reduce excess packaging or eliminate toxic compounds found in household waste. Voluntary bans that prohibit the sale or disposal of specified items could be used if necessary. This effort also should include the development of a uniform labeling system to identify packages and products that reflect the source reduction principles established through this voluntary program. Methods should be developed to measure industry progress in reducing waste. If the EPA-led process fails to identify voluntary goals and strategies, Congress should require EPA to develop a mandatory program to reach the goals.

Both government and industry should initiate educational programs to encourage practices in the home and workplace that promote source reduction. Both also should adopt procurement programs and management practices that reduce waste generation and the reliance on disposable goods in the workplace, such as encouraging two-sided copying.

2.3 Recycling

2.3.1 **Over the Long Term, the Nation Should Aspire to Reach a Recycling Goal of 50 Percent.** To reach this goal, the nation should recycle 30 percent of all municipal solid waste by 1995 and 40 percent by 2000, after source reduction. Because different regions and localities have different markets and consumer habits, recycling targets may not be met uniformly across the nation. Thus, this goal is intended as a national guideline and not a requirement to be met by each state or locality. For waste that is produced, recycling should be the first option. Other waste disposal options, including incineration and landfilling, must be consistent with achievement of the recycling goals.

In order for recovered materials to be fully used again, a strong market for recycled products must be fostered through economic incentives, research and development, and education. The federal government should assist state recycling programs by providing technical assistance; supporting research and development of product design, recycling technology, and manufacturing processes; and developing safety and quality standards for recycled products. States and the federal government also

should individually or cooperatively stimulate markets for recycled materials through market exchanges and transportation policies and by serving as models for collecting recyclable materials and purchasing recycled products.

A national cooperative effort should be established among industry, government, and citizen groups to develop voluntary durability, recycled content, and recyclability standards for adoption by industry. If this EPA-led effort fails to reach agreement on the voluntary standards, Congress should require EPA to establish mandatory standards to reach the goal by 2000.

Both industry and government have a responsibility to educate the public on the value of using recycled materials and on the choices available. The federal government can help by instituting labeling systems to identify recycled and recyclable material, such as a nationally uniform plastic container coding system.

Barriers to the purchase of recycled products should be removed and government procurers should consider giving price advantages to products containing recycled materials. In addition, Congress should ensure that the federal tax code and other regulations do not unfairly grant advantages to virgin products over recycled ones and consider whether economic incentives are possible to promote recycling.

2.4 State Planning

2.4.1 Each State, Alone or in Cooperation with Other States, Should Manage the Waste Produced Within Its Borders in an Environmentally Sound Manner. This goal requires states to take responsibility for the treatment and disposal of solid waste created within their borders to eventually eliminate the transportation of unwanted waste sent over state lines for treatment or disposal.

It should be the national policy for each state to promote self-sufficiency in the management of solid waste. States should be allowed to use reasonable methods to achieve their goal of self-sufficiency, including the use of waste flow control. Self-sufficiency is a reliable, cost-effective, long-term path and generally reflects the principle that the citizens ultimately are responsible for the wastes they create.

As states phase in programs to ensure self-sufficiency, Congress should require the federal government to aggressively pursue packaging and product composition initiatives and to identify and foster creation of markets for recyclable or recycled goods. Federal assistance in these waste reduction endeavors is critical to developing national waste reduction and recycling programs to achieve self-sufficiency.

Similarly, the federal government must mandate national minimum performance standards for municipal solid waste disposal facilities. Otherwise, some states may resolve capacity crises brought about by export limitations by keeping open landfills that otherwise should be closed. Also, the lack of minimum standards may encourage exports, because it might be cheaper, even taking into consideration transportation costs, for a community in a state with stringent regulations to ship to nearby states that do not have the same requirements.

The development of solid waste management plans should be the primary responsibility of state and local governments, and the Governors urge EPA to assist states in the development of comprehensive and integrated planning and regulatory programs through financial and technical assistance. Such plans should include a ten-year planning horizon and should be updated at least every five years. These plans should include a description of the following:

- the waste management hierarchy that maximizes cost-effective source reduction, reuse, and recycling of materials;
- the planning period;
- the waste inventory;
- the relationship between state and local governments;
- municipal solid waste reduction and recycling programs;
- a waste capacity analysis for municipal solid waste (which in no way should resemble a capacity assurance requirement similar to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA);
- the state's regulatory program;

- the process for citizen participation; and
- self-certification that the state has necessary authority to implement these program elements.

EPA review of plans should be limited to a check for completeness based on elements specified in this policy and raised by EPA during the public comment period of the draft plan. EPA does not have the ability or the resources to take on the solid waste planning and management responsibilities that fall under the historical and rightful domain of state and local governments. Moreover, EPA's intrusion into the planning process (in a manner similar to Subtitle C of the Resource Conservation and Recovery Act, or RCRA) would frustrate and impede the planning process already underway in many states.

States should retain authority to implement and enforce Subtitle D programs upon passage of legislation reauthorizing RCRA, and new program elements in this legislation should be automatically delegated to states. Should a state fail to submit a complete plan, EPA should assume responsibility for the permitting and enforcement portion of a state solid waste management program after the state is given the opportunity to appeal and correct any deficiencies.

2.5 Interstate Transportation of Solid Waste

A certain level of waste exportation can be expected as states work toward self-sufficiency in waste management and as short-term capacity crises arise. However, importing states have the right to expect that unwanted imports will be reduced as quickly as possible. The authority to levy surcharges and to impose limitations on imported waste can help ease the burdens of the host state and can act as incentives to exporting states to develop sufficient in-state capacity.

2.5.1 **Fees on Waste Imports.** Congress should authorize states to impose a surcharge on waste imported for disposal at facilities permitted to handle municipal solid waste. This fee would recognize such host state burdens as the assumption of the additional cost of ensuring the proper management of imported waste, as well as the potential long-term liability costs of its disposal. A maximum allowable fee should be established by federal law, and receiving states should be permitted to set one fee level within that allowable fee cap for all imported nonhazardous solid waste disposed of at facilities handling municipal solid waste.

2.5.2 **Restrictions on Waste Imports.** Because state government is responsible for ensuring that state waste management practices, including disposal capacity planning, protect the interests of all state citizens, Governors must be able to act on their own initiative in certain circumstances to limit nonhazardous solid waste imports to facilities permitted to dispose of municipal solid waste. Governors also should be authorized to limit or freeze waste import levels in consultation with local governments in order to address concerns at specific disposal facilities.

Authority to impose surcharges and restrictions on imported waste should not be linked to federal review of solid waste management plans or other requirements. This inappropriately places the burden on importing states, which most need this relief, and is impractical given EPA's level of resources.

2.6 Technical Standards

The Governors believe that the federal government should be responsible for setting enforceable standards to define the safe operation of waste disposal facilities—including limits on air emissions from incinerators and waste-to-energy facilities and groundwater protection requirements for landfills, as well as management practices for different Subtitle D waste streams.

However, the Governors believe that the federal government should set performance technical standards, not design standards. The development of specific technical requirements and siting decisions appropriate to these standards should remain with the states.

EPA should oversee and participate in state solid waste enforcement activities when waste disposal practices within a state violate federal technical performance standards and the state fails to enforce these standards within a reasonable period of time after notice by EPA. In this instance, EPA should pursue enforcement of minimum federal technical performance standards, but not any additional state standards.

2.6.1 **Municipal Incinerator and Waste-to-Energy Plant Emissions Standards.** The Governors recommend that Congress direct EPA to adopt minimum national standards for the emissions from new facilities and to provide a schedule for the upgrading of existing facilities.

2.6.2 **Municipal Incinerator and Waste-to-Energy Plant Ash.** In order to facilitate planning for both incineration and ash management facilities, the Governors recommend that Congress establish a specific management classification and regulatory scheme for municipal waste combustion residues under Subtitle D; require the establishment of minimum performance standards for land disposal facilities for such wastes; and specify the testing regimes that are applicable to the wastes and facilities. Any policies addressing municipal incinerator residues should recognize the possibility of and encourage beneficial reuse of such material, consistent with protection of the environment.

2.7 Industrial Wastes

Industrial solid waste volumes far outweigh municipal waste volumes, yet relatively little is known about the composition of these waste streams. The Governors support uniform national industrial solid waste management practices that enhance reduction and recovery of industrial wastes following sufficient study of public health and environmental risks. This planning could be required through the permitting process.

2.8 Special Wastes

The Governors recognize that a number of wastes are sufficiently unique to necessitate special management practices.

2.8.1 **Mining Waste.** The Governors believe that EPA should undertake an expedited effort to propose and promulgate a regulatory program for any mining wastes found by the agency to warrant regulation under Subtitle D. This program should establish a state-based approach for protection of public health and the environment, taking into account site-specific, waste-specific, and waste management-specific practices that are in use. To the maximum extent feasible consistent with this objective, the Subtitle D program should permit reliance on existing state regulatory programs for mining waste.

2.8.2 **Oil and Gas Waste.** Currently, on-shore oil and gas exploration and production wastes are exempt from classification as hazardous under the Resource Conservation and Recovery Act. Congress will consider whether this exemption should continue now that EPA has submitted its study on the disposal of these wastes.

EPA's study confirms that exploration and production wastes, when properly managed, do not endanger human health or the environment. In addition, the study confirms that existing state and federal regulations require proper management of the exploration and production wastes. Additional regulations are not necessary.

Therefore, the Governors recommend that the regulation of on-shore oil and gas exploration and production wastes remain primarily the individual state's right and responsibility under current federal laws, and that state regulation of on-shore oil and gas exploration and production wastes continue to be exempt from hazardous waste regulation.

2.8.3 **Biomedical Waste.** The Governors recommend that Congress establish a specific management classification, as a subset of RCRA Subtitle D, for biomedical wastes with infectious potential. This management scheme should include the establishment of a state-based system for tracking biomedical wastes, distinct from the current Subtitle C hazardous waste manifest system, but similar in that it ensures that wastes are disposed of in appropriate facilities and ensures that states receive sufficient and consistent information to ensure proper management. In addition, those who produce and handle such waste should be held strictly liable for its proper management.

2.9 Role of State and Local Governments

While recognizing the need for a strong federal commitment to the sound management of solid waste, consistent with this policy, the Governors believe that the primary responsibility for planning, implementation, enforcement, siting, and the day-to-day operation of solid waste management facilities should remain with state and local government, as it is today. Nothing in this policy shall be construed as an endorsement by the Governors of an expanded federal role in areas of state responsibility.

Time limited (effective WINTER MEETING 1997–ANNUAL MEETING 1997). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Annual Meeting 1990; revised Annual Meeting 1991, Winter Meeting 1993, and Winter Meeting 1995 (formerly Policy D-9).

REAFFIRM

NR-14. RECREATION RESOURCES

14.1 Preamble

Demand for outdoor recreation opportunities has expanded constantly while recreational resources are being steadily diminished and degraded by overcrowding, environmental pollution, and conversion to other uses. This is particularly true of resources within physical and economic reach of the vast majority of urban populations. The expansion, development, and management of recreational space and facilities is an important national challenge. To effectively meet this challenge, the current system for federal assistance to recreation resources must be modified to include a far greater emphasis on state and local decisionmaking than currently exists. The system must also be reinvented to enhance efficiencies and effective program administration.

14.2 A Vision for America's Parks

The Governors support a vision of a safe, clean, planned network of parks, natural areas, greenways, and recreation areas available to all Americans. Important objectives can be achieved by combining the existing Land and Water Conservation Fund (LWCF) and Urban Park and Recreation Recovery (UPARR) programs. The Governors strongly encourage a funding allocation that restores the original apportionment formula that provides at least 60 percent of the funds to state and local projects. The Governors recognize the valuable work done by the National Parks' Service Advisory Board report, "An American Network of Parks and Open Space," with its call for a balanced formula for ensuring state, local, and national funding allocations to meet the nation's diverse needs for recreation resources. Over time, by restoring funding and consideration for the importance of state and local participation in the system of American parks and natural areas, citizen-determined priorities and needs can be better met.

14.3 Guiding Principles

The Governors believe that the creation of a nationwide network of recreation, park, and open space areas should be guided by the following principles.

- Priorities for spending funds must come from citizens involved in local, state, and national planning activities. State and local recreation resources planning activities, including comprehensive outdoor recreation plans, should continue to be a foundation for decisionmaking. The Governors encourage a revitalized LWCF/UPARR program to streamline federal requirements currently imposed on such state planning and granting processes. At the same time, the Governors acknowledge the importance of an open, public process for allocating grants-in-aid and support continuation of this important tool for effective citizen participation.

  To assist in a better determination of national priorities and their interaction with the expressed priorities of state and local governments, the Governors also encourage integration of federal recreation resource planning processes with their state and local counterparts.
- Programs for land conservation, preservation of cultural landscapes, and park development require a shared partnership among citizens, private landowners, all levels of governments, and private organizations.
- The equity of private property owners must be respected in the implementation of recreation and conservation programs.
- As the nation's recreation resources investments are made, the Governors encourage continued attention to providing quality recreation opportunities to all citizens, reflecting the diverse needs for recreation that is safe, accessible, affordable, enjoyable, and open.
- National strategies and programs that aid state and local governments should be flexible, effective, and efficient.

14.4 Funding

The Governors believe that Congress should establish a mechanism to provide adequate and predictable funding to support a New American Parks initiative. The Governors support the principle that a share of proceeds from Outer Continental Shelf revenues should be reinvested in natural and capital resources of lasting value to the nation.

The Governors recommend that Congress provide a 30-30-30 percent allocation of funds to federal agencies, state governments, and urban areas. Further, the Governors support reserving 10 percent of the funding to meet national priorities, as designated by Congress.

14.5 Federal Responsibility and Partnership

Federally managed public lands and resources serve a critical function in meeting national recreational needs. Congress should authorize, and federal agencies should give priority attention to, the use of LWCF funds for sound maintenance of existing federal land holdings. Federal agencies should develop comprehensive outdoor recreation resource plans in consultation with state and local governments and coordinate their planning with the recreation resource needs identified by state and local governments and private organizations. New federal institutional arrangements are needed to give greater visibility and authority to recreational program administration; ensure adequate financial assistance to the states; and foster innovative state, local, and private program partnerships. The efficiency and effectiveness of federal recreational support can be enhanced.

14.6 Railroad Rights-of-Way

The Governors believe that where it is consistent with state law and recognizes the concerns of adjacent landowners, it is in the public interest to conserve and maintain abandoned railroad corridors whenever suitable for use as public trails and greenways, for other public purposes, or for possible future rail use. Such efforts can help achieve the goal of the President's Commission on Americans Outdoors of establishing "a continuous network of recreation corridors . . . across the country."

Time limited (effective WINTER MEETING 1997–ANNUAL MEETING 1997). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Winter Meeting 1995.

REAFFIRM

NR-15. GEOLOGIC MAPPING

15.1 Preamble

Geologic maps are a principal source of critical earth-related information required by federal, state, and local government agencies and the private sector. They are essential for numerous assessments, evaluations, and decisions related to the economic development and maintenance of the environment of the nation. These maps provide vital information needed for land-use planning. In particular, they are indispensable for locating disposal sites for municipal, hazardous, and radioactive wastes; locating and protecting surface water and groundwater resources; locating and developing mineral and energy resources; reducing the risks from earthquakes, landslides, and ground failure hazards; predicting hazards from volcanoes and from stream and shoreline erosion; siting critical emergency facilities; routing highways and public utility lines; and investigating basic earth science matters.

15.2 Recommendations

Geologic map coverage of the nation, however, is critically out of date and insufficient to meet the demands of private, industrial, and government agency users. The nation's Governors strongly support national legislation, SUCH AS REAUTHORIZATION OF THE NATIONAL GEOLOGIC MAPPING ACT OF 1992, to build the nation's geologic map database through a program to be implemented in equity partnership between the states (through their geological surveys or other designated agencies) and the federal government. The program must be sufficiently funded at both the federal and state levels to permit achieving ~~complete~~ geologic map coverage for the nation at an appropriate level of detail within a reasonably short period of time.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~
Adopted Annual Meeting 1991; revised Winter Meeting 1995 (formerly Policy D-16).

Paul J. Weinstein Jr.
01/28/97 11:31:58 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: NGA: Housing Amendments

1) Amendment 14.2: 30% Cap On Rental Payments -- Governors are opposed to Administration efforts to increase the requirement that 30% of income be paid as rent. They claim this is counter to welfare to work principles. We have propose an increase to the 30% requirement (Brook Rule), but so have the Republicans. We have proposed to increase the figure for budgetary purposes.

2) Amendment 14.3: Existing Programs -- Governors want to maintain permancy of Low-Income Housing Tax Credit and Mortgage Revenue Bond Program. The Administration concurs with the NGA position and would underscore that the President fought to make both of these incentives part of the permanent tax code back in 1993. He signed them into law as permanent features of the Code as part of OBRA '93.

3) 14.4: Federal Housing Efforts -- Generally concur with NGA position.

4) 14.5: Section 8 Project-Based Assistance -- The Administration has called for going to a "mark to market" system which should make the Section 8 program more efficient. The Governors are very concerned and want us to preserve the existing system. This however is not financially feasible. We of course are open to working with them in insuring the best possible transition.

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1997 Winter Meeting

COMMITTEE ON ECONOMIC DEVELOPMENT AND COMMERCE

Governor Paul E. Patton, Chair
Governor Edward T. Schafer, Vice Chair

Tim Masanz, Group Director

Proposed Changes in Policy

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Reaffirmation of Existing Policy

EDC-15	Uniform Product Liability Code	Page 32

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

The Committee on Economic Development and Commerce recommends the consideration of three new policy positions, amendments to five existing policy positions (two in the form of substitutes), three resolutions, and the reaffirmation of one existing policy position. Policy proposals are time-limited to two years, unless otherwise noted. Background information and fiscal impact data follow.

1. Military Base Closure, Disposal, and Reuse (Amendments to EDC-3)

   Amendments to this policy significantly reduce the issues addressed. The remaining language calls for the federal government to continue to improve property disposal procedures, ensure timely environmental cleanup, ensure states and territories a meaningful role in the base closure process, allow flexibility in the timing of base closures, and provide incentives for timely commercial reuse.

   There is no federal fiscal impact from this policy.

2. The Role of States, the Federal Government, and Indian Tribal Governments with Respect to Indian Gaming and Other Economic Issues (EDC-6, amendment in the form of a substitute to EC-1 and EC-20)

   The proposed policy, which consolidates policies EC-1, Indian Gaming, and EC-20, the Effect of the *Seminole* Decision on the Implementation of IGRA, contains the following provisions.

   - Indian Gaming Regulatory Act of 1988 (IGRA) Reform. The policy states that amendments to the law should clarify which gambling activities and devices are subject to compact negotiation and that a Governor should not be forced to negotiate with a tribe for gambling activities and devices that are not otherwise permitted by state law. Further, the application of the good faith negotiation standard should be amended to apply to both states and tribes, with the burden of proof resting on the alleging party. A state should not be held to have negotiated in bad faith for refusing to negotiate outside the boundaries of state law.
   - Regulatory Oversight. This new language states that if Congress establishes minimum regulatory standards for tribal gaming operations, states should not be prevented from imposing more stringent standards on tribal gambling activities as part of a tribal-state compact. In addition, should such standards be created, the federal government's regulatory oversight role should be limited to cases where the state and the Indian tribal government fail to meet established standards.
   - The Effect of the *Seminole* Decision on the Authority of the Secretary. IGRA remains in effect in the wake of the U.S. Supreme Court's decision in *Seminole Tribe of Florida v. Florida* and continues to be the only mechanism through which a tribe can legally operate Class III gaming. The policy states that the secretary of the U.S. Department of the Interior does not have unilateral authority to permit tribal operation of Class III gaming.
   - Congressional Delegation of Authority to the Secretary. New language states that if Congress acts to grant to the secretary the authority to provide a remedy to a tribe in the event a state invokes the Eleventh Amendment to suit, the policy asserts that the secretary should be strictly limited by the affected state's gambling laws, regulations, and ordinances.
   - Governors' Role in Federal Decisionmaking. New language states that the Governors should have a concurrent role in decisions undertaken by the federal government that will have an impact on states, including all new trust land acquisition and the recognition of new tribes.
   - State and Local Taxation of Newly Acquired Land. New language states that Congress should require a state and tribe to reach a binding agreement with respect to the application of state and local taxes before new trust land can be acquired.

   There is no federal fiscal impact to the policy.

3. Federal Economic and Community Development Programs (Amendments to EDC-10)

Amendments call for federal action to remove barriers to growth for the private sector; changes in federal tax policy, including a permanent research and development tax credit; and continuation of the Community Development Block Grant program, the federal empowerment zone program, and the manufacturing extension partnership. New language updates rural development policy by calling for the removal of restrictions in last year's appropriations bill, which removed the authority of federal program directors to shift 10 percent of rural development dollars among existing categories to meet state needs.

Because this language is existing policy, there is no additional cost to the federal government.

4. Governors' Principles on International Trade (Amendment in the form of a substitute to EDC-11 and EDC-12)

The proposed amendment in the form of a substitute updates NGA policy on expanding international trade. NGA's policy supporting fast-track negotiation authority for the President has also been incorporated into this revised policy. Overall, the policy stresses that international trade agreements create jobs and increase economic growth by establishing a wide range of opportunities for businesses to enter into foreign markets. In addition, the policy supports U.S. participation in ongoing regional trade summits, such as Asia-Pacific Economic Cooperation and the Summit of the Americas, and trade agreements, such as the North American Free Trade Agreement (NAFTA) and the World Trade Organization (created by the Uruguay Round Negotiations of the General Agreement on Tariffs and Trade). The proposed policy calls upon the U. S. Trade Representative to expand existing trade agreements, including new language in support of Chilean accession to the NAFTA and multilateral and sectoral agreements such as the Multilateral Agreement on Investment and the Information Technology Agreement; urges speedy renewal of the fast-track trade negotiation authority for the President; asks the federal government to involve states and territories in both trade agreement negotiation and implementation; and urges effective coordination among states, territories, and the federal government with respect to promoting the export of goods and services into foreign markets, developing agricultural market programs, and providing citizen education on the importance of international trade.

The policy supports a wide range of federal expenditures, already included in the budget, for the promotion of international trade. The policy contains no new spending requests.

5. Affordable Housing (Amendments to EDC-14)

Amendments add new language expressing concern that the requirement that residents in federally assisted housing pay 30 percent of their income as rent is a disincentive to moving from welfare to work, and that federal efforts to increase that requirement would be a greater disincentive and harmful to the success of welfare reform. New language supports the permanency of the low-income housing tax credit and mortgage revenue bonds; addresses the need for the federal government to maintain commitments to existing Section 8 contracts on state-financed projects; and asserts that states will be more willing to assist the federal government in restructuring expiring contracts if greater flexibility and authority are provided and if states can participate in the savings. The policy also asks that states be given adequate time to restructure contracts on these properties, especially in states with large numbers of expiring contracts.

Support for existing programs adds no new federal costs. The cost of raising the volume cap back to its original level could be as high as $6 billion over five years, although recent recalculations of the consumer price index and the rate of inflation may decrease that amount by as much as half. There is no new cost to continuing support for continuing Section 8 contracts because they are included in the current budget. If states are to share in the savings generated from the restructuring of expiring contracts, the savings to the federal budget may be decreased. However, because state efforts to aid in the restructuring will save federal resources that would have been required to hire and train staff to perform this work, state participation and the savings redirected toward states can be seen as a net savings to the federal budget.

6. Reciprocal Refund Offset for Past-Due Tax Debts (New Policy Position, EDC-18)

This new policy calls on the federal government to redirect individual income tax refunds to states in instances where federal taxpayers owe states for back taxes. Currently thirty states voluntarily provide this service to the U.S. Internal Revenue Service.

This policy's impact on the federal budget is slight—the cost of locating specific refunds and redirecting the money to the various states. This cost is offset by the efforts of states who already voluntarily redirect refunds to the federal government from state taxpayers owing past federal taxes.

7. Private Sector Jobs for Economically Distressed Areas (New Policy Position, EDC-19)

This new policy expands the section 30A wage credit established in 1996 but targets the credit to states or territories that meet a very strict eligibility test. The policy also deletes the ten-year phase-out of the wage credit, replacing it with a limit related to improvement in economic indicators within the affected state or territory. The policy asks for an extension of the research and development tax credit to any state or territory eligible for the wage credit.

The federal fiscal impact from this policy would depend on the number of jobs that exist or will be created in the economically distressed areas. Because the requirements for becoming a distressed area are very restrictive, few states or territories will be eligible.

8. Tax Exempt Financing (New Policy Position, EDC-20)

The proposed policy notes that the value of the state-by-state volume caps for so-called "private activity" tax-exempt bonds has decreased significantly over the past ten years. It also notes that states have increased their reliance on public-private partnerships to solve public service problems and meet public needs, and that the current federal definition of private activity is so narrow that many state efforts now fall outside that definition. The policy calls for an increase in the volume caps and recommends that they be brought up to their originally intended levels. The policy also calls for the relaxation and reform of existing inefficient regulations, such as the arbitrage rebate requirement; for greater flexibility in the limits of what public-private partnerships fall within the range eligible for tax-exempt financing; and for changes that would bring banks and insurance companies back into the market for tax-exempt bonds.

The fiscal impact of raising the volume cap back to its original level could be as high as $6 billion over five years, although recent recalculations of the consumer price index and the rate of inflation may decrease that amount by as much as half. Since all other changes would still be subject to the cap, no additional federal cost would be incurred.

9. Telecommunications Taxation (Resolution, based upon Policy EDC-8)

This resolution notes that the federal government recognized the sovereignty of states to determine their tax policy with respect to telecommunications and that Governors support review of existing state tax policy to determine their effect on the industry. The resolution endorses the process undertaken by the National Tax Association—with the support of the Federation of Tax Administrators and the Multistate Tax Commission—to review existing problems in the taxation of telecommunications and to propose coordinated policies that will help states promote fair competition while ensuring that the telecommunications industry bears its fair share of taxation. The resolution states that the Governors intend to monitor this process and consider the proposals developed.

There is no federal cost to this resolution.

10. Endorsing the Memorandum of Understanding Regarding the U.S. Innovation Partnership (Resolution, based upon Policy EDC-4)

This resolution supports the signing of a memorandum of understanding between the President and the National Governors' Association to establish the United States Innovation Partnership. Seventeen Governors have volunteered to serve on this partnership. Its goal is to focus and integrate federal, state, university, and private sector efforts to increase the benefits of science and technology to the American economy.

There is no federal fiscal impact to this resolution.

11. Air Bag Safety Campaign (Resolution)

This resolution supports a campaign to inform the public about maximizing the lifesaving capabilities of air bags while minimizing the risks. The resolution supports a partnership of automotive manufacturers, insurance companies, child safety seat manufacturers, occupant restraint manufacturers, government agencies, health professionals, and child health and safety organizations. The resolution states that Governors recognize the value of safety belts, support the public education initiatives of the Air Bag Safety Campaign, encourage involvement of law enforcement in promoting air bag safety and greater adherence to seat belt laws, and pledge to inform states of the activities of the campaign, including a mobilization in spring 1997.

There is no federal cost for this resolution.

12. Reaffirmation of Existing Policy

The committee recommends the reaffirmation of Policy EDC-15, Uniform Product Liability Code, which calls for adoption of a uniform code by the federal government and asks that the code provide adequate consumer protections.

EDC-3. MILITARY BASE CLOSURE, DISPOSAL, AND REUSE

~~3.1 Preamble~~

The efficient closure, disposal, and effective reuse of surplus military properties continue to remain important economic issues for states, territories, and affected communities. ~~, particularly as the federal government begins another round of military base realignments and closings under the latest recommendations of the Base Realignment and Closure (BRAC) Commission (BRAC '95).~~ The Governors believe economic development and job creation must be the primary factors governing the disposal of military properties. Therefore, the Governors call on the federal government to CONTINUE TO improve existing military property disposal procedures BY REMOVING~~. Although the President's Five Point Plan and the fiscal 1994 Department of Defense (DoD) authorization bill enacted by Congress represent important progress, additional legislation is needed to further expedite the process; remove~~ barriers in existing laws and U.S. Department of Defense (DoD) practices; ENSURING ~~ensure~~ timely environmental cleanup of closed bases; ENSURING ~~ensure~~ that state, territorial, and local governments are provided meaningful roles in the base closure process; ALLOWING ~~allow~~ DoD to provide maximum flexibility in the timing of base closures to assist state, territorial, and local governments in achieving smooth transitions to private and public uses; and PROVIDING ~~provide~~ incentives for timely commercial reuse of surplus military property.

~~3.2 Value vs. Cost of Military Bases~~

~~In 1990 when Congress created the BRAC Commission, it required the commission to make national security the first and most important factor in its decisionmaking process. The BRAC Commission has submitted its 1995 recommendations, which have been accepted by Congress and the President. The Governors once again stand ready to work with officials from the U.S. Department of Defense to minimize the impact of the base realignments and closures, to ensure that national security interests are met, and to ensure that future decisions maintain a defense infrastructure capable of meeting our nation's long-term national security interests. The Governors urge DoD to fully assess the impact that base realignments and closures will have on local communities and give full consideration to the requests of state, territorial, and local governments that may assist those communities in making a smooth transition.~~

~~3.3 Strategic Planning and Implementation~~

~~The impact of closing a base varies with the size of the community and the makeup of the local economy. The Office of Economic Adjustment must provide timely and adequate assistance for strategic planning for base closures and should provide funding to states where they are partners in easing local impacts. Funds also will be needed to implement the strategic plans. In addition to direct assistance, the federal government should consider ways to stimulate job creation and economic development in affected communities, including tax incentives such as job-related tax credits or other economic development assistance such as loans, the streamlined use of tax-exempt financing, insurance coverage to protect firms from possible economic loss due to undiscovered environmental contamination, or the involvement of local businesses as much as possible in closure and cleanup activities.~~

~~3.4 Property Disposal~~

~~To minimize the time between closure and redevelopment, the federal government must encourage parcelization of properties where appropriate, as well as minimize delays resulting from McKinney Homeless Assistance Act reviews. As long as the law operates with separate and consecutive procedures~~

~~for McKinney Act and community reuse reviews, the Governors believe it will continue to slow down timely and beneficial reuse of surplus military property. Therefore, the Governors believe that the McKinney Act should be amended to provide a single, concurrent screening period for homeless assistance providers and community reuse planners.~~

~~To facilitate cooperation between homeless assistance providers and community reuse planners, the McKinney Act should allow for community reuse planners to participate throughout the disposal process and to negotiate with homeless assistance providers directly, as well as to offer alternative locations—either on or off base—for homeless assistance providers to carry out their proposals. Further, the federal government should take steps to ensure that homeless provider applicants demonstrate both how property would be utilized and that they have the financial ability to carry out their proposals to meet regional homeless assistance needs.~~

~~The Governors urge the federal government to expand and provide additional funding for the Federal Aviation Administration's Military Airports Program, which provides assistance for the conversion of military airfields to commercial use. In cases where the federal government retains ownership of surplus property and makes long-term leases available, the Governors urge the federal government to develop a uniform policy that requires the federal government to cover the conversion costs of facilities for commercial reuse.~~

~~One additional concern is that states and localities should be viewed as partners in the reuse process. Current payment requirements are a barrier to efficient cooperation and effective economic development. To maximize the resources of local, state, and territorial governments, they should be permitted to purchase military base assets over a period of time, rather than having to make immediate and full payment.~~

~~3.5 Property and Land Appraisals~~

~~Many communities have experienced significant delays because of the procedures followed to complete the appraisal process. In a number of instances, the military has clung to inflated appraisals and insisted on compensation for "full market value." Additionally, the values assigned to buildings that frequently fail to meet fire and safety codes—not to mention Americans with Disabilities Act (ADA) requirements—are unrealistically high. Provisions should be made for the military to clear the land in circumstances where the cost of retrofitting exceeds the cost of new construction. Again, a central office must be set up within DoD to set policy and deal consistently with these problems. Consistent policies should be developed for the services to follow in any closure situation.~~

~~3.6 Environmental Cleanup~~

~~Successful timely reuse of surplus military property depends greatly on the active cooperation of the federal government and affected states and communities in remediation efforts. All too often, inconsistent policies and inadequate funding have allowed cleanup issues to become outright barriers to reuse.~~

~~Congress has directed DoD to clean up all military facilities. It is imperative that cleanup funds be available when a base is designated for closure. When all or part of a closed facility is forced to lie idle and unusable because of contamination, economic reuse and community adjustment are jeopardized.~~

~~Accurate cost assessments help assure states and communities that adequate federal funds will be made available to clean bases for reuse. Therefore, the Governors call on the Department of Defense to better inform all parties of the cost of environmental cleanup for any base recommended to be closed, and to include estimates of timely environmental cleanup costs with all recommendations regarding base closures and realignment. Further, throughout the decisionmaking process, the Governors call on Congress and the administration to budget for the funds that will be needed in annual appropriations bills to meet the commitment of timely environmental remediation.~~

~~The administration's proposal to permit environmental issues to be addressed concurrently with the reuse planning process, rather than sequentially, should be implemented without delay. Local communities must be given more information on a timely basis about the scope of environmental problems at each property, and adequate funding assistance should be provided for state, territorial, and community advisors during the remediation planning and implementation process. Cleanup work to the~~

~~greatest extent possible should be performed by local businesses, thus providing some measure of interim economic stimulus for the community.~~

~~To ensure timely and sound remediation efforts, the federal government should work with the states and territories to pursue cooperative measures when appropriate as an alternative to listing additional bases on the national priorities list. The Governors call on Congress and the administration to ensure that the Federal Facilities Compliance Act is effectively enforced on those bases slated for closure or realignment, and that military installations and other federal properties meet the same federal and state environmental standards as those imposed upon the private sector.~~

~~The federal government also must establish a coherent indemnification policy that encourages innovative methods of remediation. This policy should address both future purchasers or lessees and cleanup contractors. The lack of such a policy for cleanup contractors deters qualified contractors from using innovative technologies in their remediation efforts. The development and application of new remediation technologies can help make properties available for reuse more quickly. The Governors urge full implementation of such a policy, consistent with the President's Five Point Plan.~~

~~3.7 Cooperation and Coordination with State, Territorial, and Local Governments~~

As defense downsizing and restructuring continues, the federal government must take steps to enhance cooperation and coordination with state, territorial, and local governments in order to preserve the integrity of local economies. The Governors urge DoD to use its discretion when working with state, territorial, and local governments to allow for maximum flexibility in timing base realignments and closures.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Annual Meeting 1993; revised Winter Meeting 1994, Annual Meeting 1994, Winter Meeting 1995, and Winter Meeting 1996.

EDC-6. THE ROLE OF STATES, THE FEDERAL GOVERNMENT, AND INDIAN TRIBAL GOVERNMENTS WITH RESPECT TO INDIAN GAMING AND OTHER ECONOMIC ISSUES

6.1 PREAMBLE

THE GOVERNORS RECOGNIZE AND RESPECT THE SOVEREIGNTY OF INDIAN TRIBAL GOVERNMENTS AND SUPPORT ECONOMIC ADVANCEMENT AND INDEPENDENCE FOR TRIBES. STATE AND TRIBAL GOVERNMENTS MUST CONTINUE TO WORK TOGETHER ON MANY SIGNIFICANT ISSUES. GOVERNORS VALUE THEIR IMPORTANT RELATIONSHIPS WITH TRIBAL GOVERNMENTS.

THERE IS NO QUESTION THAT BY ENACTING THE INDIAN GAMING REGULATORY ACT OF 1988 (IGRA), CONGRESS INTENDED TO PROVIDE STATES WITH A MEANINGFUL ROLE IN DETERMINING WHICH GAMBLING ACTIVITIES AND DEVICES WOULD BE CONDUCTED UNDER A TRIBAL-STATE COMPACT. THEREFORE, IMPLEMENTATION OF IGRA REQUIRES A FAIR BALANCE BETWEEN STATE AND TRIBAL SOVEREIGNTY.

AS A STATE'S CHIEF EXECUTIVE OFFICER AND THE PRIMARY DEFENDER OF STATE SOVEREIGNTY, A GOVERNOR HAS THE ULTIMATE RESPONSIBILITY TO ACT IN THE BEST INTERESTS OF ALL STATE CITIZENS. ALTHOUGH THE GAMBLING ACTIVITIES CONDUCTED UNDER IGRA OCCUR WITHIN THE BOUNDARIES OF TRIBAL LANDS, THEY ARE DESIGNED TO ATTRACT NONTRIBAL PATRONS, AND THE EFFECTS OF THESE ACTIVITIES ARE FELT FAR BEYOND THE GEOGRAPHIC BOUNDARIES OF THE RESERVATIONS.

THE GOVERNORS HAVE LONG DECRIED THE LACK OF UNIFORMITY WITH RESPECT TO THE IMPLEMENTATION AND COURT INTERPRETATION OF IGRA AND HAVE CONSISTENTLY CALLED FOR CONGRESSIONAL CLARIFICATION OF THIS STATUTE. ALTHOUGH SEVERAL PROBLEMS EXIST, THE STATES' PRIMARY CONCERN CONTINUES TO BE CLARIFYING THE SCOPE OF THE GAMBLING ACTIVITIES PERMITTED TO TRIBES UNDER THE ACT. THE GOVERNORS FIRMLY BELIEVE THAT IT IS AN INAPPROPRIATE BREACH OF STATE SOVEREIGNTY FOR THE FEDERAL GOVERNMENT TO COMPEL STATES TO NEGOTIATE TRIBAL OPERATION OF GAMBLING ACTIVITIES THAT ARE PROHIBITED BY STATE LAW.

THE GOVERNORS REMAIN COMMITTED TO RESOLVING THE CONFLICTS ARISING OUT OF IGRA IMPLEMENTATION. ANY AMENDMENTS TO THE ACT MUST ADDRESS THE GOVERNORS' PRINCIPAL CONCERNS AND ULTIMATELY MUST BE DESIGNED TO KEEP STATES AND TRIBES IN NEGOTIATIONS AND OUT OF COURT. IN ADDITION, THE

GOVERNORS URGE CONGRESS AND OTHER FEDERAL ENTITIES TO INCLUDE THEM IN DECISIONS THAT WILL HAVE AN IMPACT ON STATES.

6.2 **IGRA REFORM**

AMBIGUITIES IN THE CURRENT LAW HAVE LED TO INCONSISTENT COURT INTERPRETATIONS OF THE ACT. AMENDMENTS TO IGRA SHOULD BE DESIGNED TO ENCOURAGE STATE AND TRIBAL GOVERNMENTS TO WORK TOGETHER TO RESOLVE CONFLICTS THAT MAY ARISE DURING THE COMPACT NEGOTIATION PROCESS. IGRA SHOULD BE AMENDED TO RESOLVE THE FOLLOWING ISSUES.

6.2.1 **CLARIFICATION OF THE SCOPE OF GAMING.** MUCH OF THE CONFUSION AND CONFLICT THAT HAS ARISEN OUT OF IGRA IMPLEMENTATION CENTERS AROUND DETERMINING WHICH GAMBLING ACTIVITIES AND DEVICES ARE PERMITTED BY A STATE'S PUBLIC POLICY. THE GOVERNORS ASSERT THAT GAMBLING PUBLIC POLICY MUST BE DETERMINED BY READING A STATE'S LAWS AND REGULATIONS.

AMENDMENTS TO IGRA MUST DEFINE THE SCOPE OF THE GAMBLING ACTIVITIES AND DEVICES SUBJECT TO NEGOTIATION UNDER THE LAW. IT MUST BE MADE CLEAR THAT TRIBES CAN NEGOTIATE TO OPERATE GAMBLING OF THE SAME TYPES AND SUBJECT TO THE SAME RESTRICTIONS THAT APPLY TO ALL OTHER GAMBLING IN THE STATE. ULTIMATELY, A GOVERNOR MUST NOT BE COMPELLED BY FEDERAL LAW TO NEGOTIATE FOR GAMBLING ACTIVITIES OR DEVICES THAT ARE NOT EXPRESSLY AUTHORIZED BY STATE LAW, ALTHOUGH THE GOVERNOR MAY HAVE THE DISCRETION TO NEGOTIATE ACROSS A BROAD RANGE OF OPTIONS.

6.2.2 **APPLICATION OF THE "GOOD FAITH" NEGOTIATION STANDARD.** THE "GOOD FAITH" NEGOTIATION STANDARD SET FORTH BY IGRA MUST BE CLARIFIED AND APPLIED TO BOTH STATES AND TRIBES. FURTHER, THE BURDEN OF PROVING AN ALLEGATION SHOULD REST WITH THE PARTY MAKING THE ALLEGATION. INABILITY TO AGREE ON A COMPACT SHOULD NOT BE TREATED AS AN INDICATION OF BAD FAITH BY EITHER PARTY. IN PARTICULAR, A STATE'S ADHERENCE TO ITS OWN LAWS AND CONSTITUTION SHOULD NOT BE REGARDED AS BAD FAITH.

6.2.3 **REGULATORY OVERSIGHT.** THE GOVERNORS RECOGNIZE THAT IN MANY CASES, FEDERALLY IMPOSED MINIMUM REGULATORY STANDARDS FOR THE OPERATION OF TRIBAL GAMBLING FACILITIES MAY BE APPROPRIATE. IN GENERAL, CAREFUL REGULATORY OVERSIGHT IS NECESSARY TO PROTECT THE INTEGRITY OF THE GAMBLING ACTIVITIES AND THE INTERESTS OF PATRONS, THE STATES, MEMBERS OF TRIBES, AND INDIAN TRIBAL GOVERNMENTS.

CONGRESSIONAL ESTABLISHMENT OF MINIMUM REGULATORY STANDARDS SHOULD NOT PREEMPT STRICTER STATE LAWS, NOR SHOULD IT PREVENT STATES FROM NEGOTIATING WITH TRIBAL GOVERNMENTS FOR MORE STRINGENT REGULATORY STANDARDS AS PART OF A TRIBAL-STATE COMPACT.

STATE AND TRIBAL GOVERNMENTS SHOULD DETERMINE THEIR RESPECTIVE REGULATORY OVERSIGHT ROLES THROUGH THE TRIBAL-STATE COMPACT NEGOTIATION PROCESS. IF SUCH STANDARDS ARE ESTABLISHED, THE FEDERAL GOVERNMENT'S OVERSIGHT ROLE SHOULD BE LIMITED TO CASES IN WHICH THE STATE AND TRIBE FAIL TO MEET ESTABLISHED MINIMUM REGULATORY STANDARDS.

6.3 THE EFFECT OF THE SEMINOLE DECISION ON THE AUTHORITY OF THE SECRETARY OF THE U.S. DEPARTMENT OF THE INTERIOR

THE U.S. SUPREME COURT FORTIFIED STATE SOVEREIGNTY IN ITS MARCH 1996 DECISION IN SEMINOLE TRIBE OF FLORIDA V. FLORIDA. CLEARLY, THE SEMINOLE DECISION RENDERED THE JUDICIAL REMEDY CONTAINED IN IGRA UNENFORCEABLE AGAINST A STATE UNWILLING TO CONSENT TO FEDERAL JURISDICTION. IN THE WAKE OF THE DECISION, HOWEVER, QUESTIONS HAVE BEEN RAISED ABOUT WHETHER THE SECRETARY OF THE U.S. DEPARTMENT OF THE INTERIOR CAN UNILATERALLY CREATE A PROCESS THROUGH WHICH TRIBAL OPERATION OF CLASS III GAMING CAN BE AUTHORIZED IN THE EVENT A STATE INVOKES THE ELEVENTH AMENDMENT DEFENSE.

AS THE GOVERNORS INTERPRET THE EFFECTS OF SEMINOLE, NOTHING REMAINS IN IGRA OR ANY OTHER LAW THAT ENDOWS THE SECRETARY WITH THE AUTHORITY TO INDEPENDENTLY CREATE SUCH A PROCESS. IGRA CONTINUES TO BE THE SOLE MECHANISM THROUGH WHICH TRIBAL GOVERNMENTS CAN OPERATE CLASS III GAMING. IT IS UNTHINKABLE THAT A SUPREME COURT DECISION ENDORSING STATE SOVEREIGNTY COULD BECOME THE VEHICLE FOR AN INAPPROPRIATE EXPANSION OF THE SECRETARY'S AUTHORITY.

THE GOVERNORS WILL ACTIVELY OPPOSE ANY INDEPENDENT ASSERTION BY THE SECRETARY OF THE POWER TO AUTHORIZE TRIBAL GOVERNMENTS TO OPERATE CLASS III GAMING. STATE AND TRIBAL GOVERNMENTS ARE BEST QUALIFIED TO CRAFT AGREEMENTS ON THE SCOPE AND CONDUCT OF CLASS III GAMING UNDER IGRA.

6.3.1 **CONGRESSIONAL DELEGATION OF AUTHORITY TO THE SECRETARY.** IF CONGRESS DELEGATES TO THE SECRETARY OF THE U.S. DEPARTMENT OF THE INTERIOR THE AUTHORITY TO PROVIDE A REMEDY TO A TRIBE IN THE EVENT A STATE RAISES THE ELEVENTH AMENDMENT DEFENSE TO SUIT, THE SECRETARY'S ABILITY TO PERMIT

TRIBAL CLASS III GAMING MUST BE STRICTLY LIMITED TO WHAT IS ALLOWED UNDER THE STATE'S GAMBLING LAWS, REGULATIONS, AND ORDINANCES.

6.4 THE GOVERNORS' ROLE IN CONGRESSIONAL AND OTHER FEDERAL DECISIONMAKING

THE GOVERNORS SHOULD HAVE A CONCURRENT ROLE IN ANY ACTION TAKEN BY CONGRESS THAT WOULD HAVE A SIGNIFICANT IMPACT ON STATES, INCLUDING FEDERAL RECOGNITION OF NEW TRIBES AND ACQUISITION OF TRUST LANDS FOR TRIBES. TRIBAL RECOGNITION THROUGH ANY FEDERAL ADMINISTRATIVE PROCEDURE SHOULD REQUIRE THE CONCURRENCE OF THE GOVERNOR(S) OF THE STATE(S) IN WHICH THE TRIBE IS LOCATED.

6.4.1 **TRUST LAND ACQUISITION FOR GAMBLING PURPOSES.** CONGRESS MUST SUPPORT ITS COMMITMENT TO PROVIDE GOVERNORS WITH CONCURRENT AUTHORITY IN THE TRUST LAND ACQUISITION PROCESS. CONGRESS MUST PRESERVE THE GOVERNORS' PARTICIPATION IN THIS DECISIONMAKING PROCESS—NAMELY, THAT NO TRUST LAND ACQUISITION FOR GAMBLING PURPOSES SHOULD BE POSSIBLE WITHOUT A GOVERNOR'S CONCURRENCE. THE U.S. DEPARTMENT OF THE INTERIOR HAS ACKNOWLEDGED THAT A GOVERNOR'S CONCURRENCE IS REQUIRED BEFORE NONCONTIGUOUS LAND CAN BE ACQUIRED FOR GAMBLING PURPOSES. THE ABILITY OF A GOVERNOR TO GIVE PARTIAL CONCURRENCE TO A TRIBE'S PROPOSAL TO TAKE LAND INTO TRUST FOR GAMBLING PURPOSES, SUCH AS WHEN A GOVERNOR IS WILLING TO AUTHORIZE THE PLAYING OF SOME TYPES OF GAMES BUT NOT OTHERS, SHOULD BE RECOGNIZED. ADDITIONALLY, THE SECRETARY SHOULD ESTABLISH PROCEDURES TO PERMIT THE VIEWS OF ALL AFFECTED GOVERNORS TO BE HEARD WHEN A GAMBLING PROPOSAL WILL HAVE AN IMPACT ACROSS STATE LINES.

6.4.2 **TRUST LAND ACQUISITION IN GENERAL.** THE GOVERNORS ALSO MUST HAVE CONCURRENT AUTHORITY WITH RESPECT TO OTHER TRUST LAND ACQUISITION DECISIONS UNDERTAKEN BY THE U.S. DEPARTMENT OF THE INTERIOR.

6.4.2.1 **STATE AND LOCAL TAXATION AUTHORITY OVER NEW TRUST LANDS.** REMOVING LAND FROM STATE AND LOCAL TAX ROLES MAY HAVE A SIGNIFICANT ECONOMIC IMPACT ON MANY STATES AND LOCALITIES. THEREFORE, CONGRESS SHOULD TAKE ACTION TO REQUIRE THAT BEFORE NEW LAND IS TAKEN INTO TRUST BY THE U.S. DEPARTMENT OF THE INTERIOR, THE STATE AND THE TRIBAL GOVERNMENT MUST REACH A BINDING AGREEMENT REGARDING THE APPLICATION OF STATE AND LOCAL

TAXES ON NEW TRUST LAND. SUCH AN AGREEMENT COULD INCLUDE A WAIVER BY THE STATE OF ANY TAXATION AUTHORITY ON THE NEW TRUST LAND.

6.5 COMMITMENT TO A SOLUTION

THE GOVERNORS ARE COMMITTED TO RESOLVING THE COMPLEX ISSUES INVOLVED IN THE IMPLEMENTATION OF IGRA AND THE MANAGEMENT OF OTHER CONGRESSIONAL AND FEDERAL DECISIONS THAT HAVE AN IMPACT ON THE STATES IN THIS AREA.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

~~EC-1. INDIAN GAMING~~

~~1.1 Preamble~~

~~The implementation of the Indian Gaming Regulatory Act (IGRA) of 1988 has generated several issues of serious concern to Governors. These issues must be satisfactorily resolved, or it will be impossible to realize the objectives of the act. Although the process established by the act has yielded some successes, it also has led to conflict and litigation that are not productive for either the states or the tribes and that tend to threaten overall state-tribal relations.~~

~~Governors support the efforts of Native Americans to create better and more prosperous lives, and they desire good relations with tribes located within their states. Governors do not seek to prevent Native Americans from pursuing any opportunity available to other citizens of their states. At present, however, some Governors find themselves in the position of being expected to negotiate Indian gaming compacts that would be in conflict with the laws of their states and beyond the requirements of IGRA.~~

~~1.2 Recommendations~~

~~To reduce conflict between states and tribes, several key issues arising from IGRA must be resolved. To this end, the nation's Governors take the following positions.~~

- ~~It must be made clear that tribes can operate gaming of the same types and subject to the same restrictions that apply to all other gaming in the state. In particular, it should be clarified that a state is not obligated to negotiate a compact to allow a tribe to operate any and all forms of Class III gaming simply because a state allows one form of Class III gaming. Only those games expressly authorized by state law should be permitted.~~
- ~~The meaning of "good faith" in the act should be clarified and applied to both states and tribes, and the burden of proving the allegation should rest with the party alleging that the other side is not acting in good faith. Mere inability to agree upon a compact should not indicate bad faith by either party. In particular, a state's adherence to its own laws and constitution should not be regarded as bad faith. Clarification and expansion of the "good faith" standard would result in both parties having an equal interest in satisfactorily concluding a compact, rather than putting one party at a disadvantage.~~
- ~~There must be clarification of the ability of a state to bar gaming on property taken into trust subsequent to the effective date of the Indian Gaming Regulatory Act. The U.S. Department of the Interior now has acknowledged that a Governor's concurrence is required before noncontiguous land can be acquired for gaming purposes. The ability of a Governor to give partial concurrence to a tribe's proposal to take land into trust for gaming purposes, such as when a Governor is willing to authorize the playing of some types of games but not others, should be recognized. Additionally, the secretary of the interior should establish procedures to permit the views of all affected Governors to be heard when a gaming proposal has impacts across state lines.~~

~~Time limited (effective Winter Meeting 1995–Winter Meeting 1997).~~
~~Adopted Winter Meeting 1993; reaffirmed Winter Meeting 1995.~~

~~EC-20. THE EFFECT OF THE *SEMINOLE* DECISION ON IGRA IMPLEMENTATION~~

~~The Governors recognize and respect the sovereignty of Indian tribal governments and support economic advancement and independence for tribes. As the state's chief executive officer and primary defender of state sovereignty, a Governor is ultimately responsible for acting in the best interests of all state citizens. The U.S. Supreme Court has fortified state sovereignty in its decision in *Seminole Tribe of Florida v. Florida*. Clearly, the *Seminole* decision rendered the judicial remedy contained in the Indian Gaming Regulatory Act of 1988 (IGRA) unenforceable against a state unwilling to accept federal jurisdiction. Questions are now being raised about whether the secretary of the U.S. Department of Interior can nonetheless create a process through which to authorize tribal operation of Class III gaming. Nothing remains in IGRA or any other law, however, that endows the secretary with any authority to permit tribal operation of Class III gaming activities.~~

~~As we understand the decision, IGRA continues to be the sole mechanism through which tribal governments can operate Class III gaming. It is unthinkable that a Supreme Court decision endorsing state sovereignty could become the vehicle for an inappropriate expansion of the secretary's authority. Governors would actively oppose any independent assertion by the secretary of the power to authorize tribal governments to operate Class III gaming. Further, we believe that Governors should have a meaningful role in any action taken by the secretary that would have a significant impact on states.~~

~~Governors have long decried the lack of uniformity with respect to the implementation and court interpretation of IGRA and have consistently called for congressional clarification of this statute. Although there are several problems with the act, the states' primary issue continues to be clarifying the scope of gambling activities permitted to tribes under the act. Governors firmly believe that it is an inappropriate breach of state sovereignty for the federal government to compel states to negotiate tribal operation of gambling activities that are not otherwise permitted by state law.~~

~~Governors want to contribute to a process aimed at resolving this complex issue, but we will not accept any solution that provides less than strict adherence to every aspect of state gambling laws, regulations, and procedures with respect to compact negotiation under IGRA. Further, we will vigorously oppose any claim of power by the secretary to authorize tribal operation of Class III gaming. State and tribal governments alone are in the position to craft agreements on the scope and conduct of Class III gaming under IGRA.~~

~~Time limited (effective Annual Meeting 1996–Annual Meeting 1998).~~
~~Adopted Annual Meeting 1996.~~

EDC-10. FEDERAL ECONOMIC AND COMMUNITY DEVELOPMENT PROGRAMS

10.1 Preamble

GOVERNORS ARE WORKING TO IMPROVE THE BUSINESS CLIMATE; PROVIDE ACCESS TO CAPITAL; FINANCE INFRASTRUCTURE INVESTMENT; DEVELOP PUBLIC-PRIVATE PARTNERSHIPS; PROMOTE EFFECTIVE EDUCATION AND JOB TRAINING PROGRAMS; SUPPORT BUSINESS ASSISTANCE, INCLUDING EXPORT PROMOTION; AND BALANCE THE NEEDS OF BUSINESS AND JOB CREATION WITH THOSE OF THE ENVIRONMENT AND CONSUMER PROTECTION. THE FEDERAL GOVERNMENT HAS A WIDE RANGE OF PROGRAMS WITH THESE SAME GOALS. ~~Effective community and economic development strategies are top priorities of the Governors as a means of creating jobs and expanding economic opportunity to maintain or improve the quality of life in their states. State economic development efforts cover a wide range of programs, including business partnership programs, tourism programs, technology transfer and diffusion, small business assistance, international trade promotion, job training, and regulatory streamlining to remove barriers to growth for the private sector.~~

10.2 Recommendations

The Governors call for the following federal actions to support state EFFORTS IN ECONOMIC AND community ~~and economic~~ development. ~~Efforts.~~

~~A. The Governors recommend full funding and implementation of the Intermodal Surface Transportation Efficiency Act of 1991, retention of state autonomy in directing public transportation resources, and improvements in the implementation of the Clean Air Act, all in accordance with National Governors' Association (NGA) policy.~~

~~B. The Governors recommend swift passage of federal telecommunications legislation that will accelerate the deployment of telecommunications services, in accordance with NGA policy. To achieve that goal, the legislation must protect universal service, leave states with the ability to manage the transition from today's highly regulated environment to a procompetitive environment, and retain state and local governments' ability to manage public rights-of-way.~~

~~C. States bear the major responsibility for the construction and maintenance of infrastructure necessary for continued national economic growth. The Governors call for changes in federal law to increase flexibility in the use of tax-exempt financing in public/private infrastructure and development efforts, to broaden the market for municipal bonds to bring banks and insurance companies back into the market, to permanently authorize small-issue industrial development bonds, and to increase the state-by-state volume caps.~~

10.2.1 ~~D.~~ **REMOVE BARRIERS TO GROWTH FOR THE PRIVATE SECTOR.** Community and economic growth and development are largely determined and influenced by actions taken by individual citizens, entrepreneurs, businesses, and industries. For these groups, multiple layers of regulatory review, permitting, and uncoordinated government requirements are a barrier to investment in communities. The federal government should do the following.

- Streamline federal regulatory review so as not to delay economic development in the states. Regulations should be final for an established time before compliance is required. Federal reviews should be done on real-time schedules.
- Delegate program authority, wherever possible, to the states, including regulations within federal programs to enable businesses to submit to one layer of review. The federal government should focus on setting goals, allowing states to define how they are best achieved in each situation.
- Require assessment of the impact on jobs, investment, and income of decisions that increase or decrease the burden of government on businesses.

~~E. Effective implementation of both the North American Free Trade Agreement and the General Agreement on Tariffs and Trade will require a strong partnership with the Office of the U.S. Trade Representative (USTR). The Governors ask USTR to provide states with adequate assistance in these matters.~~

10.2.2 ~~F.~~ **MODIFY THE FEDERAL TAX CODE.** Federal tax law influences business and individual investment decisions. The federal government should modify the federal tax code to ensure a climate conducive to long-term growth and investment in communities, including permanent extension of the research and development tax credit.

10.2.3 ~~G.~~ **PROVIDE COMMUNITY DEVELOPMENT ASSISTANCE.** STATES FOCUS RESOURCES ON COMMUNITY DEVELOPMENT TO FOSTER ECONOMIC GROWTH BY LEVERAGING PUBLIC AND PRIVATE INVESTMENTS. The Governors recognize the Community Development Block Grant as the best current example of an effective federal/state/local economic development partnership. To make federal assistance programs more effective in promoting economic and community development, the federal government should do the following.

- PROVIDE ADEQUATE APPROPRIATIONS FOR RURAL DEVELOPMENT PROGRAMS UNDER ~~Launch, in~~ the 1996 ~~1995~~ farm bill AND REMOVE RESTRICTIONS ON FLEXIBLE FUNDS CONTAINED IN FISCAL 1997 APPROPRIATIONS. ~~, a national rural development policy that clearly defines rural and economic development initiatives and goals, including more effective targeting of federal resources through greater reliance on states through programs such as the national rural development partnership, increased flexibility for states in using federal programs, and improved coordination of federal programs with state services. One important goal should be the establishment of a stable farm credit system, because a new generation of producers should be entering farming today and rural communities are working to attract new industry.~~
- Consolidate and coordinate federal grant and loan programs currently located in a number of different federal agencies. Federal programs should promote an effective intergovernmental partnership and include incentives for integrating human services and human capital resources with community and economic development programs to promote greater self-sufficiency, independence, and empowerment.
- ~~Consolidate and streamline federal job training programs in accordance with the "Governors' Principles to Ensure Workforce Excellence."~~
- ~~Adopt federal affordable housing legislation consistent with NGA policy.~~

- SUPPORT CONTINUED INVESTMENT IN ~~Implement~~ the federal empowerment zone program in COORDINATION ~~a manner coordinated and consistent~~ with state strategic plans and economic development efforts. ~~To the greatest extent possible, the federal zones should build on state programs to measure the effectiveness of combined state and federal programs and tax incentives.~~

10.2.4 **SUPPORT TECHNOLOGY DEVELOPMENT.** BUILD ON THE WORK OF THE UNITED STATES INNOVATION PARTNERSHIP, INCLUDING CONTINUING ~~Continue~~ to work with states to support programs to improve the competitiveness of the nation's manufacturers through the Manufacturing Extension Partnership (MEP).

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~
Adopted Annual Meeting 1990; reaffirmed Annual Meeting 1994; revised Winter Meeting 1995 (formerly Policy E-1).

EDC-11. GOVERNORS' PRINCIPLES ON INTERNATIONAL TRADE

11.1 PREAMBLE

INTERNATIONAL TRADE INCREASINGLY HAS BECOME IMPORTANT TO STIMULATE U.S. ECONOMIC GROWTH AND JOB CREATION. MOST GOVERNORS SUPPORT EXISTING TRADE AGREEMENTS, SUCH AS THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) AND THE URUGUAY ROUND NEGOTIATIONS ON THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT), WHICH RESULTED IN THE WORLD TRADE ORGANIZATION (WTO). THE GOVERNORS BELIEVE SUCH AGREEMENTS WILL CONTINUE TO CREATE JOBS BY OPENING A WIDE RANGE OF OPPORTUNITIES FOR BUSINESSES TO EXPAND INTO FOREIGN MARKETS. AS JOB CREATORS AND EXPORT PROMOTERS, THE GOVERNORS WILL CONTINUE TO BE ACTIVE PARTICIPANTS IN THE FORMULATION OF TRADE POLICY.

THE UNITED STATES PARTICIPATES IN TWO SUMMITS OF CRITICAL IMPORTANCE TO FUTURE TRADE INITIATIVES. THE ASIA-PACIFIC ECONOMIC COOPERATION (APEC) SUMMIT HELD ITS SECOND MEETING IN NOVEMBER 1996 IN THE PHILIPPINES. THE EIGHTEEN MEMBER NATIONS OF APEC ARE COMMITTED TO ACHIEVING FREE TRADE AMONG APEC'S MEMBERS BY 2020. SOUTHEAST ASIAN NATIONS HAVE THE FASTEST-GROWING ECONOMIES IN THE WORLD.

THE SUMMIT OF THE AMERICAS, LAST HELD IN MIAMI IN DECEMBER 1994, ALSO CONCLUDED WITH A DECLARATION STRESSING THE NEED TO CREATE A FREE TRADE AREA OF THE AMERICAS IN ORDER TO ACHIEVE FREE TRADE IN THE WESTERN HEMISPHERE BY 2005. LATIN AMERICAN NATIONS AND THE PACIFIC RIM WILL BE THE UNITED STATES' LARGEST TRADING PARTNERS IN THE FUTURE.

THE GOVERNORS OF THE FIFTY STATES AND THE TERRITORIES OF AMERICAN SAMOA, GUAM, THE NORTHERN MARIANA ISLANDS, PUERTO RICO, AND THE VIRGIN ISLANDS SUPPORT THE FOLLOWING TRADE POLICY OBJECTIVES.

11.2 EXPAND INTERNATIONAL TRADE

THE UNITED STATES TRADE REPRESENTATIVE (USTR) SHOULD EXPAND EXISTING TRADE AGREEMENTS IN AN EFFORT TO ACHIEVE GREATER ECONOMIC PROSPERITY THROUGH GLOBAL FREE TRADE. THIS INCLUDES IMPLEMENTATION OF REGIONAL FREE TRADE AGREEMENTS, AS EXPRESSED IN THE GOALS OF THE APEC SUMMIT AND THE SUMMIT OF THE AMERICAS, AS WELL AS MULTILATERAL AND SECTORAL AGREEMENTS SUCH AS THE MULTILATERAL AGREEMENT ON INVESTMENT AND THE INFORMATION TECHNOLOGY AGREEMENT.

11.2.1 **NAFTA EXPANSION.** MOST GOVERNORS SUPPORT CHILEAN ACCESSION TO NAFTA AND BELIEVE THE FEDERAL GOVERNMENT SHOULD ENCOURAGE OTHER LATIN AMERICAN AND CARIBBEAN NATIONS TO BECOME PARTIES TO THE AGREEMENT.

11.3 RENEW "FAST-TRACK" TRADE NEGOTIATION AUTHORITY FOR THE PRESIDENT

THE GOVERNORS CALL ON CONGRESS TO IMMEDIATELY RENEW FAST-TRACK TRADE NEGOTIATION AUTHORITY FOR THE PRESIDENT, WHICH EXPIRED IN LATE 1994. IT IS IMPORTANT TO NOTE THAT EVERY U.S. PRESIDENT SINCE 1974 HAS RECEIVED FAST-TRACK TRADE NEGOTIATION AUTHORITY FROM CONGRESS. FAST-TRACK AUTHORITY GIVES THE PRESIDENT THE NEGOTIATING AUTHORITY NECESSARY TO CONCLUDE INCREASINGLY COMPLEX TRADE AGREEMENTS. WITHOUT FAST-TRACK AUTHORITY, U.S. ABILITY TO EXPAND AND OPEN MARKETS AROUND THE WORLD WILL BE CONSTRAINED SIGNIFICANTLY, AND U.S. BUSINESSES WILL LIKELY LOSE MARKET OPPORTUNITIES AND JOBS TO OTHER COUNTRIES.

11.4 ENSURE A STATE AND TERRITORIAL ROLE IN TRADE AGREEMENT NEGOTIATION

FEDERAL TRADE NEGOTIATORS MUST BE AWARE OF THE POTENTIAL IMPACTS A TRADE AGREEMENT MAY HAVE ON NEW OR EXISTING STATE OR TERRITORIAL LAWS. THE FEDERAL GOVERNMENT SHOULD CONSULT REGULARLY WITH STATES AND TERRITORIES ON THE DEVELOPMENT OF SPECIFIC PROVISIONS WITHIN AN AGREEMENT THAT MAY HAVE AN IMPACT ON STATE OR TERRITORIAL LAW.

11.5 ENSURE A STATE AND TERRITORIAL ROLE IN TRADE AGREEMENT IMPLEMENTATION

THE FEDERAL GOVERNMENT SHOULD ENSURE AN EFFECTIVE STATE AND TERRITORIAL ROLE IN THE IMPLEMENTATION OF NAFTA AND SUBSEQUENT TRADE AGREEMENTS AND PARTICIPATION IN RELEVANT WTO ACTIVITIES. FEDERAL AGENCIES MUST WORK WITH STATES TO ADDRESS CONFLICTS BETWEEN STATE LAWS AND PROVISIONS OF TRADE TREATIES. EFFECTIVE STATE AND TERRITORIAL PARTICIPATION REQUIRES ADEQUATE TECHNICAL SUPPORT FROM FEDERAL AGENCIES.

11.6 PROMOTE EFFECTIVE COORDINATION BETWEEN STATES AND TERRITORIES AND THE FEDERAL GOVERNMENT

11.6.1 EXPORT PROMOTION. STATES, TERRITORIES, AND THE FEDERAL GOVERNMENT PLAY SIGNIFICANT ROLES IN PROMOTING THE EXPORT OF U.S. GOODS AND SERVICES INTO FOREIGN MARKETS. THE FEDERAL GOVERNMENT SHOULD COORDINATE WITH STATES

AND TERRITORIES TO MAXIMIZE THE EFFECTIVENESS OF FEDERAL EXPORT PROMOTION PROGRAMS.

11.6.1.1 **AGRICULTURE.** STATES AND TERRITORIES SHOULD WORK WITH THE FEDERAL GOVERNMENT TO ENSURE SUPPORT FOR STATE AND TERRITORIAL AGRICULTURAL MARKET DEVELOPMENT PROGRAMS, INCLUDING REGIONAL MARKETING ASSOCIATIONS, TO THE EXTENT ALLOWED UNDER INTERNATIONAL TREATIES.

IF NONAGRICULTURAL FEDERAL EXPORT PROMOTION PROGRAMS ARE CONSOLIDATED, GOVERNORS SHOULD HAVE INPUT ON HOW THOSE RESOURCES WILL BE REDIRECTED TO STATE AND TERRITORIAL EXPORT PROMOTION PROGRAMS. GOVERNORS SHOULD BE PROVIDED WITH THE FLEXIBILITY AND DISCRETION TO TARGET FEDERAL EXPORT PROMOTION ASSISTANCE IN A WAY THAT WILL BEST SERVE THE NEEDS OF THEIR INDIVIDUAL STATES AND TERRITORIES, SUCH AS THE PROMOTION OF SMALL AND MEDIUM-SIZED BUSINESSES OR AGRICULTURAL CONCERNS.

11.6.2 **PUBLIC EDUCATION.** STATES AND TERRITORIES SHOULD WORK WITH THE FEDERAL GOVERNMENT TO EXPAND CITIZEN UNDERSTANDING OF THE IMPORTANCE OF INTERNATIONAL TRADE AND WORK WITH THE PRIVATE SECTOR TO DEVELOP LIFETIME EDUCATIONAL OPPORTUNITIES THAT PREPARE AMERICANS TO COMPETE SUCCESSFULLY IN A CHANGING GLOBAL ECONOMY.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995-Winter Meeting 1997~~

~~EDC-11. GOVERNORS' PRINCIPLES ON INTERNATIONAL TRADE~~

~~11.1 Preamble~~

~~Two critical trade agreements recently have been ratified: the North American Free Trade Agreement (NAFTA) in November 1993 and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in December 1994. NAFTA and GATT will create jobs by opening a wide range of opportunities for businesses to expand into foreign markets.~~

~~International trade increasingly has become important to stimulate U.S. economic growth and job creation. Since 1986 it is estimated that increased international trade is responsible for two-thirds of the growth in the U.S. economy. NAFTA creates the second largest free trade area in the world with more than 360 million consumers. GATT lowers worldwide tariffs by one-third and lowers global taxes by about $750 billion. Once fully implemented, GATT is expected to increase the U.S. gross national product by $200 billion per year over ten years and result in the creation of 1.4 million jobs. The Governors' support was critical to the successful passage of both NAFTA and GATT. As job creators and export promoters, Governors will continue to be active participants in the formulation of trade policy.~~

~~11.2 Recommendations~~

~~The United States recently participated in two summits of critical importance to future trade initiatives. The Asia Pacific Economic Cooperation (APEC) summit, held in November 1994 in~~

Indonesia, concluded with a declaration by eighteen nations to achieve free trade in the region by 2020. Southeast Asian nations have the fastest growing economies in the world. The Summit of the Americas, held in Miami in December 1994, also concluded with a declaration stressing the need to achieve free trade in the western hemisphere by 2005. Latin American nations are expected to be the United States' largest trading partners by 2000.

The Governors of the states and the territories of Guam, American Samoa, the Virgin Islands, Puerto Rico, and the Northern Mariana Islands support the following trade policy objectives.

- The federal government should take the necessary steps to achieve free trade and to expand existing trade agreements to further this goal. This includes implementation of the goals of the two recent trade summits.
- The federal government should ensure an effective state and territorial role in the implementation of NAFTA and GATT, especially with respect to trade disputes involving state and territorial laws and practices and any future trade agreement negotiations. Effective state and territorial participation requires adequate technical support from federal agencies.
- The state and territorial role in promoting international trade and fostering improved relations with the people and business communities of foreign nations should be enhanced.
- States and territories should work with the federal government to expand citizen understanding of the importance of international trade and work with the private sector to develop lifetime educational opportunities that prepare Americans to compete successfully in a changing global economy.
- States and territories should work with the federal government to ensure support for state and territorial agricultural market development programs, including regional marketing associations, to the extent allowed under international treaties.
- If nonagricultural federal export promotion programs are consolidated, Governors should have input on how those resources will be redirected to state and territorial export promotion programs. Governors should be provided with the flexibility and discretion to target federal export promotion assistance in a way that will best serve the needs of their individual states and territories, such as the promotion of small and medium-sized businesses or agricultural concerns.

Time limited (effective Winter Meeting 1995–Winter Meeting 1997).
Adopted Winter Meeting 1995.

EDC-12. "FAST-TRACK" TRADE NEGOTIATION AUTHORITY FOR THE PRESIDENT

Since 1974 every U.S. President has received "fast-track" trade negotiation authority from Congress. "Fast-track" authority gives the President the negotiating authority necessary to conclude increasingly complex trade agreements. Ultimately, an agreement reached through a fast-track negotiation comes to Congress for an up or down vote without amendments. However, a fast-track process does not limit the thoughtful consideration of these agreements by Congress, states and the territories, and U.S. citizens. Throughout the negotiation process, the President is required to consult with Congress, states and the territories—through the Intergovernmental Policy Advisory Committee—the private sector, and various other advisory committees.

Without fast-track authority, U.S. ability to expand and open markets in Latin America, Asia, and worldwide will be constrained significantly, and the nation will likely lose market opportunities and jobs to other countries. To support the objectives of opening foreign markets, expanding economic growth, and creating jobs, the Governors call for Congress to immediately renew fast-track trade negotiation authority for the President.

Time limited (effective Winter Meeting 1995–Winter Meeting 1997).
Adopted Winter Meeting 1995.

EDC-14. AFFORDABLE HOUSING

14.1 Preamble

The Governors support the integration and coordination of public and private resources to make available effective, affordable housing services that range from preventing homelessness to promoting homeownership and that encourage self-sufficiency and promote economic opportunity. ~~Welfare reform should permit~~ States and local governments SHOULD BE ABLE to use affordable housing resources to help end welfare dependency. As major partners in the affordable housing arena and as managers of a significant proportion of human services program dollars, states are in a unique leadership position to coordinate these resources in an effective way to end welfare dependency and promote economic self-sufficiency.

14.2 30 PERCENT CAP ON RENTAL PAYMENTS

IF GOVERNORS ARE TO SUCCEED IN IMPLEMENTING WELFARE REFORM, PROGRAMS AND PRACTICES IN OTHER FEDERAL PROGRAMS MUST SUPPORT THIS EFFORT, AND DISINCENTIVES FOR MOVING FROM WELFARE TO WORK MUST BE MINIMIZED. THE INFLEXIBLE REQUIREMENT THAT 30 PERCENT OF INCOME BE PAID AS RENT IS A DISINCENTIVE, AND RAISING THE CAP HIGHER WOULD BE PARTICULARLY HARMFUL TO THE SUCCESS OF WELFARE REFORM, AS WELL AS POTENTIALLY SHIFTING COSTS TO THE STATES.

14.3 ~~Support for~~ Existing Programs

The HOME Investment Partnerships Program (HOME) and the Community Development Block Grant (CDBG) provide successful and proven models of a state-federal partnership that can be used in other housing and development areas. HOME was designed as a federal/state/local program, with states receiving a substantial share of the funding, having the flexibility to fit HOME funds into the full range of housing services, and having the authority to spend funds anywhere within a state rather than only in rural areas. As efforts to streamline and consolidate programs continue, Congress and the administration should use these partnership aspects of the HOME program as a model.

The Governors also recognize the importance of mortgage revenue bonds, mortgage credit certificates, and the low-income housing tax credit, which are critical to the continued availability of affordable housing, AND OPPOSE EFFORTS TO REMOVE THE PERMANENCY OF THESE PROGRAMS. These are models of effective federal housing programs administered by the states. ~~and~~ THEREFORE, the Governors support increases BOTH in THE STATE PRIVATE ACTIVITY VOLUME CAPS AND IN STATE ALLOCATIONS FOR THE TAX CREDIT BECAUSE INFLATION HAS SERIOUSLY ERODED THEIR CAPACITY. THE GOVERNORS ASK THAT INCREASED FLEXIBILITY BE PROVIDED IN THE TAX CREDIT PROGRAM, TO PERMIT MORE OF THE FUNDS TO BE USED TO PROMOTE HOMEOWNERSHIP, AS WELL AS IN THE USE OF PROCEEDS OF TAX-EXEMPT HOUSING BONDS. THESE CHANGES WOULD GIVE STATES

MORE PROGRAMMATIC FLEXIBILITY TO ADDRESS FUTURE DEMANDS FOR HOUSING ASSISTANCE AS FEDERAL PROGRAMS ARE RESTRUCTURED. ~~the limits on these programs.~~

14.4 Federal Housing Efforts

The Governors urge Congress and the administration to work more closely with states to address the following priority issues.

- Consolidate programs and streamline program administration to better effect local control, ensuring that existing contracts are adequately resolved, and to increase flexibility for states in administering federal programs, including authority for states to use existing legislative or regulatory procedures wherever possible to achieve federal program goals.
- Promote programs that are leveraged with private sector funds, that preserve the affordable housing stock, that increase the use of new technologies to lower housing costs, and that remove unnecessary regulatory impediments to the construction of affordable housing.
- Develop consistent definitions and eligibility criteria, remove set-asides and rigid planning requirements, and focus on output measures rather than detailed planning documents.

Beyond these recommendations, the Governors urge the federal government to strengthen efforts to increase homeownership. One approach is to strengthen the public/private partnership. For example, the federal government should study effective incentives to increase the construction of affordable "starter" homes, work with states and localities to identify unnecessary barriers to the construction of affordable housing, and consider other steps that might unleash the resources of the private sector in the pursuit of homeownership.

14.5 SECTION 8 PROJECT-BASED ASSISTANCE

THE SECTION 8 PROGRAM INVOLVES A FEDERAL COMMITMENT OF RENTAL ASSISTANCE TO OWNERS OF FEDERALLY ASSISTED PROPERTIES THAT HOUSE LOW- AND MODERATE-INCOME FAMILIES. SOME OF THESE PROPERTIES HAVE LONG-TERM FEDERALLY INSURED MORTGAGES. OTHERS HAVE UNINSURED, STATE-FINANCED MORTGAGES BACKED BY STATE-ISSUED BONDS. THE GOVERNORS ASK THAT EXISTING OBLIGATIONS OF THE FEDERAL GOVERNMENT TO STATE-FINANCED PROJECTS (CONTINUING CONTRACTS) BE HONORED, BECAUSE CHANGES WOULD JEOPARDIZE STATES' ABILITY TO MEET FINANCING OBLIGATIONS UNDER OUTSTANDING BONDS. FEDERAL CHANGES COULD HAVE SERIOUS CONSEQUENCES FOR ALL FUTURE STATE-FINANCING CAPACITY.

REGARDING EXPIRING CONTRACTS, THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IS CURRENTLY TESTING A METHOD OF RESTRUCTURING CONTRACTS TO REDUCE CONTINUING FEDERAL SUBSIDY COSTS. STATES COULD BE WILLING TO PLAY A MAJOR ROLE IN DEVELOPING RESTRUCTURED CONTRACTS WITH PROJECT OWNERS IN ORDER TO SAVE THE FEDERAL GOVERNMENT FROM THE COST OF DEFAULTS ON FEDERALLY INSURED PROPERTIES, PROTECT THE LIMITED STOCK OF AFFORDABLE HOUSING, AND AVOID DISPLACEMENT OF LOW-INCOME RESIDENTS. STATE INVOLVEMENT WILL INCREASE AS STATES ARE PERMITTED TO SHARE IN THE RESOURCES SAVED IN THE RESTRUCTURINGS. HOWEVER, TO BE SUCCESSFUL, STATES

NEED FLEXIBILITY AND AUTHORITY IN MANY AREAS, INCLUDING DIRECTING FEDERAL RESOURCES SUCH AS CONTINUING FEDERAL HOUSING ADMINISTRATION INSURANCE. THIS AUTHORITY AND FLEXIBILITY ALSO IS NEEDED TO ENSURE THAT RESTRUCTURING DOES NOT RESULT IN ADDED STATE FINANCIAL RESPONSIBILITIES. FLEXIBILITY ALSO SHOULD ENSURE ADEQUATE TIME TO CONDUCT RESTRUCTURING, ESPECIALLY IN STATES WITH LARGE NUMBERS OF UNITS UNDER EXPIRING CONTRACTS.

14.6 Programs Serving the Homeless

In the past, Congress has considered legislation to block grant federal programs for the homeless. The Governors support consolidation, ask that these programs be adequately funded, and ask that efforts to streamline and consolidate federal programs to serve the homeless and to prevent homelessness include an effective state role.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~
Adopted Winter Meeting 1995.

EDC-18. RECIPROCAL REFUND OFFSET FOR PAST–DUE TAX DEBTS

THE GOVERNORS URGE CONGRESS TO ENACT LEGISLATION THAT WILL ALLOW STATES TO PARTICIPATE IN THE INTERNAL REVENUE SERVICE'S (IRS) REFUND OFFSET PROGRAM. THIS WOULD PERMIT THE IRS TO WITHHOLD INCOME TAX REFUNDS ON BEHALF OF STATES ATTEMPTING TO COLLECT PAST-DUE TAX DEBTS FROM INDIVIDUAL TAXPAYERS.

FORTY STATES AND THE DISTRICT OF COLUMBIA CURRENTLY HAVE BROAD-BASED INDIVIDUAL INCOME TAXES. THIRTY OF THOSE STATES AND THE DISTRICT OF COLUMBIA CURRENTLY OFFSET STATE INCOME TAX REFUNDS TO SATISFY DELINQUENT FEDERAL TAX OBLIGATIONS UNDER A COOPERATIVE ARRANGEMENT BETWEEN THE STATE TAX AGENCY AND THE IRS DISTRICTS. THE GOVERNORS BELIEVE IT IS APPROPRIATE FOR THE FEDERAL GOVERNMENT TO RETURN THIS COURTESY.

ACCORDING TO THE FEDERATION OF TAX ADMINISTRATORS, STATES COLLECTED $81.7 MILLION FOR THE FEDERAL GOVERNMENT THROUGH STATE OFFSET PROGRAMS IN 1995. A RECIPROCAL PROGRAM AT THE FEDERAL LEVEL WOULD INCREASE STATE RECEIPTS BY AN ESTIMATED $150 MILLION TO $200 MILLION ANNUALLY IN THE EARLY YEARS OF IMPLEMENTATION, AND BY A SOMEWHAT SMALLER AMOUNT AS THE BACKLOG OF DEBTS IS REDUCED.

BEYOND INCREASING TAX EQUITY FOR STATE TAXPAYERS, SUCH A POLICY WILL ALSO PROVIDE BENEFITS AT THE FEDERAL LEVEL. ACCORDING TO THE JOINT COMMITTEE ON TAXATION, BY CREATING AN INCENTIVE FOR THE TEN REMAINING INCOME TAX STATES TO BEGIN TO OFFSET STATE INCOME TAX REFUNDS ON BEHALF OF THE FEDERAL GOVERNMENT, RECIPROCAL TREATMENT WILL HAVE A SMALL, POSITIVE REVENUE IMPACT.

IN ADDITION, RECIPROCAL TREATMENT WILL ENSURE THAT THE STATES THAT CURRENTLY PROVIDE THIS SERVICE ON BEHALF OF THE FEDERAL GOVERNMENT ON A VOLUNTARY BASIS WILL CONTINUE TO DO SO.

THE GOVERNORS CALL UPON CONGRESS TO AUTHORIZE RECIPROCAL REFUND OFFSETTING BY ADOPTING LEGISLATION SIMILAR TO THAT INTRODUCED IN BOTH THE HOUSE AND SENATE IN THE 104TH CONGRESS.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

EDC-19. PRIVATE SECTOR JOBS FOR ECONOMICALLY DISTRESSED AREAS

19.1 PREAMBLE

THE GOVERNORS BELIEVE IT IS IMPERATIVE THAT THE MAXIMUM POSSIBLE NUMBER OF AMERICAN HOUSEHOLDS ATTAIN ECONOMIC SELF-SUFFICIENCY THROUGH PRODUCTIVE EMPLOYMENT IN THE PRIVATE SECTOR. INDEED, THIS IS THE FUNDAMENTAL GOAL OF WORKFORCE DEVELOPMENT.

IN ORDER TO GENERATE OPTIMAL LEVELS OF ECONOMIC SELF-SUFFICIENCY, THE NATION MUST FOCUS SPECIAL ATTENTION UPON THOSE STATES, TERRITORIES, OR COMMONWEALTHS WHEREIN THE NEED FOR PRODUCTIVE PRIVATE SECTOR JOBS IS MOST URGENT.

THIS REQUIRES THE USE OF INCENTIVES UNTIL SUCH TIME AS QUALIFYING STATES, TERRITORIES, OR COMMONWEALTHS APPROACH ECONOMIC PARITY WITH THE NATION AS A WHOLE.

19.2 PRIVATE SECTOR JOBS FOR ECONOMICALLY DISTRESSED AREAS

PURSUANT TO THE GOAL OF BALANCING THE FEDERAL BUDGET, THE 104TH CONGRESS MOUNTED AN ASSAULT ON "CORPORATE WELFARE." AMONG OTHER THINGS, THIS ENTAILED THE ENACTMENT OF A TEN-YEAR PHASE-OUT FOR INCOME-BASED CORPORATE TAX CREDITS GRANTED UNDER U.S. INTERNAL REVENUE CODE SECTION 936. THAT LEGISLATION (P.L. 104-188: THE SMALL BUSINESS JOB PROTECTION ACT OF 1996) ALSO TRANSFERRED THE WAGE-CREDIT COMPONENT OF SECTION 936 TO U.S. INTERNAL REVENUE CODE SECTION 30A, PROHIBITED THE GRANTING OF NEW CREDITS UNDER THIS PROVISION, AND ESTABLISHED A TEN-YEAR PERIOD FOR THE PHASE-OUT OF EXISTING WAGE CREDITS.

THE PURPOSE OF SECTION 936 HAD MERIT: THE STIMULATION OF PRIVATE SECTOR EMPLOYMENT IN U.S. JURISDICTIONS WHERE THE NEED FOR ECONOMIC DEVELOPMENT WAS MOST ACUTE. MOREOVER, THE WAGE-CREDIT COMPONENT OF SECTION 936, CREATED BY CONGRESS AND THE PRESIDENT IN 1993 AND NOW CONTAINED IN SECTION 30A, NEVER CONSTITUTED CORPORATE WELFARE. ON THE CONTRARY, ITS TAX BENEFITS WERE LINKED DIRECTLY AND EXCLUSIVELY TO THE CREATION OF PRIVATE SECTOR JOBS FOR U.S. CITIZENS.

THE GOVERNORS RECOGNIZE THAT, SUBJECT TO THE BUDGET ENFORCEMENT ACT, INCENTIVES SUCH AS THOSE IN SECTION 30A THAT ENCOURAGE U.S. COMPANIES TO STAY ON AMERICAN SOIL, CREATE JOBS, AND PAY TAXES TO THE FEDERAL TREASURY ARE CRITICAL TO THE ECONOMIC WELL-BEING OF THE NATION AS A WHOLE. THE GOVERNORS ARE CONCERNED, HOWEVER, THAT THE CURRENT PROVISION IS TOO NARROWLY DRAWN TO SERVE ITS INTENDED PURPOSE. ACCORDINGLY, THE NATIONAL GOVERNORS' ASSOCIATION URGES THE 105TH CONGRESS TO AMEND SECTION 30A:

- BY DELETING LANGUAGE THAT PROHIBITS ITS APPLICABILITY TO NEW ENTERPRISES, GRADUALLY DIMINISHES ITS BENEFITS, AND PROVIDES FOR ITS EVENTUAL REPEAL;
- BY EXPANDING ITS SCOPE TO ENCOMPASS RESEARCH-AND-DEVELOPMENT ACTIVITIES, AS WELL AS OTHER SIMILARLY CONSTRUCTIVE VENTURES;
- BY MAKING IT IMMEDIATELY APPLICABLE TO EVERY STATE, TERRITORY, OR COMMONWEALTH WHERE FOR FIVE CONSECUTIVE YEARS THE PREVAILING LEVELS OF PER-CAPITA INCOME HAVE BEEN LESS THAN HALF THE NATIONAL AVERAGE; THE POVERTY RATE HAS BEEN MORE THAN 50 PERCENT; THE UNEMPLOYMENT RATE HAS BEEN MORE THAN TWICE THE NATIONAL AVERAGE; AND OTHER OBJECTIVE STANDARDS OF SOCIOECONOMIC DEVELOPMENT ARE MARKEDLY INFERIOR TO THOSE OF THE UNITED STATES AS A WHOLE; AND
- BY PROVIDING FOR THE IMMEDIATE COMMENCEMENT OF A PHASE-OUT OF THE SECTION'S INCENTIVES WHEN THE STATE, TERRITORY, OR COMMONWEALTH IN QUESTION HAS ATTAINED A LEVEL OF PROSPERITY WHERE THE UNEMPLOYMENT RATE DOES NOT EXCEED 150 PERCENT OF THE NATIONAL AVERAGE; PER CAPITA INCOME IS AT LEAST 66 PERCENT OF THE NATIONAL AVERAGE; AND THE POVERTY LEVEL DOES NOT EXCEED 30 PERCENT.

THE GOVERNORS ALSO CALL ON THE FEDERAL GOVERNMENT TO ENSURE THAT THE FEDERAL RESEARCH AND DEVELOPMENT TAX CREDIT IS AVAILABLE TO BUSINESSES OPERATING IN ANY STATE, TERRITORY, OR COMMONWEALTH THAT FALLS WITHIN THE ELIGIBILITY CRITERIA FOR SECTION 30A.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

EDC-20. TAX-EXEMPT FINANCING

THE STATE-BY-STATE VOLUME CAP ON SO-CALLED "PRIVATE ACTIVITY" BONDS WAS ENACTED IN 1984 AND REDUCED IN 1986; IT HAS BEEN FROZEN AT THAT LEVEL FOR THE PAST TEN YEARS. INFLATION HAS SIGNIFICANTLY REDUCED THE CAPACITY OF THE CAP, AND TODAY, MOST STATES CONSISTENTLY TURN ASIDE BONA FIDE REQUESTS FOR AFFORDABLE HOUSING, ECONOMIC DEVELOPMENT INITIATIVES, OR OTHER PUBLIC PROJECTS THAT FALL UNDER THE CAP. OVER THE PAST DECADE, STATES HAVE INCREASINGLY TURNED TOWARD PUBLIC-PRIVATE PARTNERSHIPS AS A MEANS OF REDUCING THE SIZE OF GOVERNMENT WHILE GUARANTEEING ESSENTIAL SERVICES. HOWEVER, THE VOLUME CAP, THE OUTDATED DEFINITION OF "PRIVATE ACTIVITY," AND COMPLEX FEDERAL REGULATIONS SUCH AS ARBITRAGE REBATE, ALL INTERFERE WITH THE ABILITY OF STATES TO PROCEED WITH MANY OTHERWISE ACCEPTABLE AND WIDELY SUPPORTED PROJECTS.

THE GOVERNORS NEED TO HAVE THE RESOURCES TO CARRY OUT THEIR RESPONSIBILITIES TO IMPROVE PRODUCTIVITY, EDUCATION, AND THE QUALITY OF LIFE; TO MEET HEALTH, SAFETY, AND TRANSPORTATION NEEDS; AND TO HELP U.S. BUSINESSES MOVE INTO THE TWENTY-FIRST CENTURY ON A COMPETITIVE LEVEL WITH THE OTHER INDUSTRIALIZED NATIONS. TO ENSURE THAT STATES HAVE ADEQUATE ACCESS TO FLEXIBLE FINANCING TOOLS, GOVERNORS CALL FOR THE FOLLOWING CHANGES IN FEDERAL LAW AND REGULATION.

- INCREASE THE STATE-BY-STATE VOLUME CAPS TO, AT A MINIMUM, BRING THEM BACK TO THEIR ORIGINALLY INTENDED LEVELS.
- RELAX AND REFORM EXPENSIVE AND INEFFICIENT REGULATORY REQUIREMENTS SUCH AS THE ARBITRAGE REBATE.
- INCREASE FLEXIBILITY IN SUCH PROVISIONS AS THE PRIVATE USE AND PAYMENT TEST (NOW SET AT 10 PERCENT) AND THE 5 PERCENT PRIVATE BUSINESS USE TEST, TO INCREASE OPPORTUNITIES FOR PUBLIC/PRIVATE PARTNERSHIPS. THE FEDERAL GOVERNMENT SHOULD NOT NARROW THE CURRENT DEFINITION OF GOVERNMENTAL BONDS, FURTHER RESTRICTING STATE OPTIONS. GREATER FLEXIBILITY WOULD IMPROVE THE EFFECTIVENESS OF MANY STATE CREDIT AND INFRASTRUCTURE BANK INITIATIVES.
- ENACT CHANGES TO BROADEN THE MARKET FOR MUNICIPAL BONDS BY BRINGING BANKS AND INSURANCE COMPANIES BACK INTO THE MARKET, REDUCING TODAY'S OVER-RELIANCE ON INDIVIDUAL INVESTORS.

Time limited (effective Winter Meeting 1997–Winter Meeting 1999).

RESOLUTION*

TELECOMMUNICATIONS TAXATION

THE PASSAGE OF THE TELECOMMUNICATIONS ACT OF 1996 WAS AN IMPORTANT STEP TOWARD STRENGTHENING COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY. ITS PASSAGE HAS PROMOTED WIDE-RANGING CHANGES BOTH IN THE INDUSTRY ITSELF AND IN THE APPLICATION OF TECHNOLOGICAL ADVANCES TO EXISTING SERVICES. AS A RESULT, STATE TAX SYSTEMS, DEVELOPED PRIMARILY IN AN AGE OF MANUFACTURING INDUSTRIES AND IN A PERIOD OF LOCAL OR REGIONAL, REGULATED, MONOPOLISTIC TELECOMMUNICATIONS UTILITIES, ARE OFTEN ILL-EQUIPPED TO RESPOND TO THESE CHANGES.

FOR THE PAST SEVERAL YEARS, THE GOVERNORS HAVE SUPPORTED POLICY FAVORING INCREASED COMPETITION IN TELECOMMUNICATIONS AND THE REMOVAL OF BARRIERS TO ENTRY IN ORDER TO BRING MORE COMPANIES INTO LOCAL MARKETS. THE GOVERNORS ALSO HAVE SUPPORTED REGULATORY SYMMETRY, ENSURING THAT SIMILAR SERVICES AND SERVICE PROVIDERS ARE TREATED IN A SIMILAR MANNER. THE TELECOMMUNICATIONS ACT OF 1996 CALLS ON STATES AND LOCALITIES TO TREAT COMPETING COMPANIES IN A NONDISCRIMINATORY MANNER.

CONGRESS HAS RECOGNIZED THE SOVEREIGNTY OF STATES TO DETERMINE THEIR TAX POLICY WITH RESPECT TO TELECOMMUNICATIONS. THE GOVERNORS SUPPORT STATE REVIEW OF EXISTING STATE TAX POLICIES TO DETERMINE THEIR EFFECT ON TELECOMMUNICATIONS AND THE FUTURE GROWTH OF THE INDUSTRY, AND TO ENSURE THAT OUTDATED AND INCONSISTENT TAX TREATMENT DOES NOT HINDER THE GROWTH OF COMPETITION. SEVERAL STATES HAVE UNDERTAKEN TELECOMMUNICATIONS TAXATION STUDIES DURING THE LAST YEAR AND MANY MORE ARE CONTEMPLATING DOING SO.

ON NOVEMBER 11 AND 12, 1996, A CONFERENCE WAS HELD IN BOSTON, MASSACHUSETTS, ON TAXATION OF THE TELECOMMUNICATIONS INDUSTRY. THE CONFERENCE, SPONSORED BY SEVERAL NATIONAL TAX ORGANIZATIONS, PROVIDED A FORUM FOR BOTH STATES AND INDUSTRY TO TALK ABOUT THIS CRITICAL ISSUE AND TO SEEK SOLUTIONS. AT THE CONCLUSION OF THE CONFERENCE, A SUGGESTION WAS MADE TO FORM A SMALLER GROUP TO DRAFT MODEL LEGISLATION. THE OFFER WAS TAKEN UP BY ONE OF THE SPONSORING ORGANIZATIONS, THE NATIONAL TAX ASSOCIATION, A PROFESSIONAL ASSOCIATION OF TAX PRACTITIONERS FROM INDUSTRY, GOVERNMENT, AND ACADEMIA. THE NATIONAL TAX ASSOCIATION

OFFERED TO SERVE AS A NEUTRAL CONVENER ON THE ISSUES. PLANS ARE CURRENTLY UNDERWAY TO CREATE A PROCESS TO SEEK MORE UNIFORM STATE TAX TREATMENT OF TELECOMMUNICATIONS COMPANIES.

THE GOVERNORS CONTINUE TO OPPOSE FEDERAL ACTION TO PREEMPT THE SOVEREIGN RIGHT OF THE STATES TO DETERMINE THEIR OWN TAX POLICIES. THE GOVERNORS THEREFORE ENDORSE THE PROCESS UNDERTAKEN BY THE NATIONAL TAX ASSOCIATION WITH THE SUPPORT OF THE FEDERATION OF TAX ADMINISTRATORS AND THE MULTISTATE TAX COMMISSION TO REVIEW EXISTING PROBLEMS IN THE TAXATION OF TELECOMMUNICATIONS AND TO PROPOSE COORDINATED POLICIES THAT WILL HELP STATES PROMOTE FAIR COMPETITION WHILE ENSURING THAT THE TELECOMMUNICATIONS INDUSTRY BEARS ITS FAIR SHARE OF TAXATION. THE GOVERNORS INTEND TO MONITOR THE PROCESS AND CONSIDER ANY PROPOSALS THAT ARE DEVELOPED.

* Based upon Policy EDC-8, State Priorities in Telecommunications.

Time limited (effective Winter Meeting 1997–Winter Meeting 1998).

RESOLUTION*

ENDORSING THE MEMORANDUM OF UNDERSTANDING REGARDING THE U.S. INNOVATION PARTNERSHIP

THE UNITED STATES FACES INCREASING INTERNATIONAL COMPETITION FOR MARKETS AND FOR EMPLOYMENT OF ITS PEOPLE IN FAMILY-WAGE AND HIGH-WAGE JOBS. THE UNITED STATES' PREVIOUSLY UNQUESTIONED TECHNOLOGICAL LEADERSHIP IS ALSO BEING CHALLENGED IN WORLD MARKETS. AMERICAN BUSINESSES AND AMERICAN WORKERS NEED THE BENEFITS OF NEW TECHNOLOGIES TO REMAIN COMPETITIVE.

THE PEOPLE, BUSINESSES, AND UNIVERSITIES OF THE UNITED STATES, AS WELL AS THE FEDERAL GOVERNMENT AND STATE GOVERNMENTS, HAVE THE CAPACITY TO IMPROVE THE U.S. SYSTEM OF MOVING NEW TECHNOLOGIES FROM RESEARCH AND DEVELOPMENT TO COMPETITIVE PRODUCTS IN THE MARKETPLACE. INDIVIDUALS, FIRMS, AND PUBLIC AND PRIVATE INSTITUTIONS ARE INVESTING IN RESEARCH, DEVELOPMENT, TRAINING, AND MODERNIZATION, BUT TOO OFTEN THESE EFFORTS FAIL TO REACH THEIR POTENTIAL.

THE PRESIDENT OF THE UNITED STATES HAS INDICATED HIS INTEREST IN ENTERING INTO A FORMAL UNDERSTANDING WITH THE GOVERNORS, THROUGH THE NATIONAL GOVERNORS' ASSOCIATION, TO FOCUS AND INTEGRATE FEDERAL, STATE, UNIVERSITY, AND PRIVATE SECTOR EFFORTS TO INCREASE THE BENEFITS OF SCIENCE AND TECHNOLOGY TO THE AMERICAN ECONOMY.

THE NATION'S GOVERNORS AUTHORIZE THE APPROPRIATE GOVERNORS TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE PRESIDENT OF THE UNITED STATES TO ESTABLISH THE U.S. INNOVATION PARTNERSHIP.

* Based upon Policy EDC-4, The State Role in National Science and Technology Policy.

Time limited (effective Winter Meeting 1997–Winter Meeting 1998).

RESOLUTION

AIR BAG SAFETY CAMPAIGN

THE AIR BAG SAFETY CAMPAIGN, A PARTNERSHIP OF AUTOMOTIVE MANUFACTURERS, INSURANCE COMPANIES, CHILD SAFETY SEAT MANUFACTURERS, OCCUPANT RESTRAINT MANUFACTURERS, GOVERNMENT AGENCIES, HEALTH PROFESSIONALS, AND CHILD HEALTH AND SAFETY ORGANIZATIONS, IS WORKING TO INCREASE THE PROPER USE OF SAFETY BELTS AND CHILD SAFETY SEATS AND TO INFORM THE PUBLIC ABOUT HOW TO MAXIMIZE THE LIFESAVING CAPABILITIES OF AIR BAGS WHILE MINIMIZING THEIR RISKS.

THE AIR BAG SAFETY CAMPAIGN IS CONDUCTING A WIDE-RANGING PUBLIC EDUCATION EFFORT. THE CENTERPIECE OF THIS CAMPAIGN WILL BE A NATIONAL MOBILIZATION OF PUBLIC OFFICIALS AND LAW ENFORCEMENT AGENCIES TO DELIVER THE MESSAGE "AIR BAG SAFETY MEANS: BUCKLE EVERYONE! CHILDREN IN BACK!"

THE GOVERNORS RECOGNIZE THAT PROPER USE OF VEHICLE SAFETY RESTRAINT DEVICES CAN ASSIST IN REDUCING FATALITIES AND SERIOUS INJURY ON OUR NATION'S ROADWAYS. STUDIES HAVE AFFIRMED THAT STATES WITH PRIMARY ENFORCEMENT LAWS HAVE SIGNIFICANTLY HIGHER SEAT BELT USE, THAT THE CORRECT USE OF SEAT BELTS HAS CONTRIBUTED TO A DECREASE IN THE NUMBER OF FATALITIES BY UP TO 45 PERCENT, AND THAT THE EFFECTIVENESS OF CORRECTLY INSTALLED CHILD SAFETY SEATS REDUCES FATAL INJURY BY 60 PERCENT FOR INFANTS.

THE GOVERNORS SUPPORT AND ENDORSE THE PUBLIC EDUCATION INITIATIVES OF THE AIR BAG SAFETY CAMPAIGN, ITS MOBILIZATION OF PUBLIC OFFICIALS AND LAW ENFORCEMENT AGENCIES, AND ORGANIZED PUBLIC INFORMATION PROGRAMS AND EDUCATION INITIATIVES IN THE STATES TO INCREASE SEAT BELT USE AND RAISE COMMUNITY AWARENESS ABOUT AIR BAG SAFETY AND OCCUPANT PROTECTION.

THE GOVERNORS ENCOURAGE INVOLVEMENT OF LAW ENFORCEMENT OFFICIALS IN PROMOTING AIR BAG SAFETY AND GREATER ADHERENCE TO SEAT BELT AND CHILD PASSENGER SAFETY LAWS ACCORDING TO THE LAWS OF EACH STATE.

THE NATIONAL GOVERNORS' ASSOCIATION, THROUGH ITS COMMITTEE ON ECONOMIC DEVELOPMENT AND COMMERCE, WILL ENCOURAGE AND SUPPORT THE EFFORTS OF THE AIR BAG SAFETY CAMPAIGN BY INFORMING STATES OF THE AVAILABILITY OF CAMPAIGN INFORMATION AND BY NOTIFYING THEM OF, AND INVOLVING THEM IN, THE MOBILIZATION IN SPRING 1997.

Time limited (effective Winter Meeting 1997–Winter Meeting 1998).

REAFFIRM

EDC-15. UNIFORM PRODUCT LIABILITY CODE

The National Governors' Association recognizes that the current patchwork of U.S. product liability laws is too costly, time-consuming, unpredictable, and counterproductive, resulting in a severely adverse effect on American consumers, workers, competitiveness, innovation, and commerce.

The issue of product liability reform increasingly has pointed to federal action as a way to alleviate the problems faced by small and large businesses with regard to inconsistent state product liability laws. This lack of uniformity and predictability makes it impossible for product manufacturers to accurately assess their own risks, leading to the discontinuation of necessary product lines, reluctance to introduce product improvements, and a dampening of product research and development. American small businesses are particularly vulnerable to disparate product liability laws. For them, liability insurance coverage has become increasingly expensive, difficult to obtain, or simply unavailable. Further, the system causes inflated prices for consumer goods and adversely affects the international competitiveness of the United States.

Clearly, a national product liability code would greatly enhance the effectiveness of interstate commerce. The Governors urge Congress to adopt a federal uniform product liability code.

In establishing a uniform product liability code, Congress should assess the impact of a uniform code on public safety and consumer protection and, if deemed appropriate, enhance federal safety and consumer protection standards.

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~

Adopted Annual Meeting 1986; revised Annual Meeting 1991 and Winter Meeting 1995 (formerly Policy E-4).

SANVILLE_U @ A1
01/24/97 03:24:00 PM

Record Type: Record

To: Elena Kagan

cc: FLEMING_P @ A1@CD@LNGTWY
Subject: Response to NGA resolutions

Patsy Fleming asked me to send you the following regarding the NGA resolutions.

38.1 -- Concur.

38.2 -- Bottom of p. 43 alludes to but does not explicitly discuss concerns about mandatory testing. Administration's position has been that routine voluntary testing is preferred.

38.2.1 - Concur. I checked with ONDCP regarding treatment levels -- the FY 98 budget requests an increase for treatment. In FY 97 CDC funding for outreach to substance abusers was increased -- the FY98 budget also proposes an increase in outreach.

38.2.2 -- The language refers to the Coburn Amendment. The Administration did not take a position on the amendment but rather supports the PHS guidelines that call for routine and voluntary testing for women as the best way to reduce perinatal transmission. The issue raised (paragraph 1, p. 45) about mandatory testing possibly discouraging women from seeking health care is legitimate. The concern about low incidence states being able to meet the 50% percent required reduction is also valid (paragraph 3, p. 45).

38.3 -- Concur. The expressed support for research and public-private partnerships in this section is in concert with the themes of the National AIDS Strategy.

38.4 -- Concur with concerns regarding cost of care.

The Administration has made significant efforts to address the health care needs of persons living with HIV/AIDS. Overall funding for the Ryan White CARE Act (RWCA) has increased by 158% since 1993. In the proposed FY98 budget, the RWCA titles are slated to receive a $40 million increase.

In the last year, in close coordination with State AIDS Directors, the Administration increased ADAP funding threefold - from $52 million in FY 96 to $167 million in FY 97. Also in the past year, the Administration submitted two budget amendments to increase specific funding for ADAP (one for $52 million and one for $65 million). In the FY98 budget, Title II (which includes ADAP) is slated to receive a $15 million increase -- States will have the option to use this money on ADAP.

Also, it is now standard operating procedure that all Medicaid managed care

waiver applications are examined for their impact on people living with HIV if people with disabilities are included in the waiver.

38.5 -- Concur with NGA interest in working together in implementing new provisions of the RWCA. Administration has strongly supported RWCA and secured significant increases for all Titles, including ADAP. (See above.)

To ensure the most effective use of ADAP resources several efforts are underway:

- HRSA is working with states to ensure appropriate use of ADAP funds;

- PHS is working on developing treatment guidelines on the most effective use of these therapies; and

- Through the Forum for Collaborative HIV Research (an initiative catalyzed through the Vice President's Office) government, industry, patients, and third-party payors are designing studies to assess the clinical effectiveness of these therapies.

If you need anything else let me know.

Jane Sanville

To: Elena Kagan
Paul Weinstein

From: Lyn Hogan

Date: January 24, 1997

Re: White House/HHS Response to the NGA Position On Child Care

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Note: HHS has not taken a formal position against any of the NGA resolutions because they represent the opinions of only one organization. However, HHS has comments on each of the following NGA resolutions.

22.2, Adequate Funding

We agree that both discretionary and mandatory funds should be funded at full authorization levels and that funding for the Social Service Block Grant should be maintained.

22.2.1, Seamless Child Care

We agree that states should have flexibility to run a seamless child care system.

22.2.2, Increased State Flexibility to Set Payment Rates

We recognize that states want maximum flexibility in setting payment rates. HHS is in the process of developing regulations on these and other issues and will take these recommendations into consideration.

22.2.3, Improved Program Administration

We recognize that states want maximum flexibility in defining administrative costs. HHS is in the process of developing regulations on these and other issues and will take these recommendations into consideration.

22.2.4, State Standards

(There is much controversy over this issue. HHS agrees with the law as passed and **would not** like to see the NGA suggested modifications enacted.)

The statute allows states to set child care standards for all types of providers. However, the new law does require states to ensure that standards are set in three key areas for all providers funded with CCDBG money: minimum health and safety training appropriate to the provider's setting; the prevention and control of infectious diseases (including immunizations) and building and premises safety. HHS supports the law as passed. This provision continues to allow states to set the actual standards, while at the same time ensuring that some level of standards are required for all providers in these key areas which are critical to protecting the health and safety for children in care.

DF 36

Comments on NGA Resolution on Welfare Reform

The Governors support a number of changes to or interpretations of the law that we do not.

- NGA supports total flexibility on the use of state maintenance of efforts funds. We are concerned that this could significantly weaken the work requirements, but have not yet resolved the issue with HHS.

- NGA wants states to define key terms in the law, such as "assistance" and "eligible families." Allowing them to do so would weaken the work requirements, but we have not yet released guidance on this question.

- Another potentially problematic NGA proposal is to allow more activities to count as work (job search, job readiness, education, drug/alcohol treatment). We have not supported such changes.

- The Governors are dismayed that the Administration filed a brief supporting the plaintiff in a case before the Supreme Court that argues that individual familiies should have the right to sue states for failure to collect child support owed ("Blessing v. Freestone").

WARNATH_S @ A1
01/27/97 03:14:00 PM

Record Type: Record

To: Elena Kagan

cc:
Subject: NGA Resolution

I need to revise one of our responses for the immigration resolutions:

2.1.8 Research and Data Collection

The Administration supports strengthening the reliability and capability of data collection and research on migration issues. However, we do not support reinstatement of the program of annual registration and reregistration of all legal immigrants in the United States as called for by this resolution.

Also, I am trying to determine whether NSC is submitting the refugee responses themselves or whether they plan to incorporate their responses into the DPC document. I have not heard back yet.

thanks

NGA Resolutions on Refugees

2.3.1 Strongly agree with Governors' statement of support for persons fleeing persecution and with the importance of providing culturally appropriate services to meet the needs of those resettled in the United States. Also agree with judgment that resettlement is a long-term process which demands a close partnership between states, the private sector, and the federal government.

2.3.2 The Clinton Administration believes that a strong federal-state partnership is critical to the success of the refugee resettlement program and that the burden placed on states must be taken into account. Accordingly, this Administration has maintained prior levels of cash and medical assistance to refugees and expanded our domestic program assistance. At the same time, our refugee admissions numbers must reflect the humanitarian needs of people who are being persecuted.

[On SSI and Food Stamps for Refugees: Defer to OMB position in budget]

On privatization: The Clinton Administration is strong believer in partnership between government and private sector. Options on privatization will be considered within the context of the 1997 Reauthorization of the Refugee Act and we will welcome the views of the NGA and others interested in the issue.

2.3.3 The Administration generally agrees with the principles proposed by the Governors for the Reauthorization of the Refugee Act. In particular, the Administration supports the goal of helping refugees achieving rapid economic self-sufficiency.

The Administration strongly supports the Governors' recommendation that Cuban-Haitian entrants be treated as "refugees" as provided under the Fascell-Stone amendment. The Administration opposed the provision in the welfare bill that put an end to that parity.

The Administration will review the question of extending the period of eligibility for refugee services to twelve months. This should be considered within the context of the 1997 Reauthorization of the Refugee Act and we will welcome the Governors' input in that endeavor.

2.3.4 The Administration agrees that consultation between states, voluntary agencies and the federal government can and should be improved. The Administration will seriously consider proposals that enhance such coordination while maintaining the necessary flexibility to deal with urgent humanitarian crises.

2.3.5 The Administration supports the proposal to provide special impact aid to states and local governments under the circumstances described by the Governors.

THE WHITE HOUSE

WASHINGTON

January 21, 1997

MEMORANDUM

TO: Bruce Reed
Elena Kagan

FROM: Marcia L. Hale

RE: National Governors' Association

Attached are the National Governors' Association policy papers, which detail the policies that have been proposed by the Executive Committee of the NGA. We are preparing a briefing memo for the President on these issues and would like your assistance in reviewing the policies. Please look over them, and let our office know by the close of business on Friday, January 24, how we should best respond to these issues.

Thank you for your assistance.

To: Elena Kagan
Paul Weinstein

From: Lyn Hogan

Date: January 24, 1997

Re: White House/HHS Response to the NGA Position On Child Care

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Note: HHS has not taken a formal position against any of the NGA resolutions because they represent the opinions of only one organization. However, HHS has comments on each of the following NGA resolutions.

22.2, Adequate Funding

We agree that both discretionary and mandatory funds should be funded at full authorization levels and that funding for the Social Service Block Grant should be maintained.

22.2.1, Seamless Child Care

We agree that states should have flexibility to run a seamless child care system.

22.2.2, Increased State Flexibility to Set Payment Rates

We recognize that states want maximum flexibility in setting payment rates. HHS is in the process of developing regulations on these and other issues and will take these recommendations into consideration.

22.2.3, Improved Program Administration

We recognize that states want maximum flexibility in defining administrative costs. HHS is in the process of developing regulations on these and other issues and will take these recommendations into consideration.

22.2.4, State Standards

(There is much controversy over this issue. HHS agrees with the law as passed and **would not** like to see the NGA suggested modifications enacted.)

The statute allows states to set child care standards for all types of providers. However, the new law does require states to ensure that standards are set in three key areas for all providers funded with CCDBG money: minimum health and safety training appropriate to the provider's setting; the prevention and control of infectious diseases (including immunizations) and building and premises safety. HHS supports the law as passed. This provision continues to allow states to set the actual standards, while at the same time ensuring that some level of standards are required for all providers in these key areas which are critical to protecting the health and safety for children in care.

690-5600

HR-22. CHILD CARE

22.1 PREAMBLE

AS AMERICA'S MOST VALUABLE HUMAN RESOURCE, CHILDREN DESERVE A SAFE AND HEALTHY CHILD CARE ENVIRONMENT. THE GOVERNORS RECOGNIZE THAT PARENTS ARE CHILDREN'S FIRST AND PRIMARY NURTURERS, AND GOVERNMENT POLICIES SHOULD ACKNOWLEDGE AND SUPPORT THE FAMILY AS THE PRIMARY CHILD CARE UNIT. OVER THE PAST TWO DECADES, MAJOR ECONOMIC AND SOCIAL CHANGE HAS RESULTED IN GROWING NUMBERS OF PARENTS AT ALL INCOME LEVELS SEEKING QUALITY CARE OPPORTUNITIES FOR CHILDREN. THE CHALLENGE TO PUBLIC AND PRIVATE ENTITIES IS TO RESPOND TO THIS NEED AND PRESERVE FOR PARENTS THE FUNDAMENTAL CHOICE OF HOW TO BEST MEET THE CHILD CARE NEEDS OF THEIR CHILDREN.

GOVERNORS, THE FEDERAL GOVERNMENT, THE PRIVATE SECTOR, AND FAMILIES ALL HAVE A VESTED INTEREST IN ENSURING THAT OUR NATION'S CHILD CARE SYSTEM IS PROVIDING THE SERVICES AND RESOURCES THAT WORKING FAMILIES NEED. GOVERNORS BELIEVE THAT THE PRIVATE SECTOR IS AN IMPORTANT PARTNER IN THIS EFFORT.

THE GOVERNORS BELIEVE THAT THE EXPANSION OF SAFE, AFFORDABLE, AND ACCESSIBLE CHILD CARE OPPORTUNITIES IS VITAL TO THE ECONOMIC GROWTH OF THE NATION AND CRUCIAL FOR THE WELL-BEING OF THE NATION'S FAMILIES AND CHILDREN. THE GOVERNORS ALSO RECOGNIZE THAT DRAMATIC AND ONGOING CHANGES IN OUR SOCIETY WILL CONTINUE TO FUEL A GROWING DEMAND FOR SAFE, AFFORDABLE, AND ACCESSIBLE CHILD CARE OVER THE NEXT DECADE. FOR EXAMPLE, WITH THE PASSAGE OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996, P.L. 104-193, TOUGH WORK REQUIREMENTS AND TIME-LIMITED ASSISTANCE WILL GREATLY INCREASE THE DEMAND FOR AFFORDABLE AND ACCESSIBLE CHILD CARE OVER THE NEXT SEVERAL YEARS. AS GROWING NUMBERS OF FAMILIES TRANSITION OFF WELFARE AND OTHER FAMILIES REMAIN AT RISK OF WELFARE DEPENDENCY, CHILD CARE FOR LOW-INCOME WORKING FAMILIES ALSO WILL NEED TO BE EXPANDED.

22.2 RECOMMENDATIONS

THE GOVERNORS BELIEVE THAT ADEQUATE FUNDING FOR CHILD CARE IS ABSOLUTELY ESSENTIAL IF STATE WELFARE REFORM INITIATIVES ARE TO BE SUCCESSFUL IN HELPING FAMILIES MAKE THE TRANSITION FROM WELFARE AND

DEPENDENCY TO WORK AND SELF-SUFFICIENCY. CONGRESS MUST PROVIDE FUNDING FOR CHILD CARE FOR BOTH THE DISCRETIONARY AND MANDATORY FUNDING STREAMS AT THE FULL LEVELS AUTHORIZED IN THE WELFARE LAW. ADDITIONALLY, BECAUSE THE SOCIAL SERVICES BLOCK GRANT (SSBG) IS USED IN MANY STATES TO FUND CHILD CARE FOR WORKING POOR FAMILIES, FUNDING FOR THIS PROGRAM ALSO MUST BE MAINTAINED. GOVERNORS STRONGLY OPPOSE ANY ATTEMPTS TO FURTHER REDUCE FUNDING FOR SSBG.

22.2.1 **OPERATE A SEAMLESS CHILD CARE SYSTEM.** THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 ACHIEVED THE CONSOLIDATION RECOMMENDED BY THE GOVERNORS BY COMBINING TITLE IV-A CHILD CARE FUNDING (AID TO FAMILIES WITH DEPENDENT CHILDREN, AT-RISK CHILD CARE, AND TRANSITIONAL CHILD CARE) WITH THE CHILD CARE DEVELOPMENT BLOCK GRANT TO CREATE A SINGLE CHILD CARE SYSTEM. THE NEW CHILD CARE BLOCK GRANT TO STATES WILL FACILITATE THE OPERATION OF A SEAMLESS SYSTEM OF CHILD CARE, ENABLING STATES TO SERVE FAMILIES MORE SMOOTHLY AND EFFECTIVELY WITHOUT CHANGES IN SERVICES AS FAMILIES' SITUATIONS CHANGE. CHILD CARE WILL BE PROVIDED THROUGH A SINGLE STATE AGENCY AND STATES WILL HAVE TOTAL FLEXIBILITY TO SET PAYMENT RATES FOR PROVIDERS AND PROVIDE DIFFERENT REIMBURSEMENT RATES FOR DIFFERENT CATEGORIES OF CARE AND IN DIFFERENT GEOGRAPHIC SETTINGS.

22.2.2 **INCREASE STATE FLEXIBILITY.** GIVEN THE INCREASED DEMAND FOR CHILD CARE SERVICES, FLEXIBILITY WILL BE KEY AS STATES PROVIDE CHILD CARE SERVICES UNDER THE BLOCK GRANT. AS MORE WELFARE RECIPIENTS MOVE INTO THE WORKFORCE, STATES WILL NEED TO EXPAND CHILD CARE DURING NONTRADITIONAL HOURS AND IN ALTERNATIVE SETTINGS, SUCH AS SCHOOLS AND THE WORKPLACE. STATES WILL NEED FLEXIBILITY IN SETTING CHILD CARE RATES, SUCH AS PROVIDING A "FAMILY BENEFIT" RATHER THAN A FLAT RATE PER CHILD TO FURTHER STRETCH CHILD CARE RESOURCES. THE GOVERNORS URGE THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, IN WRITING REGULATIONS, TO HONOR THE CONGRESSIONAL INTENT TO ACCORD STATES MAXIMUM FLEXIBILITY.

22.2.3 **IMPROVE PROGRAM ADMINISTRATION.** THE GOVERNORS APPRECIATE THAT SEVERAL SET-ASIDES HAVE BEEN MODIFIED OR ELIMINATED. THEY CONSIDER THE EXPANSION OF AFFORDABLE AND ACCESSIBLE CHILD CARE TO BE A PRIORITY, BUT ARE CONCERNED THAT THE 5 PERCENT ADMINISTRATIVE CAP MAY LIMIT A STATE'S ABILITY TO CREATE INNOVATIVE AND EFFECTIVE PROGRAMS. ELIGIBILITY

DETERMINATION, CHILD CARE PLACEMENT, RECRUITMENT, LICENSING, INSPECTIONS, TRAINING, COMPUTERIZED SYSTEMS, FRONT-LINE WORKERS, AND FIELD STAFF SHOULD NOT BE CONSIDERED ADMINISTRATIVE COSTS. ALL COSTS RELATED TO MANAGEMENT INFORMATION SYSTEMS AND ONGOING DATA COLLECTION AND ANALYSIS REQUIRED UNDER THE LAW SHOULD BE OUTSIDE OF THE ADMINISTRATIVE CAP. ADDITIONALLY, STATES NEED THE FLEXIBILITY TO USE SOME PORTION OF THEIR FUNDS TO EXPAND CAPACITY THROUGH RENOVATION AND CONSTRUCTION.

22.2.4 **USE STATE STANDARDS.** STATES ARE COMMITTED TO TARGETING CHILD CARE TO THOSE MOST IN NEED AND DO NOT NEED PRESCRIPTIVE FEDERAL REQUIREMENTS. THE CHILD CARE BLOCK GRANT REQUIRES STATES TO DEVELOP HEALTH AND SAFETY STANDARDS THAT ALL PROVIDERS MUST MEET. THESE STANDARDS ARE RELATED TO PREVENTING AND CONTROLLING INFECTIOUS DISEASES, ENSURING THE SAFETY OF BUILDINGS AND PHYSICAL PREMISES, AND PROVIDING MINIMUM HEALTH AND SAFETY TRAINING. IN SOME CASES, THESE STANDARDS MAY BE INAPPROPRIATE TO THE PROVIDER SETTING. THE GOVERNORS BELIEVE THAT THE STATES ARE IN THE BEST POSITION TO SET HEALTH AND SAFETY STANDARDS AND RECOMMEND THAT FEDERALLY FUNDED PROVIDERS BE REQUIRED TO COMPLY WITH HEALTH AND SAFETY STANDARDS AS PRESCRIBED UNDER STATE LAW. THE GOVERNORS ALSO URGE THE ELIMINATION OF THE 85 PERCENT STATE MEDIAN INCOME CAP REQUIREMENT FOR ELIGIBILITY. AS CONGRESS MONITORS THE IMPLEMENTATION OF THE LAW AND OPPORTUNITIES ARISE TO MAKE MODIFICATIONS, THE GOVERNORS ASK THAT THESE CHANGES BE CONSIDERED.

~~**22.1 Preamble**~~

~~As America's most valuable human resource, children deserve a safe and healthy child care environment. The Governors recognize that parents are children's first and primary nurturers, and government policies should acknowledge and support the family as the primary child care unit. Over the past two decades, major economic and social change has resulted in parents seeking quality care opportunities for children. The challenge to all levels of government is to respond to this need and preserve for parents the fundamental choice of how to best meet the child care needs of their children.~~

~~The Governors believe that the expansion of quality child care opportunities is vital to the economic growth of the nation and crucial for the well-being of the nation's families and children. The Governors also recognize that dramatic and ongoing changes in our society will continue to fuel a growing demand for quality child care over the next decade.~~

~~In response to this growing need, the states and the federal government have created programs to provide quality child care opportunities for low-income families. One of the federal initiatives, the Child Care Development Block Grant (CCDBG) distributes funds to states to provide child care services for low-income families, as well as to support activities to improve the overall quality and supply of child care in the state. No state match is required under this program.~~

The Governors believe that CCDBG is a highly successful program that together with state and local initiatives has substantially increased the supply and the quality of child care services for low-income families and support its reauthorization.

22.2 Recommendations for Modifying Federal Child Care Programs

Based on the experiences and interests of states in providing high-quality child care services, the Governors offer the following recommendations to the administration and Congress in addressing issues of child care in the first session of the 104th Congress.

22.2.1 Create a Seamless Child Care System. The Governors urge Congress to move toward a more seamless system incorporating all of the federal child care programs. In general, they believe that CCDBG should be the foundation for that seamless system and that other federal child care programs, such as the Title IV-A and At-Risk Child Care programs, should be consolidated with CCDBG to form a single child care system operated by the states.

Such a consolidation would permit states to better coordinate state and federal child care programs at the state level and therefore operate a more seamless child care system. Based on the CCDBG requirements, the U.S. Department of Health and Human Services should work with states to develop a standardized reporting form that can be used by states for reporting on the use of federal child care funds.

In addition, the Governors call for the elimination of the 75 percent of state median income cap requirement for CCDBG eligibility and instead permit states to determine eligibility as under the At-Risk Child Care program. The Governors are committed to targeting child care programs to those families most in need. Therefore, as part of the state plan, the state can describe to the secretary of the U.S. Department of Health and Human Services its definition of an eligible family in the contexts of its own child care initiatives and overall child care needs in the state.

22.2.2 Increase State Flexibility. The Governors recommend that states be given total flexibility to set payment rates for providers. This will permit states to serve more families with limited CCDBG dollars and allow them to respond in the most appropriate manner based on their unique needs.

States also should be given the flexibility to set different statewide limits for different categories of care. Some categories of care, such as before school, evening, or part-time care, often are in shorter supply and therefore can be more expensive than traditional full-time day care. By permitting states to set different statewide limits for different categories of care, states can purchase higher cost care without paying inflated rates for traditional care. In addition, states should have the option to pay providers more than the local market rate for higher quality care. This will provide an incentive for providers to increase the quality of care available in all types of categories.

The Governors call for the greatest flexibility possible in the allocation of funds for 1) the provision of child care services and activities to improve the quality and availability of child care; and 2) activities to improve the quality of child care and to increase the availability of early childhood development and before-and after-school child care services. Under the current CCDBG, funds are allocated between these two basic categories, and additional set-asides are included within the second category. The Governors believe the states are in the best position to assess the child care needs of their residents and call for the elimination of inflexible federal funding categories and set-asides. If the federal government is committed to maintaining basic funding categories, the Governors call for the greatest flexibility possible to reallocate funds between categories.

22.2.3 Improve Program Administration. In an effort to reduce the costs of administering CCDBG, the Governors call for enhanced federal funding to automate child care tracking and payment systems. Such an automated system could be used not only to administer child care programs, but also to coordinate child care services with other federal programs that support children and their families.

The Governors also call for greater flexibility for the states in terms of what is considered an allowable administrative expense, especially in the area of licensing and provider monitoring. Greater state administrative flexibility and the reduced costs of administering CCDBG would free up funds that would be used to expand the availability of child care.

~~22.2.4 Use State Standards. The Child Care Development Block Grant includes health and safety standards that all providers must meet. These standards are related to the prevention and control of infectious diseases, building and physical premises safety, and minimum health and safety standards appropriate to the provider setting. In some cases, these standards exceed what is required by current state law. The Governors believe the states are in the best position to set health and safety standards and recommend that providers funded by CCDBG be required to comply with health and safety standards as prescribed under state law.~~

Time limited (effective WINTER MEETING 1997–WINTER MEETING 1999). ~~Winter Meeting 1995–Winter Meeting 1997~~
Adopted Winter Meeting 1995.

NGA IMMIGRATION RESOLUTIONS

2.1.1 Preamble

Immigration is a shared responsibility, not solely a federal one. For example, jobs are the largest magnet of illegal immigration and some private employers knowingly hire illegal immigrants at low wages for competitive advantage. Some States also have enforcement obligations arising from their own laws prohibiting hiring illegal workers and sweatshops. Legal immigration levels are based in large part on supporting interests of private businesses and reunifying families. These policies are based upon the shared interest of Federal, State and local governments in supporting economic development and strengthening families in our communities.

The Administration strongly supported making the affidavit of support legally binding as a fair and effective mechanism to ensure fair personal responsibility and protect against immigrants becoming public charges.

We have not taken a position on the NGA resolution calling for continuing federal benefits for those who have applied to naturalize while their application is pending.

2.1.2 Principles

We agree with helping lower costs to states and with increased consultations with states. The Administration is helping lower costs to states through an unprecedented effort to lower illegal immigration and by helping states with the costs of incarcerating criminal aliens (as well as general education and medical funding).

2.1.3 Immigration Ceiling and Preference System

Concur -- although it is unclear what the resolution means about separating completely employment-based and family categories into distinct admission categories because, for example, employment-based immigrants often bring their families with them to the U.S.

2.1.4 Prohibition on the Hiring of Illegal Immigrants

Concur (but have reservation about implications of unclear language stating that we should not develop methods to prevent identification document fraud that "infringe upon areas that traditionally have been under the scope of state and local authority. . .")

This Administration has done more to enforce the laws prohibiting employment of illegal immigrants than ever before.

2.1.5 Legalization and Naturalization

The Administration's position is that felons should not be naturalized.

We are streamlining the process for eligible applicants.

We have not taken a position on waiving the oath for individuals who are incapable of communicating the desire to naturalize.

2.1.6 Supplemental Worker Program

The Administration opposes any new guestworker program, which is what this resolution seems to be about.

2.1.7 Cooperation with Western Hemisphere Countries

Concur

2.1.8 Research and Data Collection

Concur

2.1.9 Legal Immigration and Law Enforcement

Concur

2.1.10 Exclusion/Asylum Proceedings

Concur

2.1.11 Emergency Authority and Contingency Plan

Concur

2.1.12 Impact Aid

Concur with refugee impact aid.

2.2 ILLEGAL IMMIGRATION
2.2.1 Law Enforcement

Concur with calling for sufficient funding to support the Administration's illegal immigration control efforts.

[para. 2 regarding DRUG SMUGGLING -- Dennis Burke is providing response]

2.2.2 Prosecution and Removal of Undocumented Felons

Concur with early identification of criminal aliens.

Concur with continued efforts to improve prisoner transfer mechanisms including some level of nonconsensual prisoner transfer, although renegotiating treaties raise other problematic issues (particularly due to international human rights protections including our obligations under the 1967 Protocol relating to the Status of Refugees).

Concur with continuing to strengthen protections against reentry by illegal immigrants.

2.2.3 Education Costs of Undocumented Aliens

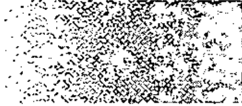
The Administration supports education for undocumented children and we opposed the Congressional proposal for reimbursement for educating these children [the "Son-of-Gallegly amendment"].

2.2.4 Study of Costs of Citizen Children

Concur

3.3 REFUGEE POLICY

NSC is working on responses.



Diana Fortuna

01/30/97 06:17:42 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Lyn A. Hogan/OPD/EOP
Subject: OMB on NGA resolutions

Although I consulted with OMB when I wrote my NGA resolution comments, they only just sent Lyn and me some comments on our writeups that arguably call on us to modify our commentary/positions on a couple of items. Should I just forward these to Emily at this point?

Here's how OMB differed from me on the welfare resolution:

- (1) they say we should oppose more flexibility to transfer from TANF to SSBG; I had said no position. I would tend to defer to them.
- (2) on whether to exempt states from penalties if they make good faith efforts, they thought my "do not support" position was too strong, since the law permits HHS to consider good faith.

(They also thought my position of "do not support" on allowing additional weeks of job search to count toward the work requirement was arguably too strong, since we once supported NGA's position; but I have told them I don't think we're in the business of endorsing looser work requirements in any guise, no matter what our previous positions have been.)