

NLWJC - Kagan

DPC - Box 004 - Folder 011

**Budget Materials - Appropriations
Riders 1999: Tobacco**

New file

Budget-appropriations riders 1999-
tobacco

Kagan
W 66 9 / 14356

October 7, 1998

NOTE TO BRUCE AND ELENA

FROM: Cynthia Rice and Cynthia Dailard
CC: Chris Jennings and Jeanne Lambrew
SUBJ: Adding Tobacco Control to McCain Menu

We have attached three versions of legislative language that could be used to add state tobacco control efforts to the McCain menu of items on which states must spend half of their settlement funds. (These edits would add an eighth option to the menu; to require a certain percentage of the restricted funds to be used for tobacco control efforts, section 452(b)(2) listed below would also have to be amended). ✓

The options vary from least to most detailed. The first version is based on Hansen-Meehan, the second is a very slimmed down version of McCain, and the third is a somewhat slimmed-down version of the McCain language. The most detailed option is the Conrad proposal (not attached) which incorporates all the McCain language. HHS has not yet reviewed these options.

Chris has made a strong argument that we should not be the ones to propose dropping anything that was on the McCain menu, but that we should instead wait to see if others propose to do so.

Overall, an amendment would need to have the following pieces:

I. Waiver of Medicaid Recovery (To be drafted by Hill)

Should include:

- A. Requirements on State Spending as a Condition of Waiver
- B. Requirements to Contribute Share of Federal Costs as Condition of Waiver
↳ pay its share of CBO costs

II. Use of State Settlement Funds (See options below)

Should include:

- A. What Percent of Funds Restricted
- B. Menu of Program Upon Which Restricted Funds Can Be Spent
- C. Children's Outreach Options

III. Payfor Language (To be drafted by Hill)

Should require states to pay:

- A. Amount CBO expects federal government to recover from state tobacco settlements
- B. Amount CBO expects federal Medicaid costs will increase due to use of new Medicaid outreach options

Proposal Based on Hansen-Meehan

Add the following to the state menu listed under McCain sec. 452(b)(2)

(H) state tobacco control activities, which include:

- (i) public awareness campaigns to discourage the use of tobacco products;
- (ii) child-oriented and community-based programs to discourage the use of tobacco products; and
- (iii) tobacco use cessation programs, which are consistent with the most recent tobacco use cessation guidelines issued by the Agency for Health Care Policy Research or are approved as safe and effective for tobacco use cessation by the Food and Drug Administration.

Proposal Based on McCain

Add the following to the state menu listed under McCain sec. 452(b)(2)

(H) state tobacco control activities, which include:

- (i) a media-based counteradvertising campaign to discourage the use of tobacco products;
- (ii) state, community and school-based education and prevention programs to discourage the use of tobacco products;
- (iii) evidence-based tobacco use cessation programs, consistent with the most recent tobacco use cessation guidelines issued by the Agency for Health Care Policy Research or are approved as safe and effective for tobacco use cessation by the Food and Drug Administration; and
- (iv) activities to enforce youth access restrictions in order to reduce the sale and distribution of tobacco products to individuals under 18 years of age.

Proposal Based on McCain

Add the following to the state menu listed under McCain sec. 452(b)(2)

(H) state tobacco control activities, which include:

- (i) evidence-based activities for tobacco use prevention and control, including state, community and school-based initiatives;
- (ii) a statewide campaign to reduce tobacco usage through media-based (such as counter-advertising campaigns) and non-media based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals, to encourage those who use such products to quit, and to educate the public about the hazards of exposure to environmental tobacco smoke;
- (iii) evidence-based cessation activities, which are consistent with the most recent tobacco use cessation guidelines issued by the Agency for Health Care Policy Research or are approved as safe and effective for tobacco use cessation by the Food and Drug Administration, including:
 - (aa) evidence-based programs designed to assist individuals to quit their use of tobacco products;
 - (bb) training in cessation methods for health professionals;
 - (cc) programs to encourage health insurers and health plans to provide coverage for evidence-based tobacco use cessation interventions or therapies; and
- (iv) implementing and enforcing a tobacco retailer licensing program in a manner that can reasonably be expected to reduce the sale and distribution of tobacco products to individuals under 18 years of age.

McCain Bill State Spending Language

SEC. 452. GRANTS TO STATES.

(a) Amounts._ From the amount made available under section 451(a) for each fiscal year, each State shall receive a grant on a quarterly basis according to a formula.

(b) Use of Funds._

(1) Unrestricted funds._ A State may use funds, not to exceed 50 percent of the amount received under this section in a fiscal year, for any activities determined appropriate by the State.

(2) Restricted funds._ A State shall use not less than 50 percent of the amount received under this section in a fiscal year to carry out additional activities or provide additional services under_

(A) the State program under the maternal and child health services block grant under title V of the Social Security Act (42 U.S.C. 701 et seq.);

(B) the State program for child care under the funding for child care under section 418 of the Social Security Act, notwithstanding subsection (b)(2) of that section;

(C) the State program for child welfare and abuse under the Federally-funded child welfare and abuse programs under title IV-B of the Social Security Act;

(D) programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title XIX, part B of the Public Health Service Act;

(E) the Safe and Drug-Free Schools Program under title IV, part A, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.);

(F) the Department of Education's Dwight D. Eisenhower Professional Development program under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.); and

(G) the State Children's Health Insurance Program authorized under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), provided that the amount expended on this program does not exceed 6 percent of the total amount of restricted funds available to the State each fiscal year.

(c) No Substitution of Spending._ Amounts referred to in subsection (b)(2) shall be used to supplement and not supplant other Federal, State, or local funds provided for any of the programs described in subparagraphs (A) through (G) of subsection (b)(2). Restricted funds, except as provided for in subsection (b)(2)(G), shall not be used as State matching funds. Amounts provided to the State under any of the provisions of law referred to in such subparagraph shall not be reduced solely as a result of the availability of funds under this section.

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(d) Federal-State Match Rates. Matching requirements, as provided in the statutory authority for the programs described in subsection (b)(2), apply to each program listed under subsection (b)(2), except for the program described under subsection (b)(2)(B). For the program described under subsection (b)(2)(B), after an individual State has expended resources sufficient to receive its full Federal amount under section 418(a)(2)(B) of the Social Security Act (subject to the matching requirements in section 418(a)(2)(C) of such Act), the Federal share of expenditures shall be 80 percent.

(e) Maintenance of Effort. To receive funds under this subsection, States must demonstrate a maintenance of effort. This maintenance of effort is defined as the sum of

(1) an amount equal to 95 percent of Federal fiscal year 1997 State spending on the programs under subparagraphs (B), (c), and (D) of subsection (b)(2); and

(2) an amount equal to the product of the amount described in paragraph (1) and

(A) for fiscal year 1999, the lower of

(i) general inflation as measured by the consumer price index for the previous year; or

(ii) the annual growth in the Federal appropriation for the program in the previous fiscal year; and

(B) for subsequent fiscal years, the lower of

(i) the cumulative general inflation as measured by the consumer price index for the period between 1997 and the previous year; or

(ii) the cumulative growth in the Federal appropriation for the program for the period between fiscal year 1997 and the previous fiscal year.

The 95-percent maintenance-of-effort requirement in paragraph (1), and the adjustments in paragraph (2), apply to each program identified in paragraph (1) on an individual basis.

(f) Options for Children's Health Outreach. In addition to the options for the use of grants described in this section, the following are new options to be added to States' choices for conducting children's health outreach:

(1) Expansion of presumptive eligibility option for children.

(A) In general. Section 1920A(b)(3)(A)(I) of the Social Security Act (42 U.S.C. 1396r-1a(b)(3)(A)(I)) is amended

(i) by striking "described in subsection (a) or (II) is authorized" and inserting "described in subsection (a), (II) is authorized"; and

(ii) by inserting before the semicolon `` eligibility for benefits under part A of title IV, eligibility of a child to receive benefits under the State plan under this title or title XXI, (III) is a staff member of a public school, child care resource and referral center, or agency administering a plan under part D of title IV, or (IV) is so designated by the State".

(B) Technical amendments. _ Section 1920A of that Act (42 U.S.C. 1396r-1a) is amended _

(i) in subsection (b)(3)(A)(ii), by striking ``paragraph (1)(A)" and inserting ``paragraph (2)(A)"; and

(ii) in subsection (c)(2), in the matter preceding subparagraph (A), by striking ``subsection (b)(1)(A)" and inserting ``subsection (b)(2)(A)".

(2) Removal of requirement that children's health insurance program allotments be reduced by costs related to presumptive eligibility determinations. _

(A) In general. _ Section 2104(d) of the Social Security Act (42 U.S.C. 1397dd(d)) is amended by striking ``the sum of _" and all that follows through the paragraph designation ``(2)" and merging all that remains of subsection (d) into a single sentence.

(B) Effective date. _ The amendment made by subsection (a) shall be deemed to have taken effect on August 5, 1997.

(3) Increased funding for administrative costs related to outreach and eligibility determinations for children. _ Section 1931(h) of the Social Security Act (42 U.S.C. 1396u-1(h)) is amended _

(A) by striking the subsection caption and inserting ``(h) Increased federal matching rate for administrative costs related to outreach and eligibility determinations for children. _";

(B) in paragraph (2), by striking ``eligibility determinations" and all that follows and inserting ``determinations of the eligibility of children for benefits under the State plan under this title or title XXI, outreach to children likely to be eligible for such benefits, and such other outreach-and eligibility-related activities as the Secretary may approve.";

(C) in paragraph (3), by striking ``and ending with fiscal year 2000 shall not exceed \$500,000,000" and inserting ``shall not exceed \$525,000,000"; and

(D) by striking paragraph (4).

(g) Periodic reassessment of spending options. _ Spending options under subsection (b)(2) will be reassessed jointly by the States and Federal government every 5 years and be reported to the Secretary.

Potential Hutchison (R-TX) Amendment on Medicaid Tobacco Recoupment

Press Reports of Hutchison Rider – The 10/6 *Washington Post* suggests that Sen. Kay Bailey Hutchison may propose a rider to the FY 1999 L/HHS Appropriations bill that would preclude HCFA from collecting the Federal Share of state tobacco settlements. [Current law requires HCFA to seek recovery of the Federal portion (e.g. approximately 57%) of reimbursements for Medicaid that may be part of any state tobacco settlement.]

HD, HHS and CBO staff have not seen the actual language of the Hutchison rider. However, HHS staff heard rumors last month that Sen. Hutchison was contemplating this amendment. This type of amendment was not included in either the House or Senate Committee versions of the FY 1999 L/HHS bill.

HCFA Has Not Yet Recouped the Federal Share from the Four State Settlements - Mississippi, Texas, Minnesota and Florida have reached individual state settlements with the tobacco industry. They have not yet submitted the appropriate paperwork to HCFA to notify the agency that these funds would be eligible for Federal recoupment because of a letter that the President sent to the NGA on 12/5/97 which said that the Administration "would prefer to see the allocation of tobacco funds between Federal and state government resolved through legislation." Several other states may be close to resolution with the industry.

The Administration Would Likely Oppose the Hutchison Amendment– Although HD staff have not seen the actual Hutchison rider, the Administration would likely have the following concerns with the proposal:

(1) No Specific Menu of Programs on Which States Could Spend Funds: The Administration's past position during consideration of McCain comprehensive legislation was that it would relinquish Federal recoupment only if the states agree to spend it on certain purposes (e.g. Child Care, Education, and Child Health). The Administration would have serious concerns with the proposal if it did not include such a menu.

(2) Amendment Considered in Absence of Comprehensive Tobacco Legislation: The Administration also did not express opposition to this type of provision in the McCain bill because it was part of comprehensive tobacco legislation and the Federal government stood to gain a substantial share of tobacco receipts. The Federal share of tobacco proceeds would not be addressed in the isolated FY 1999 L/HHS appropriations bill.

(3) The Amendment Would Score as Cost Against the L/HHS Bill: CBO would also likely score this type of an amendment as leading to a Federal cost of \$140 million in FY 1999 and \$1.7 billion over five years. OMB would score no Federal costs.

NGA Staff May Be Seeking Support for a Compromise Amendment -- We understand that NGA and other staff from Gov. Chiles (D-Fla.) may be seeking support

for a variant to the Hutchison Amendment that could include a state menu of programs and have the settlement states pay the estimated CBO costs of these proposal (e.g. \$1.7 billion over 5 years) to the Federal government in order to maintain budget neutrality. Depending how this language was written, the Administration would likely have fewer concerns with this proposal.



October 6, 1998

The Honorable Newt Gingrich
U.S. House of Representatives
2428 Rayburn House Office Building
Washington, DC 20515-1006

Speaker Gingrich:

On September 30, 1998 Senator Kay Bailey Hutchison announced her intention to introduce an amendment to the Labor, HHS, Education Appropriations vehicle that would waive the federal government's claim to the federal portion of any money the states receive as the result of the lawsuits against the tobacco industry. The states brought these suits to recover Medicaid funds spent to treat tobacco-related diseases. Over 50 percent of the money the states spend on Medicaid is paid for by the federal government, but the states dispute how much the federal government should receive as part of these cases. The current legislative proposal would not require the states to spend any of these federal funds to reduce the number of Americans addicted to tobacco or to reduce the death toll from tobacco – the very purpose for which these cases were brought.

We do not object to legislation that would permit the states to retain the funds they receive in these cases, provided, however, that a significant amount of the funds recovered (no less than 30 percent of the federal portion of these funds) is earmarked to reduce tobacco use and the harms caused by tobacco.

We oppose legislation, however, that would waive the federal government's share of these funds if that legislation does not specifically set aside money to reduce tobacco use and the death and disease caused by tobacco.

Over 400,000 Americans died from tobacco-caused disease last year and over a million children started using tobacco for the first time. Funding for tobacco control programs can make a difference. It would be a national tragedy if cases that were brought to recoup billions of dollars spent because of tobacco-caused disease were settled and the federal government relinquished its share of the money without significant funds being used to reduce the death toll from tobacco.

The amount of money at stake is substantial. Four states (Mississippi, Florida, Texas, and Minnesota) have already settled their cases for billions of dollars. The remaining states are in negotiations to settle all of the remaining cases. The media has reliably reported that the tobacco industry has offered to pay approximately \$200 billion over

twenty-five years to settle these cases. Thus, the federal government's share could exceed \$100 billion over twenty-five years or approximately \$40 billion over ten years.

If the Hutchison amendment, or a similar amendment, is considered we urge you to insist that no less than 30 percent of the federal government's share of the funds from the state tobacco Medicaid cases be earmarked specifically for programs to reduce tobacco use and to oppose any legislation that fails to do so. Thank you.

Sincerely,

The ENACT Coalition



Cynthia A. Rice

10/07/98 09:38:42 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP
cc: Cynthia Dailard/OPD/EOP
Subject: D.C. Tobacco Amendments

OMB staff called me last night to check our position on two D.C. related tobacco amendments. Eleanor Holmes Norton had asked the Administration to support the first and oppose the second, which comports with positions we've taken.

- 1) The amendment to allow D.C. to hire a law firm on a contingency basis (which we already had told OMB we support)
- 2) The amendment to impose community service and fines on underage teens who smoke (which I reminded them we had already opposed in a SAP on the grounds of D.C. micromanagement, saying that while we support the objectives we should not legislate for D.C. and not all states.)



Cynthia A. Rice

10/05/98 11:58:42 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Letter from ENACT-- what 20% means

The letter called for 20% of the federal portion of the settlement funds to be spent on tobacco control efforts and says "over 50%" of the settlement funds belong to the feds. Thus I read this as: 20% of 50% going to tobacco control, or 10 percent of the total.

Thus ENACT is pushing for:

- 50 percent unrestricted
- 40 percent menu
- 10 percent tobacco control

Tom Mahr's cover sheet indicate he wants:

- 50 percent unrestricted
- 25 percent menu
- 25 percent tobacco control

The legislative language leaves blank the percentage to be devoted to tobacco control efforts but dictates that of the amount devoted to tobacco control:

- bet. 25-30 shall be spent on cessation
- bet. 25-30 shall be spent on counteradvertising
- bet. 25-30 percent shall be spent on smoking prevention
- the remainder shall be spent to enforce youth access restrictions

Message Sent To:

- Bruce N. Reed/OPD/EOP
- Elena Kagan/OPD/EOP
- Laura Emmett/WHO/EOP
- Christopher C. Jennings/OPD/EOP
- Jeanne Lambrew/OPD/EOP
- Cynthia Dailard/OPD/EOP

United States Senate
WASHINGTON, DC 20510-3403

COMMITTEES
AGRICULTURE, NUTRITION
AND FORESTRY
FINANCE
BUDGET
INDIAN AFFAIRS

FACSIMILE
COVER
SHEET

cc Chris
CR
EK

+ return

PLEASE DELIVER TO: Bruce Reed

ORGANIZATION: DPC

FROM: Tom Mahr

FAX NUMBER: 456-2878

DATE: 10/2

NUMBER OF PAGES: 17
(INCLUDING COVER SHEET)

COMMENTS: As we discussed, here's

some language in case it becomes necessary.
Getting states to spend 25% of the settlements on
this would extrapolate to about \$2 B/yr nationally.
Then another 25% could be reserved for the McLain
menu items. Thanks for the update!

Tom

~~1 credited to the Medicare Preservation Account. Funds
2 credited to this account shall be transferred to the Medi-
3 care Hospital Insurance Trust Fund.~~

4 **SEC. 352. WAIVER OF MEDICAID RECOVERY.**

5 (a) APPLICATION.—

6 (1) IN GENERAL.—The limitation described in
7 paragraph (2) shall apply to the Secretary in a fiscal
8 year with respect to a State described in paragraph
9 (3).

10 (2) LIMITATION.—Cost recovery rules applica-
11 ble under the medicaid program under title XIX of
12 the Social Security Act (42 U.S.C. 1396 et seq.) in-
13 cluding the provisions related to the treatment of
14 overpayments under section 1903(d) of such Act (42
15 U.S.C. 1396b(d)) shall not apply to amounts de-
16 scribed in paragraph (3) in the fiscal year involved.

17 (3) REQUIREMENTS FOR STATE.—A State de-
18 scribed in this paragraph is a State that receives
19 amounts from tobacco manufacturers in settlement
20 of tobacco-related claims in a fiscal year if—

21 (A) the State submits to the Secretary a
22 certification, in such form and by such date as
23 the Secretary may require, that the State will
24 expend at least percent of such amounts in

*had settled tobacco-related claims
with tobacco
manufacturers
prior to October
1, 1998 and that
reports
accounting for
a majority of
domestic
cigarette
production
prior to
October 1, 1998
and that*

1 such fiscal year on tobacco control efforts in ac-
2 cordance with this section;

3 (B) the State submits a State plan in ac-
4 cordance with tobacco-related guidelines pro-
5 mulgated by the Secretary; and

6 (C) the State provides assurances to the
7 Secretary that ^{of the amount determined under paragraph (A),} the State will expend ~~at least 50~~ —

8 (i) ~~(i)~~ not less than 25 percent, nor more
9 than 30 percent, ~~shall be used~~ for cessation ac-
10 tivities;

11 (ii) ~~(ii)~~ not less than 25 percent, nor more
12 than 30 percent, ~~shall be used~~ for counter-ad-
13 vertising activities;

14 (iii) ~~(iii)~~ not less than 25 percent, nor more
15 than 30 percent, ~~shall be used~~ for smoking pre-
16 vention; and

17 (iv) ~~(iv)~~ the remainder of such amounts for ac-
tivities to enforce youth access restrictions.

1 (iii) not less than 25 percent, nor
2 more than 30 percent, for smoking preven-
3 tion; and

4 (iv) the remainder of such amounts
5 for activities to enforce youth access re-
6 strictions.

7 (b) STATE PLAN.—A State plan under subsection

8 (a)³(B)—

9 (1) with respect to cessation activities described
10 in subsection (c) shall specify the activities author-
11 ized under such subsection that the State intends to
12 carry out;

13 (2) with respect to State and community-based
14 prevention activities described in subsection (d),
15 shall specify the activities authorized under such
16 subsection that the State intends to carry out;

17 (3) with respect to counter-advertising activities
18 under subsection (e), shall specify the activities au-
19 thorized under such subsection that the State in-
20 tends to carry out; and

21 (4) with respect to enforcement activities de-
22 scribed in subsection (f), shall specify the activities
23 authorized under such subsection that the State in-
24 tends to carry out.

1 (c) TOBACCO USE CESSATION ACTIVITIES.—In order
2 to meet the requirements of subsection (a), amounts re-
3 quired to be expended for cessation activities under sub-
4 section (a)³(~~4~~)(C)(i) shall be used for the following:

5 (1) Evidence-based cessation activities consist-
6 ent with the tobacco use cessation guidelines issued
7 by the Agency for Health Care Policy and Research
8 or any other evidence-based guidelines approved by
9 the Secretary, described in the plan of the State,
10 submitted in accordance with subsection (b), includ-
11 ing—

12 (A) evidence-based programs designed to
13 assist individuals, especially young people and
14 minorities who have been targeted by tobacco
15 product manufacturers, to quit their use of to-
16 bacco products;

17 (B) training in cessation intervention
18 methods for health plans and health profes-
19 sionals, including physicians, nurses, dentists,
20 health educators, public health professionals,
21 and other health care providers;

22 (C) programs to encourage health insurers
23 and health plans to provide coverage for evi-
24 dence-based tobacco use cessation interventions
25 and therapies, except that the use of any funds

1 under this clause to offset the cost of providing
 2 a smoking cessation benefit shall be on a tem-
 3 porary demonstration basis only;

4 (D) culturally and linguistically appro-
 5 priate programs targeted toward minority and
 6 low-income individuals, individuals residing in
 7 rural and medically underserved areas, unin-
 8 sured individuals, and pregnant women;

9 (E) programs to encourage employer-based
 10 wellness programs to provide evidence-based to-
 11 bacco use cessation intervention and therapies;
 12 and

13 (F) programs that target populations
 14 whose smoking rate is disproportionately high
 15 in comparison to the smoking rate population-
 16 wide in the State.

17 Such programs shall recognize that some individuals
 18 may require more than one attempt for successful
 19 cessation, and shall be tailored to the needs of spe-
 20 cific populations, including minorities.

21 (2) Planning, administration, and educational
 22 activities related to the activities described in para-
 23 graph (1).

24 (3) The monitoring and evaluation of activities
 25 carried out under paragraphs (1) and (2), and re-

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1 porting and disseminating resulting information to
2 health professionals and the public.

3 (4) Targeted pilot programs with evaluation
4 components to encourage innovation and experimen-
5 tation with new methodologies.

6 (d) STATE AND COMMUNITY ACTION ACTIVITIES.—

7 In order to meet the requirements of subsection (a),
8 amounts required to be expended for prevention activities
9 under subsection ^{(a)(3)(C)(iii)} ~~(a)(3)(C)(i)~~ shall be used for the follow-
10 ing:

11 (1) Evidence-based activities for tobacco use
12 prevention and control described in the plan of the
13 State, submitted in accordance with subsection (b),
14 including—

15 (A) State and community initiatives;

16 (B) community-based prevention programs,
17 similar to programs currently funded by NIH;

18 (C) programs focused on those populations
19 within the community that are most at risk to
20 use tobacco products or that have been targeted
21 by tobacco advertising or marketing;

22 (D) school programs to prevent and reduce
23 tobacco use and addiction, including school pro-
24 grams focused in those regions of the State

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1 with high smoking rates and targeted at popu-
2 lations most at risk to start smoking;

3 (E) culturally and linguistically appro-
4 priate initiatives targeted towards minority and
5 low-income individuals, individuals residing in
6 rural and medically underserved areas, and
7 women of child-bearing age;

8 (F) the development and implementation
9 of tobacco-related public health and health pro-
10 motion campaigns and public policy initiatives;

11 (G) assistance to local governmental enti-
12 ties within the State to conduct appropriate
13 anti-tobacco activities.

14 (H) strategies to ensure that the State's
15 smoking prevention activities include minority,
16 low-income, and other undeserved populations;
17 and

18 (I) programs that target populations whose
19 smoking rate is disproportionately high in com-
20 parison to the smoking rate population-wide in
21 the State.

22 (2) Planning, administration, and educational
23 activities related to the activities described in para-
24 graph (1).

1 (3) The monitoring and evaluation of activities
2 carried out under paragraphs (1) and (2), and re-
3 porting and disseminating resulting information to
4 health professionals and the public.

5 (4) Targeted pilot programs with evaluation
6 components to encourage innovation and experimen-
7 tation with new methodologies.

8 (e) COUNTER-ADVERTISING ACTIVITIES.—In order
9 to meet the requirements of subsection (a), amounts re-
10 quired to be expended on counter-advertising activities
11 under subsection ^{(a) (3) (c) (ii)} ~~(a) (2) (C) (iii)~~ shall be used in accordance
12 with the following:

13 (1) IN GENERAL.—A State shall conduct a
14 Statewide campaign to reduce tobacco usage through
15 media-based (such as counter-advertising cam-
16 paigns) and nonmedia-based education, prevention
17 and cessation campaigns designed to discourage the
18 use of tobacco products by individuals, to encourage
19 those who use such products to quit, and to educate
20 the public about the hazards of exposure to environ-
21 mental tobacco smoke.

22 (2) REQUIREMENTS.—The ~~national~~ campaign
23 under paragraph (1) shall—

24 (A) target those populations that have
25 been targeted by tobacco industry advertising

1 using culturally and linguistically appropriate
2 means;

3 (B) include a research and evaluation com-
4 ponent; and

5 (C) be designed in a manner that permits
6 the campaign to be modified for use at the local
7 level.

8 (3) AWARDS.—In carrying out paragraph (1),
9 the ~~Secretary~~ ^{State} may—

10 (A) enter into contracts with or award
11 grants to eligible entities to develop messages
12 and campaigns designed to prevent and reduce
13 the use of tobacco products that are based on
14 effective strategies to effect behavioral changes
15 in children and other targeted populations, in-
16 cluding minority populations; and

17 (B) enter into contracts with or award
18 grants to eligible entities to carry out public in-
19 formational and educational activities designed
20 to reduce the use of tobacco products;

21 (4) ELIGIBILITY.—To be eligible to receive
22 funding under paragraph (3) an entity shall—

23 (A) be a—

24 (i) public entity or a State ^{or local} health de-
25 partment; or

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1 (ii) private or nonprofit private entity
2 that—

3 (I)(aa) is not affiliated with a to-
4 bacco product manufacturer or im-
5 porter;

6 (bb) has a demonstrated record
7 of working effectively to reduce to-
8 bacco product use; or

9 (cc) has expertise in conducting a
10 multi-media communications cam-
11 paign; and

12 (II) has expertise in developing
13 strategies that effect behavioral
14 changes in children and other targeted
15 populations, including minority popu-
16 lations;

17 (C) provide assurances that amounts re-
18 ceived under this subsection will be used in ac-
19 cordance with paragraph (5); and

20 (D) meet any other requirements deter-
21 mined appropriate by the Secretary.

22 (5) USE OF FUNDS.—An entity that receives
23 funds under this subsection shall use amounts pro-
24 vided under the grant or contract to conduct multi-
25 media and non-media public educational, informa-

1 tional, marketing and promotional campaigns that
2 are designed to discourage and de-glamorize the use
3 of tobacco products, encourage those using such
4 products to quit, and educate the public about the
5 hazards of exposure to environmental tobacco smoke.
6 Such amounts may be used to design and implement
7 such activities and shall be used to conduct research
8 concerning the effectiveness of such programs.

9 ----(6) NEEDS OF CERTAIN POPULATIONS.—In
10 awarding grants and contracts under this sub-
11 section, the State shall take into consideration the
12 needs of particular populations, including minority
13 populations, and use methods that are culturally and
14 linguistically appropriate.

15 (7) COORDINATION.—The Secretary shall en-
16 sure that programs and activities under this sub-
17 section are coordinated among the States in order to
18 provide a consistent, effective, nationwide tobacco
19 control campaign.

20 (f) ENFORCEMENT.—In order to meet the require-
21 ments of subsection (a), with respect to enforcement ac-
22 tivities, a State—

23 (1) shall enter into an agreement with the Sec-
24 retary to assume responsibilities for the implementa-

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1 tion and enforcement of a tobacco retailer licensing
2 program;

3 (2) shall prohibit retailers from selling or other-
4 wise distributing tobacco products to individuals
5 under 18 years of age in accordance with the Youth
6 Access Restrictions regulations promulgated by the
7 Secretary (21 C.F.R. 897.14(a) and (b));

8 (3) shall make available to appropriate Federal
9 agencies designated by the Secretary requested in-
10 formation concerning retail establishments involved
11 in the sale or distribution of tobacco products to
12 consumers;

13 (4) shall undertake to enforce compliance with
14 its tobacco retailing licensing program in a manner
15 that can reasonably be expected to reduce the sale
16 and distribution of tobacco products to individuals
17 under 18 years of age;

18 (5) shall conduct monthly random, unan-
19 nounced inspections of sales or distribution outlets
20 in the State to ensure compliance with a law prohib-
21 iting sales of tobacco products to individuals under
22 18 years of age;

23 (6) shall annually submit to the Secretary a re-
24 port describing in detail—

1 (A) the activities carried out by the State
 2 to enforce underage access laws during the fis-
 3 cal year;

4 (B) the extent of success the State has
 5 achieved in reducing the availability of tobacco
 6 products to individuals under the age of 18
 7 years;

8 (C) how the inspections described in para-
 9 graph (5) were conducted and the methods used
 10 to identify outlets, with appropriate protection
 11 for the confidentiality of information regarding
 12 the timing of inspections and other investigative
 13 techniques whose effectiveness depends on con-
 14 tinued confidentiality; and

15 (D) the identity of the single State agency
 16 designated by the Governor of the State to be
 17 responsible for the implementation of the re-
 18 quirements of this section; and

19 (7) shall establish to the satisfaction of the Sec-
 20 retary that it has a law or regulation that includes
 21 the following:

22 (A) LICENSURE; SOURCES; AND NOTICE.—
 23 A requirement for a State or local license for
 24 each retail establishment involved in the sale or
 25 distribution of tobacco products to consumers.

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1 A requirement that a retail establishment may
2 purchase tobacco products only from Federally-
3 licensed manufacturers, importers, or whole-
4 salers. A program under which notice is pro-
5 vided to such establishments and their employ-
6 ees of all licensing requirements and respon-
7 sibilities under State and Federal law relating
8 to the retail distribution of tobacco products.

9 (B) PENALTIES.—

10 (i) CRIMINAL.—Criminal penalties for
11 the sale or distribution of tobacco products
12 to a consumer without a license.

13 (ii) CIVIL.—Civil penalties for the sale
14 or distribution of tobacco products in viola-
15 tion of State law, including graduated fines
16 and suspension or revocation of licenses for
17 repeated violations.

18 (iii) OTHER.—Other programs, in-
19 cluding such measures as fines, suspension
20 of driver's license privileges, or community
21 service requirements, for underage youths
22 who possess, purchase, or attempt to pur-
23 chase tobacco products.

24 (iv) STING OPERATIONS PER-
25 MITTED.—Notwithstanding clause (iii), an

1 individual under the age of 18 years shall
2 be permitted to purchase tobacco products
3 and participate in compliance checks if
4 such activities are undertaken as part of
5 an organized and supervised program for
6 the purpose of ensuring compliance with
7 youth access regulations promulgated by
8 the Secretary at part 897 of title 21, Code
9 of Federal Regulations, or with any other
10 applicable local, State or Federal law re-
11 stricting the access of minors to tobacco
12 products. Such individuals shall not be
13 subject to penalties under clause (iii).

14 (C) JUDICIAL REVIEW.—Judicial review
15 procedures for an action of the State suspend-
16 ing, revoking, denying, or refusing to renew any
17 license under its program.

18 (g) COORDINATION.—Tobacco use cessation and
19 community-based prevention activities described under
20 subsections (c) and (d) may be conducted in conjunction
21 with Federally—funded programs within the State, in-
22 cluding—

23 (1) the special supplemental food program
24 under section 17 of the Child Nutrition Act of 1966
25 (42 U.S.C. 1786);

1 (2) the Maternal and Child Health Services
2 Block Grant program under title V of the Social Se-
3 curity Act (42 U.S.C. 701 et seq.);

4 (3) the State Children's Health Insurance Pro-
5 gram of the State under title XXI of the Social Se-
6 curity Act (42 U.S.C. 13397aa et seq.);

7 (4) the school lunch program under the Na-
8 tional School Lunch Act (42 U.S.C. 1751 et seq.);

9 (5) an Indian Health Service Program;

10 (6) the community, migrant, and homeless
11 health centers program under section 330 of the
12 Public Health Service Act (42 U.S.C. 254b);

13 (7) state-initiated smoking cessation programs
14 that include provisions for reimbursing individuals
15 for medications or therapeutic techniques;

16 (8) the substance abuse and mental health serv-
17 ices block grant program, and the preventive health
18 services block grant program, under title XIX of the
19 Public Health Service Act (42 U.S.C. 300w et seq.);

20 (9) the Medicaid program under title XIX of
21 the Social Security Act (42 U.S.C. 1396 et seq.);
22 and

23 (10) programs administered by the Department
24 of Defense and the Department of Veterans Affairs.

1 (h) LIMITATION.—A State may not apply towards the
2 requirements in subsection (a)(2)(C), amounts used to—

3 (1) make cash payments except with appro-
4 priate documentation to intended recipients of to-
5 bacco use cessation services;

6 (2) fund educational, recreational, or health ac-
7 tivities not based on scientific evidence that the ac-
8 tivity will prevent smoking or lead to success of ces-
9 sation efforts

10 (3) purchase or improve land, purchase, con-
11 struct, or permanently improve (other than minor
12 remodeling) any building or other facility, or pur-
13 chase major medical equipment; or

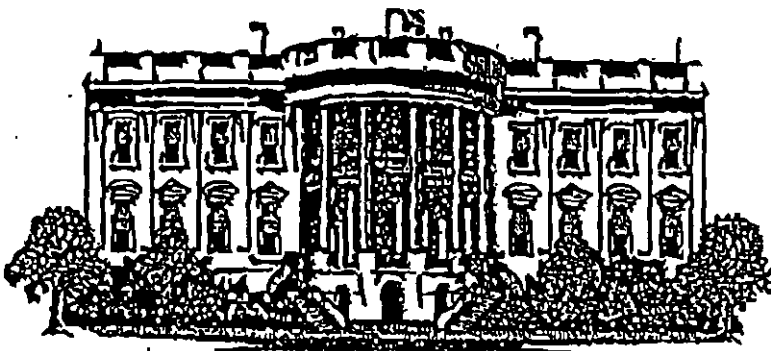
14 (4) satisfy any requirement for the expenditure
15 of non-Federal funds as a condition of the receipt of
16 Federal funds.

17 This subsection shall not apply to the support of targeted
18 pilot programs that use innovative and experimental new
19 methodologies and include an evaluation component.

20 ~~**TITLE IV—LONG-TERM ECO-**~~
21 ~~**NOMIC ASSISTANCE FOR**~~
22 ~~**FARMERS**~~

23 ~~SEC. 401. SHORT TITLE.~~

24 ~~This title may be cited as the “Long-Term Economic~~
25 ~~Assistance for Farmers Act” or the “LEAF Act”.~~



THE WHITE HOUSE

Domestic Policy Council

DATE: _____

FACSIMILE FOR: Elena Kagan

FAX: 62878
PHONE:

FACSIMILE FROM: Cynthia Rice, Special Assistant to the President for Domestic Policy

FAX: 202-456-7431
PHONE: 202-456-2846

NUMBER OF PAGES (INCLUDING COVER): 9

COMMENTS: _____

① Agreement w/ NGA

② McCain statutory language

STATE TOBACCO SETTLEMENT FUNDS

May 15, 1998

- **\$196 billion over 25 years** from the legislation will be allocated to states from a trust fund. These grants will be a mandatory, permanent appropriation. Federal spending for new options on children's health outreach will be netted from this amount.
- **50 percent of the grants** may be used by states for any purpose. The remaining 50 percent will be used for specified restricted purposes, described below.
- **Options for restricted funds.** States can use the restricted funds in any amount that they choose (except for CHIP) to add to any one or all of the following options:
 - Maternal and Child Health Bureau's Title V program
 - Child Care and Development Block Grant
 - Child welfare programs (Title IV-B)
 - Substance Abuse and Mental Health Services Administration grant programs
 - Safe and Drug-Free Schools program
 - Professional Development (Eisenhower) grants
 - Match for the Children's Health Insurance Program (limited to 6 percent of restricted funds)
- **Each program's current matching rules** will be used except for an increased Federal match of 80 percent for child care block grant funds above the appropriated amount.
- **Supplement, not supplanting spending:** Funds from the restricted portion of the grants may not be used as state match for Federal programs (except for CHIP). There will be a maintenance of effort on a program-specific basis, that consists of:
 - 95 percent of the FFY 1997 state spending on the programs listed below, trended by the lower of inflation (CPI) or the Federal appropriation growth.
- **Options for the use of restricted funds will be re-assessed every 5 years.** An independent organization (e.g., General Accounting Office or National Academy of Sciences) will conduct evaluations and assessments of spending options every 5 years, and make recommendations on improvements.

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1 SEC. 452. GRANTS TO STATES.

2 (a) AMOUNTS.—From the amount made available
3 under section 451(a) for each fiscal year, each State shall
4 receive a grant on a quarterly basis according to a for-
5 mula.

6 (b) USE OF FUNDS.—

7 (1) UNRESTRICTED FUNDS.—A State may use
8 funds, not to exceed 50 percent of the amount re-
9 ceived under this section in a fiscal year, for any ac-
10 tivities determined appropriate by the State.

11 (2) RESTRICTED FUNDS.—A State shall use not
12 less than 50 percent of the amount received under
13 this section in a fiscal year to carry out additional
14 activities or provide additional services under—

15 (A) the State program under the maternal
16 and child health services block grant under title
17 V of the Social Security Act (42 U.S.C. 701 et
18 seq.);

19 (B) the State program for child care under
20 the funding for child care under section 418 of
21 the Social Security Act, notwithstanding sub-
22 section (b)(2) of that section;

23 (C) the State program for child welfare
24 and abuse under the Federally-funded child wel-
25 fare and abuse programs under title IV-B of
26 the Social Security Act;

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1 (D) programs administered within the
2 State under the authority of the Substance
3 Abuse and Mental Health Services Administra-
4 tion under title XIX, part B of the Public
5 Health Service Act;

6 (E) the Safe and Drug-Free Schools Pro-
7 gram under title IV, part A, of the Elementary
8 and Secondary Education Act of 1965 (20
9 U.S.C. 7111 et seq.);

10 (F) the Department of Education's Dwight
11 D. Eisenhower Professional Development pro-
12 gram under title II of the Elementary and Sec-
13 ondary Education Act of 1965 (20 U.S.C. 6601
14 et seq.); and

15 (G) the State Children's Health Insurance
16 Program authorized under title XXI of the So-
17 cial Security Act (42 U.S.C. 1397aa et seq.),
18 provided that the amount expended on this pro-
19 gram does not exceed 6 percent of the total
20 amount of restricted funds available to the
21 State each fiscal year.

22 (c) NO SUBSTITUTION OF SPENDING.—Amounts re-
23 ferred to in subsection (b)(2) shall be used to supplement
24 and not supplant other Federal, State, or local funds pro-
25 vided for any of the programs described in subparagraphs

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1 (A) through (G) of subsection (b)(2). Restricted funds, ex-
2 cept as provided for in subsection (b)(2)(G), shall not be
3 used as State matching funds. Amounts provided to the
4 State under any of the provisions of law referred to in
5 such subparagraph shall not be reduced solely as a result
6 of the availability of funds under this section.

7 (d) **FEDERAL-STATE MATCH RATES.**—Matching re-
8 quirements, as provided in the statutory authority for the
9 programs described in subsection (b)(2), apply to each
10 program listed under subsection (b)(2), except for the pro-
11 gram described under subsection (b)(2)(B). For the pro-
12 gram described under subsection (b)(2)(B), after an indi-
13 vidual State has expended resources sufficient to receive
14 its full Federal amount under section 418(a)(2)(B) of the
15 Social Security Act (subject to the matching requirements
16 in section 418(a)(2)(C) of such Act), the Federal share
17 of expenditures shall be 80 percent.

18 (e) **MAINTENANCE OF EFFORT.**—To receive funds
19 under this subsection, States must demonstrate a mainte-
20 nance of effort. This maintenance of effort is defined as
21 the sum of—

22 (1) an amount equal to 95 percent of Federal
23 fiscal year 1997 State spending on the programs
24 under subparagraphs (B), (c), and (D) of subsection
25 (b)(2); and

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1 (2) an amount equal to the product of the
2 amount described in paragraph (1) and—

3 (A) for fiscal year 1999, the lower of—

4 (i) general inflation as measured by
5 the consumer price index for the previous
6 year; or

7 (ii) the annual growth in the Federal
8 appropriation for the program in the pre-
9 vious fiscal year; and

10 (B) for subsequent fiscal years, the lower
11 of—

12 (i) the cumulative general inflation as
13 measured by the consumer price index for
14 the period between 1997 and the previous
15 year; or

16 (ii) the cumulative growth in the Fed-
17 eral appropriation for the program for the
18 period between fiscal year 1997 and the
19 previous fiscal year.

20 The 95-percent maintenance-of-effort requirement in
21 paragraph (1), and the adjustments in paragraph (2),
22 apply to each program identified in paragraph (1) on an
23 individual basis.

24 (f) OPTIONS FOR CHILDREN'S HEALTH OUT-
25 REACH.—In addition to the options for the use of grants

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1 described in this section, the following are new options to
2 be added to States' choices for conducting children's
3 health outreach:

4 (1) EXPANSION OF PRESUMPTIVE ELIGIBILITY
5 OPTION FOR CHILDREN.—

6 (A) IN GENERAL.—Section
7 1920A(b)(3)(A)(I) of the Social Security Act
8 (42 U.S.C. 1396r-1a(b)(3)(A)(I)) is amended—

9 (i) by striking “described in sub-
10 section (a) or (II) is authorized” and in-
11 serting “described in subsection (a), (II) is
12 authorized”; and

13 (ii) by inserting before the semicolon
14 “, eligibility for benefits under part A of
15 title IV, eligibility of a child to receive ben-
16 efits under the State plan under this title
17 or title XXI, (III) is a staff member of a
18 public school, child care resource and refer-
19 ral center, or agency administering a plan
20 under part D of title IV, or (IV) is so des-
21 ignated by the State”.

22 (B) TECHNICAL AMENDMENTS.—Section
23 1920A of that Act (42 U.S.C. 1396r-1a) is
24 amended—

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1 (i) in subsection (b)(3)(A)(ii), by
2 striking "paragraph (1)(A)" and inserting
3 "paragraph (2)(A)"; and

4 (ii) in subsection (c)(2), in the matter
5 preceding subparagraph (A), by striking
6 "subsection (b)(1)(A)" and inserting "sub-
7 section (b)(2)(A)".

8 (2) REMOVAL OF REQUIREMENT THAT CHIL-
9 DREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS
10 BE REDUCED BY COSTS RELATED TO PRESUMPTIVE
11 ELIGIBILITY DETERMINATIONS.—

12 (A) IN GENERAL.—Section 2104(d) of the
13 Social Security Act (42 U.S.C. 1397dd(d)) is
14 amended by striking "the sum of—" and all
15 that follows through the paragraph designation
16 "(2)" and merging all that remains of sub-
17 section (d) into a single sentence.

18 (B) EFFECTIVE DATE.—The amendment
19 made by subsection (a) shall be deemed to have
20 taken effect on August 5, 1997.

21 (3) INCREASED FUNDING FOR ADMINISTRATIVE
22 COSTS RELATED TO OUTREACH AND ELIGIBILITY
23 DETERMINATIONS FOR CHILDREN.—Section 1931(h)
24 of the Social Security Act (42 U.S.C. 1396u-1(h)) is
25 amended—

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1 (A) by striking the subsection caption and
2 inserting “(h) INCREASED FEDERAL MATCHING
3 RATE FOR ADMINISTRATIVE COSTS RELATED TO
4 OUTREACH AND ELIGIBILITY DETERMINATIONS
5 FOR CHILDREN.—”;

6 (B) in paragraph (2), by striking “eligi-
7 bility determinations” and all that follows and
8 inserting “determinations of the eligibility of
9 children for benefits under the State plan under
10 this title or title XXI, outreach to children like-
11 ly to be eligible for such benefits, and such
12 other outreach- and eligibility-related activities
13 as the Secretary may approve.”;

14 (C) in paragraph (3), by striking “and
15 ending with fiscal year 2000 shall not exceed
16 \$500,000,000” and inserting “shall not exceed
17 \$525,000,000”; and

18 (D) by striking paragraph (4).

19 (g) PERIODIC REASSESSMENT OF SPENDING OP-
20 TIONS.—Spending options under subsection (b)(2) will be
21 reassessed jointly by the States and Federal government
22 every 5 years and be reported to the Secretary.

23 **SEC. 453. INDIAN HEALTH SERVICE.**

24 Amounts available under section 451(b)(2)(B) shall
25 be provided to the Indian Health Service to be used for

The Medicare Care Recovery Act Amendments of 1998

Sec. 1. – Section 2651 of Title 28, United States Code, is amended as follows:

In subsection (a),

Replacing the words “creating a tort liability upon” with “in which”

Replacing the words “to pay damages therefor” with “caused the injury or disease”

Inserting the words “or defenses against” between “independent of the rights of” and “the injured or diseased person”

In subsection (d),

Inserting “(1)” before the current section; and

Adding a new subsection “(2)The United States may, to enforce this right, establish causation and the amount of damages for which a defendant or defendants may be liable through the use of statistical analysis or epidemiological evidence or both.

In subsection (f)

Adding a new subsection “(3) Any amount recovered under this section for Medicare payments made to members of the public who are Medicare beneficiaries shall be credited to the Medicare trust fund.”

42 U.S.C.A. S 2651

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 32--THIRD PARTY LIABILITY FOR HOSPITAL AND MEDICAL CARE

Sec. 2651. Recovery by United States

(a) Conditions; exceptions; persons liable; amount of recovery; subrogation; assignment

In any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, after the effective date of this Act, under circumstances ~~creating a tort liability upon~~ in which some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) caused the injury or disease, ~~to pay damages therefor~~, the United States shall have a right to recover (independent of the rights of or defenses against the injured or diseased person) from said third person, or that person's insurer, the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for and shall, as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for. The head of the department or agency of the United States furnishing such care or treatment may also require the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the extent of that right or claim.

(b) Pay and allowances

If a member of the uniformed services is injured, or contracts a disease, under circumstances creating a tort liability upon a third person (other than or in addition to the United States and except employers of seamen referred to in subsection (a) of this section) for damages for such injury or disease and the member is unable to perform the member's regular military duties as a result of the injury or disease, the United States shall have a right (independent of the rights of the member) to recover from the third person or an insurer of the third person, or both, the amount equal to the total amount of the pay that accrues and is to accrue to the member for the period for which the member is unable to perform such duties as a result of the injury or disease and is not assigned to perform other military duties.

(c) Third-party beneficiary status of United States

(1) If, pursuant to the laws of a State that are applicable in a case of a member of the uniformed services who is injured or contracts a disease as a result of tortious conduct of a third person,

there is in effect for such a case (as a substitute or alternative for compensation for damages through tort liability) a system of compensation or reimbursement for expenses of hospital, medical, surgical, or dental care and treatment or for lost pay pursuant to a policy of insurance, contract, medical or hospital service agreement, or similar arrangement, the United States shall be deemed to be a third-party beneficiary of such a policy, contract, agreement, or arrangement.

(2) For the purposes of paragraph (1)--

(A) the expenses incurred or to be incurred by the United States for care and treatment for an injured or diseased member as described in subsection (a) of this section shall be deemed to have been incurred by the member;

(B) the cost to the United States of the pay of the member as described in subsection (b) of this section shall be deemed to have been pay lost by the member as a result of the injury or disease; and

(C) the United States shall be subrogated to any right or claim that the injured or diseased member or the member's guardian, personal representative, estate, dependents, or survivors have under a policy, contract, agreement, or arrangement referred to in paragraph (1) to the extent of the reasonable value of the care and treatment and the total amount of the pay deemed lost under subparagraph (B).

(d) Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings

(1) The United States may, to enforce a right under subsections (a), (b), and (c) of this section intervene or join in any action or proceeding brought by the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay; or (2) if such action or proceeding is not commenced within six months after the first day in which care and treatment is furnished or paid for by the United States in connection with the injury or disease involved, institute and prosecute legal proceedings against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay, in a State or Federal court, either alone (in its own name or in the name of the injured person, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors.

(2) The United States may, to enforce this right, establish causation and the amount of damages for which a defendant or defendants may be liable through the use of statistical analysis or epidemiological evidence or both.

(e) Veterans' exception

The provisions of this section shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Department of Veterans Affairs to an eligible veteran for a service-connected disability under the provisions of chapter 17 of Title 38.

(f) Credits to appropriations; regulations

(1) Any amount recovered under this section for medical care and related services furnished by a military medical treatment facility or similar military activity shall be credited to the appropriation or appropriations supporting the operation of that facility or activity, as determined under regulations prescribed by the Secretary of Defense.

(2) Any amount recovered under this section for the cost to the United States of pay of an injured or diseased member of the uniformed services shall be credited to the appropriation that supports the operation of the command, activity, or other unit to which the member was assigned at the time of the injury or illness, as determined under regulations prescribed by the Secretary concerned.

(3) Any amount recovered under this section for Medicare payments made to members of the public who are Medicare beneficiaries shall be credited to the Medicare trust fund.

(g) Definitions

For the purposes of this section:

(1) The term "uniformed services" has the meaning given such term in section 101 of Title 10.

(2) The term "tortious conduct" includes any tortious omission.

(3) The term "pay", with respect to a member of the uniformed services, means basic pay, special pay, and incentive pay that the member is authorized to receive under Title 37, or any other law providing pay for service in the uniformed services.

(4) The term "Secretary concerned" means--

(A) the Secretary of Defense, with respect to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a service in the Navy);

(B) the Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy;

(C) the Secretary of Health and Human Services, with respect to the commissioned corps of the Public Health Service; and

(D) the Secretary of Commerce, with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

Sec. 2652. Regulations

(a) Determination and establishment of reasonable value of care and treatment

The President may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

(b) Settlement, release and waiver of claims

To the extent prescribed by regulations under subsection (a) of this section, the head of the department or agency of the United States concerned may (1) compromise, or settle and execute a release of, any claim which the United States has by virtue of the right established by section 2651 of this title; or (2) waive any such claim, in whole or in part, for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in care or treatment described in section 2651 of this title.

(c) Damages recoverable for personal injury unaffected

No action taken by the United States in connection with the rights afforded under this legislation shall operate to deny to the injured person the recovery for that portion of his damage not covered hereunder.

Sec. 2653. Limitation or repeal of other provisions for recovery of hospital and medical care costs

This chapter does not limit or repeal any other provision of law providing for recovery by the United States of the cost of care and treatment described in section 2651 of this title.

The Medicare Care Recovery Act Amendments of 1998

Sec. 1. – Section 2651 of Title 28, United States Code, is amended as follows:

In subsection (a),

Replacing the words “creating a tort liability upon” with “in which”

Replacing the words “to pay damages therefor” with “caused the injury or disease”

Inserting the words “or defenses against” between “independent of the rights of” and “the injured or diseased person”

In subsection (f)

Adding a new subsection “(3) Any amount recovered under this section for Medicare payments made to members of the public who are Medicare beneficiaries shall be credited to the Medicare trust fund.”

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 32--THIRD PARTY LIABILITY FOR HOSPITAL AND MEDICAL CARE

Sec. 2651. Recovery by United States

(a) Conditions; exceptions; persons liable; amount of recovery; subrogation; assignment

In any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, after the effective date of this Act, under circumstances ~~creating a tort liability upon in which~~ some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) caused the injury or disease, ~~to pay damages therefor~~, the United States shall have a right to recover (independent of the rights of or defenses against the injured or diseased person) from said third person, or that person's insurer, the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for and shall, as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for. The head of the department or agency of the United States furnishing such care or treatment may also require the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the extent of that right or claim.

(b) Pay and allowances

If a member of the uniformed services is injured, or contracts a disease, under circumstances creating a tort liability upon a third person (other than or in addition to the United States and except employers of seamen referred to in subsection (a) of this section) for damages for such injury or disease and the member is unable to perform the member's regular military duties as a result of the injury or disease, the United States shall have a right (independent of the rights of the member) to recover from the third person or an insurer of the third person, or both, the amount equal to the total amount of the pay that accrues and is to accrue to the member for the period for which the member is unable to perform such duties as a result of the injury or disease and is not assigned to perform other military duties.

(c) Third-party beneficiary status of United States

(1) If, pursuant to the laws of a State that are applicable in a case of a member of the uniformed services who is injured or contracts a disease as a result of tortious conduct of a third person,

there is in effect for such a case (as a substitute or alternative for compensation for damages through tort liability) a system of compensation or reimbursement for expenses of hospital, medical, surgical, or dental care and treatment or for lost pay pursuant to a policy of insurance, contract, medical or hospital service agreement, or similar arrangement, the United States shall be deemed to be a third-party beneficiary of such a policy, contract, agreement, or arrangement.

(2) For the purposes of paragraph (1)--

(A) the expenses incurred or to be incurred by the United States for care and treatment for an injured or diseased member as described in subsection (a) of this section shall be deemed to have been incurred by the member;

(B) the cost to the United States of the pay of the member as described in subsection (b) of this section shall be deemed to have been pay lost by the member as a result of the injury or disease; and

(C) the United States shall be subrogated to any right or claim that the injured or diseased member or the member's guardian, personal representative, estate, dependents, or survivors have under a policy, contract, agreement, or arrangement referred to in paragraph (1) to the extent of the reasonable value of the care and treatment and the total amount of the pay deemed lost under subparagraph (B).

(d) Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings

The United States may, to enforce a right under subsections (a), (b), and (c) of this section intervene or join in any action or proceeding brought by the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay; or (2) if such action or proceeding is not commenced within six months after the first day in which care and treatment is furnished or paid for by the United States in connection with the injury or disease involved, institute and prosecute legal proceedings against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay, in a State or Federal court, either alone (in its own name or in the name of the injured person, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors.

(e) Veterans' exception

The provisions of this section shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Department of Veterans Affairs to an eligible veteran for a service-connected disability under the provisions of chapter 17 of Title 38.

(f) Credits to appropriations; regulations

(1) Any amount recovered under this section for medical care and related services furnished by a

military medical treatment facility or similar military activity shall be credited to the appropriation or appropriations supporting the operation of that facility or activity, as determined under regulations prescribed by the Secretary of Defense.

(2) Any amount recovered under this section for the cost to the United States of pay of an injured or diseased member of the uniformed services shall be credited to the appropriation that supports the operation of the command, activity, or other unit to which the member was assigned at the time of the injury or illness, as determined under regulations prescribed by the Secretary concerned.

(3) Any amount recovered under this section for Medicare payments made to members of the public who are Medicare beneficiaries shall be credited to the Medicare trust fund.

(g) Definitions

For the purposes of this section:

(1) The term "uniformed services" has the meaning given such term in section 101 of Title 10.

(2) The term "tortious conduct" includes any tortious omission.

(3) The term "pay", with respect to a member of the uniformed services, means basic pay, special pay, and incentive pay that the member is authorized to receive under Title 37, or any other law providing pay for service in the uniformed services.

(4) The term "Secretary concerned" means--

(A) the Secretary of Defense, with respect to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a service in the Navy);

(B) the Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy;

(C) the Secretary of Health and Human Services, with respect to the commissioned corps of the Public Health Service; and

(D) the Secretary of Commerce, with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

Sec. 2652. Regulations

(a) Determination and establishment of reasonable value of care and treatment

The President may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

(b) Settlement, release and waiver of claims

To the extent prescribed by regulations under subsection (a) of this section, the head of the department or agency of the United States concerned may (1) compromise, or settle and execute a release of, any claim which the United States has by virtue of the right established by section 2651 of this title; or (2) waive any such claim, in whole or in part, for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in care or treatment described in section 2651 of this title.

(c) Damages recoverable for personal injury unaffected

No action taken by the United States in connection with the rights afforded under this legislation shall operate to deny to the injured person the recovery for that portion of his damage not covered hereunder.

Sec. 2653. Limitation or repeal of other provisions for recovery of hospital and medical care costs

This chapter does not limit or repeal any other provision of law providing for recovery by the United States of the cost of care and treatment described in section 2651 of this title.

The Medicare Care Recovery Act Amendments of 1998

Sec. 1. - Section 2651 of Title 28, United States Code, is amended as follows:

In subsection (a),

striking the words "under circumstances creating a tort liability upon some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) to pay damages therefor,";

Replacing the words "(independent of the rights of the injured or diseased person" with "(independent of the rights of [or defenses against] the injured or diseased person"; and

Replacing the words "said third person" with "any third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) who caused the injury or disease";

In subsection (d),

Inserting "(1)" before the current subsection; and

Adding a new subsection "(2)The United States may, to enforce this right, establish causation and the amount of damages for which a defendant or defendants may be liable through the use of statistical analysis or epidemiological evidence or both.

In subsection (f)

Adding a new subsection "(3) Any amount recovered under this section for Medicare payments made to members of the public who are Medicare beneficiaries shall be credited to the Medicare trust fund."

42 U.S.C.A. S 2651

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 32--THIRD PARTY LIABILITY FOR HOSPITAL AND MEDICAL CARE

Sec. 2651. Recovery by United States

(a) Conditions; exceptions; persons liable; amount of recovery; subrogation; assignment

In any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, after the effective date of this Act, ~~under circumstances creating a tort liability upon some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) to pay damages therefor,~~ the United States shall have a right to recover (independent of the rights of ~~third parties against~~ the injured or diseased person) from ~~any~~ third person ~~other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) who caused the injury or disease~~ or that person's insurer, the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for and shall, as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished, to be furnished, paid for, or to be paid for. The head of the department or agency of the United States furnishing such care or treatment may also require the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the extent of that right or claim.

(b) Pay and allowances

If a member of the uniformed services is injured, or contracts a disease, under circumstances creating a tort liability upon a third person (other than or in addition to the United States and except employers of seamen referred to in subsection (a) of this section) for damages for such injury or disease and the member is unable to perform the member's regular military duties as a result of the injury or disease, the United States shall have a right (independent of the rights of the member) to recover from the third person or an insurer of the third person, or both, the amount equal to the total amount of the pay that accrues and is to accrue to the member for the period for which the member is unable to perform such duties as a result of the injury or disease and is not assigned to perform other military duties.

(c) Third-party beneficiary status of United States

(1) If, pursuant to the laws of a State that are applicable in a case of a member of the uniformed

services who is injured or contracts a disease as a result of tortious conduct of a third person, there is in effect for such a case (as a substitute or alternative for compensation for damages through tort liability) a system of compensation or reimbursement for expenses of hospital, medical, surgical, or dental care and treatment or for lost pay pursuant to a policy of insurance, contract, medical or hospital service agreement, or similar arrangement, the United States shall be deemed to be a third-party beneficiary of such a policy, contract, agreement, or arrangement.

(2) For the purposes of paragraph (1)—

(A) the expenses incurred or to be incurred by the United States for care and treatment for an injured or diseased member as described in subsection (a) of this section shall be deemed to have been incurred by the member;

(B) the cost to the United States of the pay of the member as described in subsection (b) of this section shall be deemed to have been pay lost by the member as a result of the injury or disease; and

(C) the United States shall be subrogated to any right or claim that the injured or diseased member or the member's guardian, personal representative, estate, dependents, or survivors have under a policy, contract, agreement, or arrangement referred to in paragraph (1) to the extent of the reasonable value of the care and treatment and the total amount of the pay deemed lost under subparagraph (B).

(d) Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings

~~(1)~~ The United States may, to enforce a right under subsections (a), (b), and (c) of this section intervene or join in any action or proceeding brought by the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay; or (2) if such action or proceeding is not commenced within six months after the first day in which care and treatment is furnished or paid for by the United States in connection with the injury or disease involved, institute and prosecute legal proceedings against the third person who is liable for the injury or disease or the insurance carrier or other entity responsible for the payment or reimbursement of medical expenses or lost pay, in a State or Federal court, either alone (in its own name or in the name of the injured person, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors.

~~(2) The United States may, to enforce this right, establish causation and the amount of damages for which a defendant or defendants may be liable through the use of statistical analysis, or epidemiological evidence, or both.~~

(e) Veterans' exception

The provisions of this section shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Department of Veterans Affairs to an eligible veteran for a service-connected disability under the provisions of chapter 17 of Title 38.

(f) Credits to appropriations; regulations

(1) Any amount recovered under this section for medical care and related services furnished by a military medical treatment facility or similar military activity shall be credited to the appropriation or appropriations supporting the operation of that facility or activity, as determined under regulations prescribed by the Secretary of Defense.

(2) Any amount recovered under this section for the cost to the United States of pay of an injured or diseased member of the uniformed services shall be credited to the appropriation that supports the operation of the command, activity, or other unit to which the member was assigned at the time of the injury or illness, as determined under regulations prescribed by the Secretary concerned.

~~(3) Any amount recovered under this section for Medicare payments made to members of the public who are Medicare beneficiaries shall be credited to the Medicare trust fund.~~

(g) Definitions

For the purposes of this section:

- (1) The term "uniformed services" has the meaning given such term in section 101 of Title 10.
- (2) The term "tortious conduct" includes any tortious omission.

(3) The term "pay", with respect to a member of the uniformed services, means basic pay, special pay, and incentive pay that the member is authorized to receive under Title 37, or any other law providing pay for service in the uniformed services.

(4) The term "Secretary concerned" means--

(A) the Secretary of Defense, with respect to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a service in the Navy);

(B) the Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy;

(C) the Secretary of Health and Human Services, with respect to the commissioned corps of the Public Health Service; and

(D) the Secretary of Commerce, with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

Sec. 2652. Regulations

(a) Determination and establishment of reasonable value of care and treatment

The President may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

(b) Settlement, release and waiver of claims

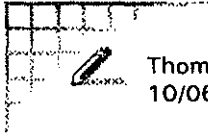
To the extent prescribed by regulations under subsection (a) of this section, the head of the department or agency of the United States concerned may (1) compromise, or settle and execute a release of, any claim which the United States has by virtue of the right established by section 2651 of this title; or (2) waive any such claim, in whole or in part, for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in care or treatment described in section 2651 of this title.

(c) Damages recoverable for personal injury unaffected

No action taken by the United States in connection with the rights afforded under this legislation shall operate to deny to the injured person the recovery for that portion of his damage not covered hereunder.

Sec. 2653. Limitation or repeal of other provisions for recovery of hospital and medical care costs

This chapter does not limit or repeal any other provision of law providing for recovery by the United States of the cost of care and treatment described in section 2651 of this title.



Thomas L. Freedman
10/06/98 05:10:13 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Mary L. Smith/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: news updates for tomorrow am

1. The Senate passed the agricultural appropriations bill today without a veto proof majority, 55-43. We have threatened to veto the \$60 billion bill because its \$4.2 billion in emergency aid is \$3.1 billion less than the president wants. The bill includes about \$51 million for the President's Food Safety Initiative, \$31 million for USDA, \$20 million for FDA. when added to the \$5 million we had previously gotten for CDC it totals \$56 million out of a proposed \$101 million package.

2. Rep. Etheridge's (D-NC) staff is pushing the idea of lifting the ban on US government involvement in promoting exports of tobacco leaf. It is possible Etheridge will call Erskine. He will likely would ask Erskine for the Administration to at least stay neutral. They are faxing the language they are asking Glickman to agree to, Dallas said Glickman wouldn't do it without WH sign off.