

THE WHITE HOUSE
WASHINGTON

12-8-94

JENNINGS

KLEIN

Do you know
anything about
this?

-Jeremy.

I've sent to
KEVIN + Joel Klein.

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December 2, 1994

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MEMORANDUM

TO: Beth Prichard Alpert
Executive Assistant to the Vice-President

FROM: Sana F. Shtasel *BS*
Feldesman, Tucker, Leifer, Fidell & Bank
202-466-8960

RE: National Association of Community Health Centers'
Litigation

DATE: December 2, 1994

I. The Lawsuit

The technical name of the lawsuit is National Association of Community Health Centers ("NACHC") v. Shalala.

Since the time the lawsuit was originally filed in June 1994, NACHC has been joined by the following parties: (1) The National Family Planning & Reproductive Health Association ("NFPRHA"), (2) The American College of Nurse-Midwives, and (3) the National Rural Health Association. There have, in addition, been eight state interveners who have come in on the side of the federal government. At this point, both sides have filed motions for summary judgment. We are awaiting an oral argument date from the

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Court (U.S. District Court for the District of Columbia, Judge Harold H. Greene) and, it is likely that the decision will be rendered within weeks of oral argument. In short, there should be a final decision in the case somewhere between six weeks and three months from now.

II. Issues in Lawsuit**a. Parties**

NACHC is an association formed in the mid-1970's to represent the interests of community health centers. Community health centers were initially created as medical analogs to the national legal services program during President Johnson's War on Poverty, and, along with Headstart has been one of that war's more notable successes. The program was shifted to HHS (HEW) in 1973 and has flourished since then, with approximately 650 centers and 2000 delivery sites in medically-underserved areas around the country. The centers serve more than 7 million patients annually, the poorest and sickest in the nation, providing comprehensive primary and preventive care and transportation, translation, and other health information and education services without regard to insurance or ability to pay. The vast majority of these patients are women and children.

The National Family Planning and Reproductive Health Association represents virtually all of the publicly-funded domestic family planning community. NFPRHA membership encompasses more than ninety percent (90%) of the 4000 recipients of Title X funds for family planning services. More than 4

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million poor women, adolescents and men receive Title X services each year.

The American College of Nurse-Midwives, the professional organization of certified nurse-midwives ("CNMs"), represents more than 5000 CNMs nationwide. Care by CNMs incorporates all of the essential factors of primary care, including evaluation, assessment, treatment and referral as required, focusing on the ambulatory care of women and newborns and emphasizing health promotion, education, and disease prevention. CNMs are often the initial contact for health care delivery to women.

The National Rural Health represents some 1,700 individuals, organizations and providers nationwide, including rural health clinics, hospitals, community and migrant health centers, state health departments, university programs, physicians, nurses, dentists, non-physician providers, health planners, researchers, educators and policy makers, all of whom work to represent the health care needs of rural America and develop and promote solutions to rural health care problems at the local, regional, and national levels.

b. Legal Issues

The fundamental legal question in the lawsuit is whether HHS may use Section 1115 of the Social Security Act to launch a series of essentially replicative undertakings under the Medicaid program pursuant to which States typically initiate Statewide capitated managed care projects and, in the process, are allowed to ignore most of the numerous requirements and

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protections that ordinarily apply under the Medicaid Act. There are now eight states with approved Section 1115 waivers and, we believe, approximately 16 more in the pipeline.

c. Practical Issues

Included in the Medicaid Act requirements/projections that States have been allowed to ignore in the Section 1115 projects are specific requirements designed to protect the rights of patients to select community health centers and family planning organizations as their primary health care providers. Also included have been requirements guaranteeing both community health centers and family planning agencies reimbursement that adequately covers the costs of their treatment of Medicaid patients. What is happening as a result of the waiver of these requirements is that health centers and family planning agencies are losing significant levels of reimbursement, resulting both in the reduction of crucial primary care services, the laying-off of doctors and staff, and, in some cases, the closing of health centers and rural health clinics. In addition, the waivers often make many more people eligible for Medicaid - a goal that we support - but the centers cannot survive if they must treat more persons and lose money on each. As a result, the very people health care reform is intended to help are being denied essential services, their choice of providers, and their access to comprehensive, primary and preventive health care.

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Prior to initiating the lawsuit, NACHC made a number of attempts to meet with and resolve its differences with Bruce Vladeck, the Administrator of HCFA. At some point, Mr. Vladeck advised the health centers that he had attempted to secure White House approval to work out some resolution but was unable to give any response. There were, and have been, implications that the Administration's relationship with the National Governors' Association is responsible for current Section 1115 policy. If the plaintiffs are successful in this lawsuit, the Administration's further utilization of Section 1115 experimental authority will be severely curtailed. Only truly unique State experiments in the Medicaid and Welfare Programs would be authorized.

Recognizing that the Administration, especially after the mid-term elections, may need a much broader license under Section 1115, the plaintiffs -- who want to support this Administration, are its natural constituents, and, indeed were embraced by the First Lady in her speech to the National Women's Law Center Wednesday evening -- have become increasingly concerned that their victory could be very injurious both to the Administration and to the poor women, children and men they represent. For this reason, we have engaged in numerous attempts to achieve a "win-win" "settlement", both with the Justice Department and HHS. In these attempts, we have sketched out a resolution well short of the necessity of a court injunction against future Section 1115

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experiments. So far, however, no one with whom we have dealt has appeared empowered to sit in a room, roll their shirt sleeves up, and attempt to work out a solution that is acceptable to all concerned.

We welcome any assistance you can be in this effort. We would appreciate the opportunity to meet with you, the Office of the White House Counsel, the Office of Public Liaison and any and all other persons necessary to a resolution of this matter in which the Administration can be proud.

THE WHITE HOUSE
WASHINGTON

October 28, 1994

MEMORANDUM FOR CHRIS JENNINGS

FROM: Ellen Seidman, NEC

SUBJECT: DOJ involvement in development of health care initiatives

At a recent staff meeting, I raised with Bob Rubin the question of early participation by the Justice Department in development of any new proposals concerning health care, to ensure that issues of constitutionality, liability and malpractice, privacy, fraud, and bankruptcy -- as well as antitrust -- are effectively factored into proposals as they are developed. He asked me to provide you with the names of people at Justice who could work with you. The relevant people are:

Cindy Lebow - Senior Counsel for Policy in the Civil Division - 514-3045
and

Chris Schroeder in the Office of Legal Counsel - 514-3714, or 919-613-7096, at Duke Law School where he teaches part time.

Both Cindy and Chris are Clinton Administration appointees. I have worked closely and effectively with Cindy on bankruptcy matters. I understand Chris was the DOJ point person and fire marshal on legal questions with respect to the prior proposal. Cindy suggested they both be involved, particularly since Chris is here only part of the time.

cc: Bob Rubin

Stacey -
Pl get Ellen's
#. I'd like to

[Handwritten initials]

456-2902
6-5359

Let her
also know
[Handwritten signature]

Stacey -
Left message,
but I'd like this
fixed to Jen.
Thanks
[Handwritten signature]

TO: Bob Rubin
FROM: Jennifer Klein
DATE: 11/29/94
RE: Justice Department Contacts

Ellen Seidman contacted us about people at the Justice Department who should participate in health care reform discussions. I keep in touch with a team at Justice that includes the two people she mentioned. The team has been involved in the preparation for the presentation of the legal issues to the Map Room group on Thursday.

I have also been periodically updating our contacts at other departments (e.g., Veterans, Defense and Education).

Counsel Meeting

- Describe staffing structure
 - OMB -- will need to be approved by Bob Damus
-- need to identify org responsibilities
 - DNC
- Describe budget needs -- travel, correspondence, printing.
Plan to ask agency for funding.
- Travel -- when can organizations pay?
→ 9 people

Detailee - count toward personnel

→ ^{White House} need to assume portion of salary during after 6 mos.

Agency rep - rep. agency to task force / committee

Budget - no interagency activity can be funded by more than 1 agency.

NEC/DPC - Coordinating interagency effort

Clear definition of interagency effort - then will
could not fund

HHS - Kevin

Treasury - Josh, Kevin Knight

Tom O'Donnell - work w/ Beth Nolan on ~~the~~ status for
David Cutler -- works for Tyson, writes memos to Tyson