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OFFICE OF GOVERNOR RONNIE MUSGROVE  
INTEROFFICE MEMORANDUM

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**TO:** BOYD  
**FROM:** RILEY  
**SUBJECT:** NGA CONFERENCE CALL ON TOBACCO FUNDS  
**DATE** 5/26/00  
**CC:** HEALTH FILE

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Below are my notes from the May 24, 3:00 (EST) NGA conference call on the implications of bankruptcy on tobacco companies and new state plans for tobacco settlement dollars

- Richard Daynog (?) was the featured speaker – he's currently working w/ Smokeless States (group for tobacco control)
- Issue: Engel case possibility that so much awarded in punitive damages against tobacco companies (signatories to Master Settlement agreement (MSA)) and all found liable for tort (fraud, conspiracy), so all held for punitive; FL court said all tobacco companies would be assessed lump sum for punitive for citizens (FL has 200K-500K citizens that are included in class), verdict can be tens of billions (Phil Morris will have 10-20 billion in damages); appellate court will probably confirm lower courts; Sup Court likely to uphold, maybe reduced; then tobacco companies pay into escrow fund until decided who in FL is member of class and entitled to part of agreement
- What is making everyone freak out? The companies involved and punitive damages substantial; several phases – 1<sup>st</sup>, jury said companies all liable; 2<sup>nd</sup> 3 plaintiffs each got \$4 million; 3<sup>rd</sup> phase (started Monday) to assess punitive damages; 4<sup>th</sup> phase assessing for other 1,000s of members of smoking class; tobacco companies cause more harm than they can pay or even more than they are worth (cause \$70 billion in health care, \$70 billion in lost productivity) no way companies can produce; companies can raise prices to maximum level, would only generate \$30-40 billion revenue; once companies held liable for fraudulent behavior of smokers, there's no way they can cover costs
- What is state to do? Companies and tobacco states try to stop lawsuits; other states work to protect their income from settlements

- 1<sup>st</sup> approach: throw public interest out window except preserving payments, do everything possible to protect companies; difficulty is it is not going to work, even tobacco state legislation didn't protect companies' assets from judgment; as long as legal system operates at fed and state level, if Congress doesn't pass legislation (considered 3 years ago – 6/20/97 – global settlement – would have limited liability), but was politically unpalatable (why should tobacco industry be favored and protected?); tobacco companies then sabotaged rest of deal and it didn't go through Senate; this approach opposes public health and opinion; sacrifices one interest of constituents for another interest; not appropriate public policy
- 2<sup>nd</sup> approach: passed by FL senate, but not House; MSA – non-participating manufacture adjustment (inserted by tobacco companies); imposes tax on non-participating manufacturers equal to amount of payment owed by participating manufacturers; possible economically b/c MSA and state deals not structured as damages, but as excise taxes (fluctuate) and mostly paid for by consumers (somewhat by manufacturers due to lower sales); 8% drop in cigarette sales; incentives for states to pass statutes require non-participating manufacturers or apply tax; most states passed
- every state can, to get out of bed w/ tobacco companies, impose a contingent excise tax on cigarettes, contingent of co failing to pay obligations under MSA, put states in different position than if company goes bankrupt or Marlboro not produced by Phillip Morris USA, but by Phillip Morris international division; SB 1998 E-1 (FL website) imposed excise tax on all cigarettes collectible through middle men, but tax waived for cigarette where manufacturer has paid share of MSA obligations; this approach makes states covered – states can stop worrying about good health of tobacco industry while resting sure that money is there; modeled on procedure already passed and not already imposing a tax already there, but divorcing state from health of tobacco companies
- Summers from GA: so companies are exempt if meet net payment? YES – Section 2 of FL bill addresses this. Whatever would have been due and if paid, then exempt for next 12 months –
- Summers from GA: is FL only state attempted? Daynog said YES – issue only heated up in FL b/c people interested in protecting income went to FL legislature and said eliminate damages in Engle case and FL Senate appointed committee to study issue and this was developed by committee – Senate passed whole package, House only passed the bonding section
- ?? from NGA: how does this help w/ the companies not having money at the end of the rainbow? Daynog said helps w/ bankruptcy court; there will be a JUNE 3 conference @ Northeastern on possible bankruptcy; he thinks companies would go into reorganization (Chapter 11) rather than straight bankruptcy, so as long as

cigarettes still sold, then state would collect tax; market for cigarettes is largely market for particular brands; brand name has tremendous equity and as long as brands continued, states could collect tax; benefits to state include much healthier state, tax revenue loss offset by health savings; offset revenue loss by higher tax on cigs sold

- How quickly should states try to pass legislation? Daynag said states could wait until next session b/c can impose tax at any point. Political advantage to doing before events happen is it is a low heat political issue (not a lot of attention)
- **STATE TOBACCO CONTROL PROGRAMS:**
- **David Cole, WI:** plan is in development; [www.dhfs.state.wi.us](http://www.dhfs.state.wi.us) (tobacco control board) – established. in last year’s legislative session; est. governor-appointed board to oversee tobacco settlement (\$140 M annually) \$23.5 to board for youth prevention, adult use cessation, elimination of environmental smoke; board responsible for 1) strategic plan 2) process for allocating funds 3) monitoring of funded programs to the board – board is very strong, several physicians, academia, 2 HS kids, college kid, stat superintendent of schools
- Will start planning thru 1) sub-committee meetings (youth prevention sub-committee, statewide sub-committee, community sub-committee) w/ each setting goals, identifying categories that board will fund, identifying indicators of impact of funding
- Board trying to get money to communities and whatever support has to have research base in order to identify what is working
- 2) During sub-committee meetings, there will also be a series of statewide video conferences
- 3) Board members make large scale decisions on funding
- Gov’s office required strategic planning
- **Lynn Howell, DEL:** Delaware Health Fund Advisory committee made recommendations to Legislature (close on June 30) – last July, the Governor established the committee and the Legislature dictated that the \$\$ be spent for health related purposes – committee is 11 members appointed by Gov and the House and Senate leadership; committee is chaired by Sec of Health and Social services – committee met every 2 weeks from Oct to April; held state public hearings; committee then developed recommendations
- 9 categories outlined in recommendations; committee adopted guiding principles that \$\$ be used for healthier citizens, \$\$ towards funding initiative should be adjustable; used for future citizens, focus on established ideas and programs and

should focus on initiatives that didn't require growing bigger government – \$32M for FY 01 budget:

- \$17M into strategic reserve fund managed by cash management financial board – not putting aside for only interest, but all money available as needed; \$\$ not allowed to be invested in tobacco companies
- \$7.5 M to senior prescription assistance program – seniors covered up to \$2,500/year
- \$3 M for tobacco prevention and control – community programs (bulk of \$\$ thru RFP process) to fight use, chronic disease, school, enforcement, prevention, surveillance, marketing programs and management
- \$752,000 in public access for defibrillation, 246 AED defibrillators @ \$2,500/device w/ targeted areas of senior centers, state service, retirement, correctional facilities - \$\$ also spent for training on devices
- \$1 M to uninsured action plan: pool together existing resources and identify analysis gaps - \$\$ for actuarial analysis to ID gaps, info systems, consultants
- 150,000 towards lesser known illnesses & regiments – ID lesser known syndromes – support staff and research activities
- substance and transitional housing for addicts: \$200,000 part of 50/50 match between state and private contractor for 15-bed transition house
- chronic disease (diabetes) pilot project – will implement diabetes task force recommendations – \$500,000 for implementation of those recommendations
- medical coverage \$1.4M for SSI for those (approx 300 people) who lose coverage – contingent upon state receiving waiver
- significant public input into 9 recommendations – lots of public and legislative support –
- [www.state.de.us/dhss/healthfund](http://www.state.de.us/dhss/healthfund)
- **PA – Angie Abraham:** no formal body assigned for research – Governor tapped the Secretary of Administration to do work – 5 guiding principles: healthier citizens, focus on future, not to increase size of state programs, fund existing programs and ??
- Met w/ every group that asked for meeting to offer suggestions; few statewide meetings – these meetings developed the certain themes

- Legislature is considering now
- 5% plus initial payment (\$142 M) for off the top endowment in case payments don't come from companies later
- then 10% annually for health research – national peer review of PA-based researchers
- 5% annually for first 3 years into venture capitol fund
- 10% for tobacco prevention programs based on CDC best practices model
- 5% for cessation – maybe increased funding for drugs
- 40% for insurance for uninsured, as well a MEDICAID coverage for working disabled
- 10% for uncompensated care
- 15% for home and community based care – options for those otherwise in nursing homes to get Medicaid waiver to stay in communities
- [www.healthinvest.state.pa.us](http://www.healthinvest.state.pa.us)
- any required personnel for these programs put into general fund budget, not paid out of tobacco funds
- **Randy Bower, Iowa:** state has completed session and taken action; Governor originally wanted to use funds strictly for health care and after discussions w/ legislature, that was approved – ways to augment present health care system
- \$55 million on an ongoing basis
- proposal split on increasing access to health care, increasing health and prevention, increasing prevention
- access (\$26.5 M) : allows state to receive more federal money (Hawkeye –states version of CHIPS) and changes in providers' reimbursement rate (\$12.8 M in Governor's proposal, \$20.7 M in Legislature's) and expansion of coverage for home services and respite care under waiver (\$6M)
- Cessation (\$10 M): Governor and AG have been active in raising \$20M in non-state dollars for this measure – want to utilize outside funds as much as possible
- Healthy Iowa 2010 (\$2.8M): providing more state assistance in areas of prevention strategy, food safety, epidemiology, adult wellness

- Substance abuse treatment and prevention (Governor's proposal included \$12.5 M to expand treatment for prisoners and drug courts – Legislature approved for \$12.5, but set aside \$3.8M for cash flow crunch in future)
- Total \$55 million package
- Because it had already been settled as to what money could be used for, the Legislature established a tobacco authority that will develop a work plan this summer
- **New York, Dave:** passed in 12/99; set aside use of tobacco settlement fund – not clear as to how revenues will fund specialized programs; the passed Health Care Reform Act of 2000 continues the state's decade old health program – also increased cigarette tax by 55 cents/pack – this increase only funds portion of programs – all recurring tobacco \$\$ goes for healthcare
- Address uninsured problem – hope to insure up to 1 million people, state set aside \$63 M for subsidies for small business insurance packages; designed a standard benefit package
- Subsidies for uninsured individuals and families for those whose jobs don't offer insurance – has to be working family
- Subsidies for those in direct pay markets – through stop law insurance type program (?)
- Established family health plus program – expands CHIPS to parents of kids, but state has to apply for waiver
- Also set aside \$50 M for tobacco prevention/cessation programs – community, school, marketing, enforcement of sales laws
- Tax increase was preventative – increased tax/pack from 57 cents to 1.10 cents/pack – intended to curb use in youth
- Expanded mental health services – supported housing programs for adults – increased number of case workers – about \$87M/year when implemented (tobacco funds)
- Senior prescription programs partially funded w/ tobacco funds – will approach \$300M/year covering 230,000 seniors
- NGA website has info
- Money goes into pool and then funds multitude of programs

- **Maryland:** 1999 bill to spend on health; Governor put in 3 task forces – cancer, reduction of used, cross conversion
- Series of recommendations and principles – session just ended;
- \$50M for cancer (30M tobacco funds) – surveillance via cancer registry – established Healthy Maryland 2010 objectives - \$30 million to research institutions for work -
- Divided among surveillance strategy – statewide surveys, statewide public health strategy, local public health strategy – funds to and through local health departments (24 local jurisdictions) – locals are required to establish coalitions that will include representatives from hospitals, but all coalitions will be managed by the state department of health and hygiene
- \$18.5M for reduction
- \$24.4M for Medicaid
- \$60 M for education
- [www.dhmf.state.md.us/esm/index.htm](http://www.dhmf.state.md.us/esm/index.htm)
- **NGA:** has identified 25 state tobacco fund plans
- 21 states spending majority of tobacco funds on health issues (seniors in AL, Medical in CA, trust in ND, rural health in NY, training of doctors in NY and \_\_\_ in Montana)
- MD, AL, MN, NE, OH, NV, ND are all spending funds on education
- Programs to assist/help tobacco growers: NC and VA
- Water development - ND
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