



National Association of Medical Equipment Suppliers

July 10, 1986

The Hon. Robert Dole
United States Senate
SH-141
Washington, D.C. 20510

Dear Senator Dole:

I am writing to invite you to participate as a speaker at the NAMES Legislative Conference to be held September 8-9, 1986 at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway in Arlington, Virginia. As a fellow Kansan and former Legislative Assistant for Congressman Keith Sebelius, I would be particularly honored by your presence.

The program is scheduled to begin at 8:00 a.m. on both days. We would appreciate it if you could deliver a 30-minute address at that time on either day; however, our schedule is flexible. Any time between 8:00 a.m. and 5 p.m. on September 8th, and 8:00 a.m. and Noon on the 9th would be acceptable.

NAMES is a non-profit trade association representing Durable Medical Equipment (DME) suppliers who provide home care equipment under Part B of the Medicare program. I have been working with Marie Michnich of your staff and I will be happy to provide whatever information may be needed for an address on The Current Legislative Climate for Home Health Care.

NAMES would be willing to compensate you for your time, either with a \$2,000 honorarium, plus a \$1,000 direct contribution to the Dole Foundation, or a \$3,000 direct contribution to the Foundation; which ever you prefer.

Thank you for your consideration of this request. Your participation would be deeply appreciated.

Sincerely,

John P. Bailey
Director of Government Affairs

7/18 Interview st

Sept. 8 or 9
Mon. or Tues
(Senate reconvenes at noon on 8)

in Arlington

Sept 9

tent 8:30

TAX REFORM

Provisions Affecting Businesses

CONFERENCE BILL

CURRENT LAW

Corporate tax rate	34% top rate; 2 lower rates on income up to \$75,000	46% top rate; 4 lower rates on income up to \$100,000
Investment tax credit	Repealed	6% to 10%
Depreciation	Less generous than current law for equipment; much less generous for real estate	Accelerated
Autos	5 years, 200% front-loaded	3 years, 150% front-loaded
Manufacturing equipment	7 years, 200% front-loaded	5 years, 150% front-loaded
Commercial real estate	31.5 years, straight line	19 years, 175% front-loaded
Business meals and entertainment	80% deductible; no deduction for stadium skyboxes	Fully deductible
Oil and gas	One-year write-off for most intangible drilling costs	One-year write off for intangible drilling costs
Bank bad debt reserves	Deductible only for banks with less than \$500 million in assets	Deductible
Timber	Retains most timber write-offs	One-year write-off of most costs of growing trees
Research and development	Extend credit for 3 years	25% credit on incremental R&D; expired Dec. 31, 1985

PROVISIONS Affecting Individuals

	CONFERENCE BILL	CURRENT LAW
Individual tax rates	2 rates: 15, 28%	14 rates: 11% to 50%
For joint filers ¹	15% up to \$29,750 28% over \$29,750	
Personal exemption	\$2,000 (\$1,950 in 1988); phased out for incomes above \$149,250 ²	\$1,080
Standard deduction³	Joint filer: \$5,000; Head of household: \$4,400; Singles: \$3,000	Joint filer: \$3,670; Head of household: \$2,480; Singles: \$2,480
Mortgage interest	Principal and second residence fully deductible; home equity loans deductible if used for home purchase, home improvement, medical or educational expenses	All mortgages, including home equity loans, fully deductible
Other interest deductions	Consumer interest not deductible; investment interest deductible up to amount equal to investment income ⁴	\$10,000 plus amount equal to investment income
Charitable contributions	Deductible only for itemizers	Fully deductible for itemizers and non-itemizers
State and local taxes	Deductible except for sales taxes	Fully deductible
Long-term capital gains	28% top rate	20% top rate
Short-term capital gains	28% top rate	50% top rate
Individual retirement account contributions	\$2,000 deductible for low and middle income workers; phased out for upper-middle and high-income workers with pension plans	\$2,000; \$250 for nonworking spouse
401(K) Tax-deferred Savings Plans	Limited to \$7,000 a year	Allows up to \$30,000 a year
Medical deduction	Deductible in excess of 7.5% of AGI ⁵	Deductible in excess of 5% of AGI
Two-earner deduction	No	Yes
Miscellaneous deductions	Deductible in excess of 2% of AGI	Fully deductible
Income averaging	Not allowed	Allowed
Tax shelters	Prohibits use of losses from "passive" investments to offset other income ⁶	No limits on using losses from "passive" investments to offset other income

¹In the Conference bill, no 0% bracket is included. Nonitemizing taxpayers would reduce taxable income by the amount of the standard deduction before calculating taxes. Under current law, this deduction is built into the tax rates and shows up as a 0% bracket.

²For joint filers.

³Called zero bracket amount under current law. Numbers under current law are for 1986; conference numbers are for 1988.

FY 1987
BUDGET RECONCILIATION
HEALTH CARE PROVISIONS
Items of Interest to Durable Medical Equipment Suppliers

Background

- o Total health care spending for the United States in 1985 was \$425 billion, an increase of 8.9% from 1984.
- o Medicare benefit payments increased 12.2% above 1984 levels.
- o Home health services to the elderly are coming into the national limelight, due in part to the increased demand for such services by the aged.
- o Last year, medicare expenditures to home health care increased 13 percent over the previous year.
- o Recently both the Senate and the House Committees with jurisdiction over the medicare programs met to act on budget reconciliation.

Senate Action

- o The Senate Finance Committee reported out a bill that contained two medicare provisions that I know are of interest to you:
 - 1. Physician Payment Reform--would require an explicit and public review of the Administration's application of its authority to change physician payments through its "Inherent Reasonableness" authority. This provision may be relevant to medical equipment suppliers as well as physicians.
 - 2. Prompt Payment for Medicare Claims--Medicare contractors would be required to pay 95% of all "clean" claims in not more than 24 days. Those currently paid sooner than 24 days could not have their payments slowed down.

Relevant House Action

- o The House Ways and Means Committee reported out a reconciliation bill that:
 - 1. eliminates the Secretary's authority to apply the "Inherently reasonable" payment method.

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2. Also includes a provision to ensure prompt payment of medicare claims

Status of Budget Reconciliation

- o New budget estimates indicate that the Senate and the House may have to return to the committees to look for added savings (according to CBO, we are approximately \$10 billion away from our Gramm-Rudman-Hollings target).
- o I will meet with the committee chairmen this week on the most recent CBO estimates and we will be deciding whether further committee work will be required.

20 August 1986

TALKING POINTS/GRAMM-RUDMAN-HOLLINGS/DEFICIT REDUCTION

o On August 19 Congress got the news that it must go back to the drawing board to come up with additional deficit reductions if it wants to comply with the commitment it made last year under the Gramm-Rudman-Hollings Balanced Budget Act.

o The news from the Office of Management and Budget and the Congressional Budget Office was not nearly as bad as it might have been. Their average deficit projection for next year is \$163.4 billion. That means Congress must find \$9.4 billion to stay within the G-R-H deficit target.

o While \$9.4 billion is more than pocketchange, Senate committees have already come up with \$3 billion in so-called budget reconciliation savings. Finding the remaining \$9-12 billion, through program reductions, asset sales, and user fees is well within the "doable" range.

o In addition to finding the actual deficit cuts, Congress must grapple with whether or not it wants to "fix" the Gramm-Rudman-Hollings law so that the "automatic spending cut" provisions found unconstitutional by the Supreme Court can be retained.

o The Senate attached the so-called Gramm-Rudman-Hollings fix as an amendment to legislation increasing the federal debt ceiling. Their amendment is designed to meet the objections raised by the Supreme Court about the separation of powers. Simply put, it gives the Office of Management and Budget the authority to lay out the spending cuts if the automatic trigger is pulled.

o But OMB's fall-back function as essentially a "Green Eyeshade" operation. The amendment guarantees that the administration will have no discretion, and that OMB's function will indeed be purely ministerial.

o The House has not voted on any similar amendment. So, Congress can't complete action on the Gramm-Rudman-Hollings fix until this fall -- if at all. There is some reluctance among

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Democrats -- both in the House and Senate -- to grant OMB new authority. But I hope that the House will agree with Senate action -- even if some modifications are needed -- and the fix will be in place.

o Because heretofore, Congress has shown little appetite for making the kind of cuts necessary to dramatically reduce the deficit. And the threat of automatic spending cuts, while not foolproof, is an additional mechanism to force Congress to live up to, not only the Gramm-Rudman-Hollings targets, but its basic fiscal responsibility.

BOB DOLE
KANSAS

United States Senate

OFFICE OF THE MAJORITY LEADER
WASHINGTON, DC 20510

September 8, 1986

M E M O R A N D U M

TO: SENATOR DOLE

FROM: SHEILA BURKE
MARIE MICHNICH

SUBJECT: SPEAKING ENGAGEMENT
NATIONAL ASSOCIATION OF MEDICAL EQUIPMENT SUPPLIERS
(NAMES)
TUESDAY, SEPTEMBER 9, 8:30 A.M.
STOUFFER CONCOURSE HOTEL
DRL:VA

You are scheduled to speak before the National Association of Medical Equipment Suppliers (NAMES) on Tuesday, September 9, at 8:30 a.m. Their legislative conference will be attended by Durable Medical Equipment (DME) suppliers who provide home care equipment under Part B of the medicare program. While you have been asked to address the current legislative climate for home health care, we have been notified by their leadership that they would be most interested in your discussing topics of general interest to small business employers, including GRH/Deficit Reductions, tax reform, product liability, and the FY '87 budget.

With regard to DME specific industry concerns, they are adamantly opposed to proposed regulations by the Administration that move the industry away from charge based reimbursement and substitute competitive bidding or nationally established "reasonable charge limits." The industry believes that the current medicare home health care reimbursement environment is unpredictable, uncoordinated and fraught with delays in payment.

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You have supported and initiated several provisions in reconciliation which they are likely to support. Specifically, you have proposed:

1. limits on the Administration's ability to deviate from current reimbursement policies. In essence, you have argued that certain conditions must be met before the Administration can invoke its "inherent reasonableness authority". While your bill is specific to physician (as opposed to medical supply) reimbursement, some have argued the provisions are appropriate to Durable Medical Equipment Suppliers as well.
2. extending the comment period on proposed regulations that apply to "inherent reasonableness" from 30 days to 60 days.

Also, you have cosponsored legislation that would foster prompt payment of medicare bills by contractors. They will be most supportive of your efforts. Last spring, the Administration ordered a slowdown in payments to produce a budget savings. Both the House and the Senate have shown strong support for reinstituting timely payment policies and practices.

Attached are the talking points on the major areas of concern.

Attachment

August 14, 1986

Talking Points
Tort Liability Reform

- o Last year, property-casualty insurance premiums rose 21%, industry economists predict another 20% jump in 1986. For many businesses and professions, liability insurance is becoming too costly to purchase, or simply not available at all. In Kansas, today's airplane purchaser is paying over \$70,000 per airplane in insurance costs alone.
- o Much of the blame for skyrocketing premiums lies with changing interest rates. During the late 1970's and early 1980's, many insurance companies lowered premiums, betting on (1) continued high interest rates on investments until claims had to be paid in the future, and (2) the ability to raise premiums in the future. Unfortunately for the industry, interest rates dropped rapidly over the last few years and they had no choice except to raise premiums substantially.
- o Some claim the tort system is also responsible for the rise in premiums. They point out that more than 13 million civil lawsuits were filed last year, one for every 15 Americans, and there were 400 damage awards exceeding \$1 million as compared to fewer than 30 such awards 10 years ago. One study commissioned by the American Insurance Association puts the total cost of the tort system at \$68.2 billion, with only 25 cents of every dollar going to compensate the victim.
- o Lawyers, however, point to their own studies showing that premiums are soaring even in states that have implemented tort reforms. They argue that the insurance companies have created a distorted perception of the tort system based on a few sensational cases.
- o Some lawyers claim that part of the problem is with the insurance industry's exemption from federal antitrust laws under the McCarran-Ferguson Act. (Regulation of the industry was left completely to the states under that Act.) But, there is little evidence that the problems have been brought on by concerted company action. If anything, the industry has been very competitive, with companies lowering premiums' below prudent levels in an effort to increase business.
- o Since tort law and insurance regulation are both areas which fall outside the traditional province of the Federal government, if major legislative activity occurs this Congress, it will probably be on the products liability issue. There is a strong argument that since most manufactured goods cross state lines they should all be subject to the same product liability laws.

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- o Most states legislatures have reviewed omnibus tort reform packages and have tended to enact specific remedies by selecting one or two issues (medical malpractice in Kansas) seemingly linked to resolving the crisis. Some states have taken action to restore/clarify sovereign immunity, limit frivolous suits, issue grants of immunity, cap damages or awards, repeal/modify joint liability, and limit attorney fees.

PENDING LEGISLATION

- o On June 26 the Senate Commerce Committee approved legislation on product liability reform. The bill was reported out of committee by a vote of 10 to 7. Judiciary now has opportunity for review and has scheduled a full committee hearing on September 9.

This bill encourages early settlement through a system of incentives and penalties. The offer to settle is limited to total "net economic loss" and \$100,000 for "dignitary loss" (pain and suffering, etc.).

If the defendant rejects the injured parties offer and the judgment is equal to or greater than the offer, the defendant must pay the injured party's legal expenses not to exceed \$100,000. If the injured party rejects the defendant's offer, recovery for "dignitary losses" is limited to \$250,000 or \$50,000 in less serious cases. Out-of-pocket expenses are not limited and punitives are not limited. If there is no offer to settle, there is no limit on liability.

Other major provisions:

- *Product seller is liable only if harm is caused by his lack of reasonable care, breach of seller's warranty or if manufacturer is judgment-proof.
- *Punitive damages may be awarded if plaintiff can prove defendant's conscious, flagrant indifference to safety.
- *Damages to injured party will be reduced by any workers' compensation benefits.
- *2 yr. statute of limitations beginning at time plaintiff discovered or should have discovered harm.
- *Fines for destroying or concealing relevant materials.
- *Liability for attorneys who file frivolous suits or delay suits.
- *Limit on joint and several liability - defendant's liability for non-economic damages limited to percentage of responsibility.

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*Bar on punitive awards against airplane and drug manufacturers if product received pre-market approval by govt.

*Statute of repose will bar liability of manufacturers where harm occurred 25 years after product was manufactured and bars liability of manufacturers of consumer products where harm occurred after useful safe life - presumed to be 10 years.

*Bar of recovery where plaintiff is legally intoxicated and was more than 50% responsible.

*Require product liability insurers to report to Dept. of Commerce data about profits, earnings, etc.

- o Senator McConnell introduced S. 2046, "The Litigation Abuse Reform Act", this bill, recently reworked by Senator McConnell, makes sweeping changes in tort liability and extends the reforms to both Federal and State Courts. Obviously, those advocating states rights will think this has gone too far. The major provisions are as follows:

*Caps pain and suffering awards at \$500,000, requires punitives to be paid to the court, caps contingency fees on a sliding scale basis at 35% for awards of less than \$100,000 - to \$135,000 plus 10% for awards over \$500,000.

*Requires attorneys to certify to the court that they have advised their clients of court-supervised arbitration alternatives.

Status: Senator McConnell intends to offer his legislation as an amendment in the nature of a substitute to the Commerce Committee products liability bill once it reaches the Senate floor. 2 full days of hearings have been held already and certain provisions of the bill are being rewritten at this time.

- o S. 2129, passed July 17 by the Senate, amends the 1981 Risk Retention Act and permits companies who have a hard time getting insurance coverage, to join together and form risk retention pools for the purpose of purchasing all lines of commercial liability insurance, except for workers' compensation and employer's liability. The chartering state used for the creation of a risk retention group will regulate it for solvency. This legislation was favored by groups like the nurse-midwives.

ADMINISTRATION

- o The Administration has sent to Congress their justice reform legislation addressing three areas of liability: government contractor liability, the liability of the United States and product liability.

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- o McConnell has introduced 2 bills at the urging of the Administration - "The Government Contractor Liability Reform Act of 1986" and "Federal Tort Claims Reform Act of 1986". Both adopt similar limitations on the liability of federal contractors and of the U.S.
- o The "Product Liability Reform Act of 1986" places limitations on the liability of those who make and sell products in the national marketplace. (Kasten introduced)

Major differences in Administration and Commerce Committee product liability bills:

*Adm - provides standards for fault-based liability - can use defenses of unforeseen alterations to product, adequate warnings, and other state of the art defenses.
Commerce - no standards provided, leaves present system.

*Adm - eliminates joint/several liability - in all instances defendant only responsible for pro-rata share.

Commerce - allows joint/several on economic damages, limits to pro-rata share on non-economic damages.

*Adm - \$100,000 cap on non-economic damages including punitives.

Commerce - Caps on non-economic damages (excluding punitives) if injured party refuses to settle. No caps on punitives if plaintiff can prove conscious, flagrant indifference to safety.

*Adm - no provision on govt. pre-market approval.
Commerce - no punitives against drug and airplane manufacturers if product received govt. pre-market approval.

*Adm - provides no incentives to settle - but asks Attorney General for suggested settlement procedure within 1 year.

Commerce - provides incentives to settle.

*Adm - sliding scale for attorney fees.
Commerce - no attorney fee limitations.

*Adm - future economic losses will be paid periodically.

Commerce - in settlement can agree to pay periodically or in lump sum. If no settlement, court can order either.

- o HOUSE - The house has done very little to date in the way of moving forward. No hearings have been held and will not be until the Senate completes action.