State Government in Review

ESSAYS

Critical examinations of trends in corrections and criminal justice, environmental management, ethics and public integrity, federalism, health care, international affairs, and state government finances. Also includes a discussion of innovative state practices recognized by CSG's Innovations Awards program.

State Trends in Corrections: Managing Growth and Promoting Accountability

On any given day in 1995, five million people in the United States were under the supervision of the criminal justice system.

by Betsy Fulton

It is a rare occasion when an article on crime and justice can begin on a positive note. But here we have it — the "Uniform Crime Report" issued by the Federal Bureau of Investigation reported a 5 percent decline in national rates of violent crime during 1994. While this reduction in crime rates cannot be attributed to any one particular policy, it certainly is welcome news. Other major correctional trends can be summarized in one word — growth. The past two years have seen an increase in the number of offenders under correctional supervision, an increase in the number of prisons, an increase in the number and type of community corrections programs, and an increase in correctional expenditures. Along with this growth has come a demand for accountability for offenders and for criminal justice systems at the state and local levels. This article will first provide a brief summary of correctional statistics and then examine the ways in which some states are facing the challenges of correctional growth and the demand for public accountability.

Correctional Populations and Costs

On any given day in 1995, five million people in the United States were under the supervision of the criminal justice system, with 1. 5 million in prisons and jails and the rest on probation or parole.[1] The Department of Justice reports an 8.8 percent increase in the number of prisoners nationwide from July 1, 1994 to June 30, 1995, the largest one year increase ever recorded. Texas and North Carolina reported the largest increase in prison populations at 27 and 18 percent, respectively. Only Alaska,

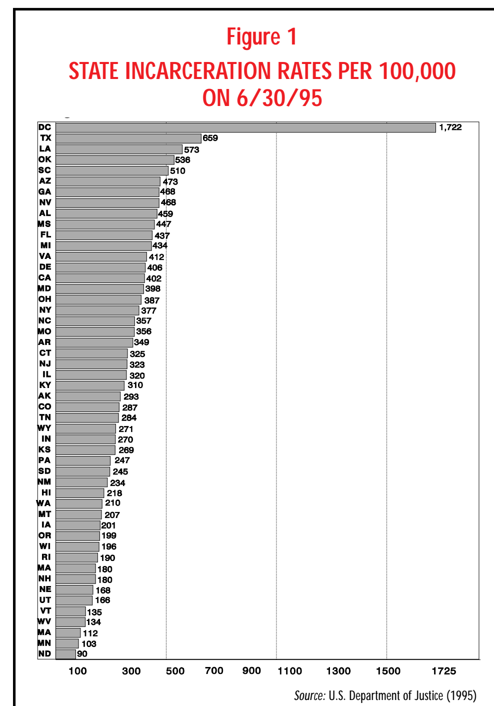

Figure 1
STATE INCARCERATION RATES PER 100,000 ON 6/30/95

Source: U.S. Department of Justice (1995)

Arkansas and South Carolina reported declines in their prison populations.[2] (See Figure1).

The probation and parole populations have also grown at an alarming rate. The latest statistics available from the Department of Justice estimate that by year end 1994, 2,962,200 people were on probation and 690,200 were on parole, representing increases over 1993 populations of 5.7 percent and 10 percent, respectively.[3] For regular supervision, probation caseloads per officer ranged from 60 in Arizona to 400 in California with a national average of 117.

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For regular supervision, parole caseloads per officer ranged from nine in Vermont to 135 in North Carolina with a national average of 84.[4]

As one might guess from these statistics, state budgets are being gouged by correctional costs. Corrections is the fastest growing area of state appropriations.[5] According to the latest available data, state correctional expenditures increased 340.4 percent from 1980 to 1992.[6] California, for example, plans to spend more on corrections than on its renowned system of higher education, according to its 1996 budget.[7]

Most correctional resources are funneled into prisons and jails to manage the exorbitant inmate populations. State budgets, however, have not kept pace with the growing probation and parole populations. During a recent examination of correctional programs and resources, Joan Petersilia found that despite the fact that three-fourths of the correctional population is under probation and parole supervision, only about one-tenth of the correctional budget is allocated to probation and parole agencies.[8] Petersilia calls for a "reinvestment in community corrections" stating that "until we curb the criminal activities of the three-fourths of criminals who reside in the community, real reductions in crime or prison commitments are unlikely. "

What Does the Public Think?

Public opinion studies seem to support an investment in community corrections. The Edna McConnell Clark Foundation has conducted numerous public opinion studies over the past decade.[9] The results of these studies consistently reveal that policymakers overestimate the punitive nature of American citizens. The results also show that when informed about the purpose and design of correctional options there is a high level of public support for alternatives to incarceration and preventive measures. Two recent public opinion studies in Oregon and Vermont suggest that this support is relatively stable, despite the continued movement toward tough crime policies.

A statewide survey of Oregon residents conducted in 1995 by Doble Research Associates found that:

• 92 percent of Oregonians favored alternative punishments for nonviolent offenders knowing that these punishments are less restrictive than incarceration and that many offenders are living in their communities.

• 88 percent of Oregonians favored mandatory treatment for offenders with alcohol or drug problems.

• 96 percent of Oregonians favored restitution, boot camps and community service for nonviolent offenders.[10]

A Vermont Department of Corrections public opinion study in the spring of 1994 found that:

• Vermonters overwhelmingly endorse the idea of making property offenders pay back the victims of their crime.

• Vermonters overwhelmingly favor using community work service instead of jail for drunk drivers, drug users, shoplifters, bad check writers and young offenders in general.

• Vermonters overwhelmingly favor the use of citizen boards to oversee the sentencing of nonviolent offenders.

• Vermonters, after learning about citizen boards, strongly favor the use of community-based sentences, rather than incarceration, for a wide variety of nonviolent offenders, and even repeat offenders.

• Vermonters do not favor using community sentences for violent offenders, even on the first offense.[11]

While favoring community-based outcomes for nonviolent offenders, Oregonians and Vermonters are in no way relieving these offenders of the need to be accountable for their behavior. Instead, Oregon and Vermont citizens are in favor of these low-level offenders being directly accountable to the victims and communities they harmed.

Longer Sentences for Violent and Repeat Offenders

While citizens show support for community-based sentences for nonviolent offenders, they also want violent and repeat offenders to be held accountable through more and longer prison terms. The past two years have been rife with

the introduction of truth-in-sentencing, parole abolishment and "three strikes" legislation.

Taking advantage of the federal government's promise of aid for prison construction as set forth in the 1994 crime bill, many states are adopting truth-in-sentencing reforms. These reforms are designed to: enhance credibility with the public; increase the predictability of the time to be served in prison; and exact retribution on serious and violent offenders. In 1995, Connecticut, Florida, Illinois, Louisiana, Mississippi, New York, North Dakota, South Carolina and Tennessee all passed legislation requiring 85 percent of a sentence to be served, and Arkansas passed legislation requiring 70 percent of the sentence to be served.[12] This constitutes a marked increase from serving only 48 percent of a sentence, the average in 1992.[13]

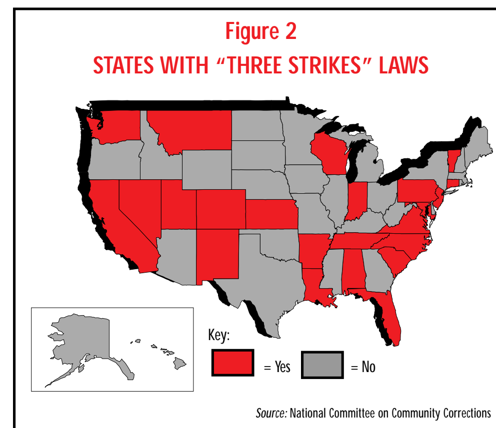
A movement toward abolishing parole has come hand in hand with truth-in-sentencing reforms. In fall of 1994, the Virginia Legislature implemented truth-in-sentencing that required all offenders to serve 85 percent of the sentences imposed and abolished discretionary parole release for offenders convicted of crimes committed after January 1, 1995.[14]

Parole boards are responsible for the discretionary release of offenders based on information about an offender's background and performance in prison, and the offense committed. As of 1995, California, Delaware, Illinois, Indiana, Maine, New Mexico, Minnesota, North Carolina, Virginia and Washington had all abolished discretionary parole release.[15] The elimination of discretionary release does not translate into offenders serving 100 percent of their sentences; all prison systems in the nation include some mechanism for early release. The difference lies in the review process which triggers the release. In states that have abolished this discretionary parole release, an offender's release is often automatic, based on a predetermined calculation and "good time" credits. With discretionary parole, release is a privilege which must be earned by demonstrating readiness through positive behavior in prison. Offenders may in fact serve less time under a nonparole system than under a parole system. For example, following parole's abolishment in Connecticut in 1981, the average time served by offenders fell to 13 percent of their sentences. After parole was reinstated in Connecticut, the average time served was 60 percent of a sentence.

By the end of 1994, 14 states had adopted some form of "three strikes" law,[16] and nine additional states threw their hat into the ring in 1995.[17] (See Figure 2). Most of these new laws call for lengthy, mandatory sentences for three-time, felony offenders, some including sentences of life without parole.

The "three strikes" legislation is creating serious problems for the state and local criminal justice systems in California according to a report prepared by the nonpartisan Legislative Analyst's Office (LAO). The report was prepared to advise legislators on the progress of the law's implementation.[18] It found that prior to the law's implementation, 94 percent of all felony cases in California resulted in a guilty plea. Approximately one year later, plea bargaining occurred at low rates of 14 percent for offenders being charged with a second strike and six percent for offenders being charged with a third strike. Furthermore, there is some evidence that first-time offenders whose conviction would constitute a first strike are even less likely to plead guilty. This insistence on jury trials is creating backlogs in the state's courts which they are attempting to address by diverting resources from civil trials. Due to the pretrial detention of these offenders, jails are

Figure 2
STATES WITH "THREE STRIKES" LAWS



Source: National Committee on Community Corrections

crowded and forced to release convicted offenders early. At the time of the report, officials from the Los Angeles County jail reported housing more than 1,000 three strikes defendants awaiting trial. The impact on the prison system has not yet been realized, but the LAO projects that by 1999 the prison population will increase by 70 percent, requiring the construction of 15 new prisons at the cost of billions of dollars to California taxpayers. While the California legislation was initially aimed at violent and career criminals, during the first eight months of the law's implementation, in 70 percent of the cases the third strike involved a nonviolent offense. Despite these systemic problems created by the legislation, California lawmakers cite a 6.5 percent decline in the state's crime rate as an indication of the law's success.

The impact of "three strikes" laws seem to be a function of the offenses to which they apply. In Washington, for instance, only 33 offenders had been processed under the "three strikes" legislation during the first two years of implementation, while in California, more than 700 offenders are in prison under the legislation after only one year of implementation.[19] The Washington legislation applies to approximately 20 serious felonies.[20] According to the California LAO, the third strike can be one of 500 felonies.

Capacity-Based Sentencing Guidelines

As of the end of 1994, 17 states had implemented sentencing guidelines to structure the sentencing discretion of judges, and five states had appointed commissions to study the approach.[21] Many of these guidelines are voluntary or advisory in nature, while others are presumptive, or prescriptive, systems of sentencing that calculate an appropriate sentencing range within which judges are obligated to sentence.[22] Sentencing guidelines are typically designed to bring rationality into the sentencing process by eliminating unfair sentencing practices and increasing deterrent effects of sentencing. Increasingly, however, guidelines are

Table 1
CURRENT STATUS OF STATE SENTENCING GUIDELINES SYSTEMS[24]

State	Effective date	Scope and distinctive features
Utah	1979	Voluntary; retains parole board; no permanent sentencing commission until 1983; linked to correctional resources since 1993.
Alaska	1-1-80	No permanent sentencing commission; statutory guidelines' scope expanded by case law.
Minnesota	5-1-80	Designed not to exceed 95 percent of prison capacity; extensive database and research.
Pennsylvania	7-22-82	Also covers misdemeanors; broad ranges and departure standards; retains parole board; encourages nonprison sanctions since 1994.
Florida	12-1-83	Formerly voluntary.
Maryland	1983	Voluntary; retains parole board.
Michigan	1-17-84	Voluntary; retains parole board.
Washington	7-1-84	Includes upper limits on nonprison sanctions, some defined exchange rates, and vague, voluntary charging standards; resource-impact assessment required.
Wisconsin	11-1-85	Voluntary; descriptive (modelled on existing practices); retains parole board.
Delaware	10-10-87	Voluntary; narrative (not grid) format; also covers misdemeanors and some nonprison sanctions; linked to resources; parole board retained until July 1990.
Oregon	11-1-89	Grid includes upper limits on custodial nonprison sanctions, with some defined exchange rates; linked to resources; many new mandatory minimums added in 1994.
Tennessee	11-1-89	Also covers misdemeanors; retains parole board; sentences linked to resources.
Virginia	1-1-91	Voluntary; judicially controlled, and parole board retained, until 1995; resource impact assessments required since 1995.
Louisiana	1-1-92	Includes intermediate sanction guidelines and exchange rates; linked to resources.
Kansas	7-1-93	Sentences linked to resources.
Arkansas	1-1-94	Voluntary; detailed enabling statute; resource impact assessment required.
North Carolina	10-1-94	Also covers most misdemeanors; sentences linked to resources.

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also being used to gain control over limited correctional resources.[23]

The Minnesota Sentencing Commission took the lead in matching sentencing guidelines with correctional resources in 1980 as part of their initial guidelines. The enabling statute for the Minnesota Sentencing Commission directed the commission to give “substantial consideration” to correctional resources. Hence, a primary goal of the commission was never to exceed 95 percent of available prison capacity. Since guideline implementation, increases in the rates of Minnesota’s prison population are much lower than other states, and the state has been able to avoid court intervention due to crowding.

In October 1994, North Carolina implemented sentencing guidelines that matched sentences to the number of prison beds, probation slots and other correctional resources. North Carolina’s system of “capacity-based sentencing” was developed based on projections of future crime and sentencing patterns. The guidelines incorporate shorter and community-based sentences for nonviolent, first time offenders and longer sentences for violent and career offenders. The North Carolina Legislature has decided that a fiscal impact statement must accompany any revisions to the current guidelines.

Arkansas, Delaware, Kansas, Louisiana, Oregon, Tennessee, Utah, Virginia, and Washington have included mechanisms within their sentencing guidelines for linking sentences with state resources. These capacity-based guidelines represent one of the most salient efforts to interject accountability into the criminal justice system.

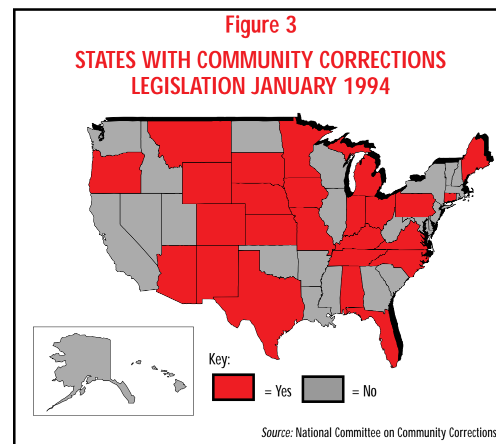
Shifting Accountability from State to Local Level

To accommodate the tough sentencing schemes for violent and repeat offenders, states continue to develop community-based intermediate sanctions for lower risk offenders. As of January 1994, 25 states had passed community corrections acts designed to divert offenders from prison.[25] (See Figure 3). Still, prison populations continue to exceed rated capacities. New bills enacted in Ohio and Oregon provide examples of measures being taken to shift the burden of housing offenders from state-level systems to local criminal justice systems, to encourage the expansion of sentencing options available to judges, and to promote accountability in sentencing practices.

The structure of corrections in Ohio is complex. The Ohio Department of Rehabilitation and Corrections operates 28 state prisons and a statewide division of parole. While this state agency provides probation services in some counties, probation, by and large, is a county or municipal function. Felony and misdemeanor probation generally fall under the jurisdiction of the Common Pleas and Municipal Courts, respectively.

Figure 3

STATES WITH COMMUNITY CORRECTIONS LEGISLATION JANUARY 1994



Source: National Committee on Community Corrections

As part of the Ohio Community Corrections Act established in 1979, the Ohio Department of Rehabilitation and Corrections began awarding counties with funds to implement Intensive Supervision Programs as a means of diverting low-risk offenders from prison. Still, by 1995, the prison population was 70 percent beyond its rated capacity. In 1995, the Ohio General Assembly enacted Senate Bill 2 as a means to shift the burden of criminal sanctions for low level offenders from the state to the county level. Other primary objectives of Senate Bill 2 are truth-in-sentencing and the reservation of prison space for violent and serious felony offenders.

Senate Bill 2 creates a fifth level of felony and downgrades some offenses previously classified as felonies to misdemeanors. The intention is to sentence these new low-level felony and misdemeanor offenders to community-based sanctions rather than prison. To assist counties in bearing this burden, Senate Bill 2 extends the 1979 Community Corrections Act by providing additional funding to local criminal justice systems for the creation of a broader range of alternatives to prison. To be eligible for this funding, counties must create a Community Corrections Planning Board and develop a comprehensive plan for community corrections that coordinates all correctional services in the county and its residing municipalities and reduces the number of people committed to state prisons or local jails.

Oregon's Senate Bill 1145 is designed to give local communities more resources, responsibility and control for local corrections activities. The law states that counties will provide sanctions for a specified group of less serious felony offenders while the state will incarcerate violent or more serious felony offenders. The legislation requires that sentences of less than one year be served in the county having jurisdiction over the case. The state will no longer operate any community corrections offices directly, with this responsibility being transferred to counties. County-based sanctions for low-level felony offenders will include jail and other community-based options such as work centers, electronic monitoring, and intensive supervision. State assistance will be provided to local governments for jails and the development of alternative sanctions.

Expanding Correctional Options

In order to accommodate the longer sentences being sought for violent and repeat adult offenders, state and local jurisdictions continue to develop correctional options designed to divert low level offenders from prison. Two of the most popular options being implemented across the nation are boot camps and day reporting centers.

Boot Camps

A 1996 research report released by the National Institute of Justice identified 52 boot camp programs across the nation for young adult offenders;[26] 34 of these programs are run by state correctional agencies. Boot camps typically have three distinguishing characteristics:1) they are designed for young, non-violent offenders; 2) they are highly structured and adhere to a military model of discipline; and 3) program duration ranges from three to six months. Table 2 provides an overview of program characteristics for programs in South Carolina and Wisconsin.

Day Reporting Centers

According to a report by Abt Associates, day reporting centers (DRCs) are one of the fastest growing intermediate sanction programs. [28]In 1990, only 13 DRCs existed nationally. By the end of 1994, 114 DRCs were operating in 22 states. Although day reporting programs differ in structure and purpose, the most common model requires offenders to report daily to a central location for treatment and support services. Additionally, many DRCs perform a surveillance function by drug testing, conducting field contacts and monitoring offender progress.

The first known day reporting center was implemented in Massachusetts in 1986.[29] Six day reporting centers are currently operating across Massachusetts. Five of the six programs are operated by local sheriffs' departments with the sixth being operated by the Crime and Justice Foundation, a private, nonprofit entity located in Boston. The programs are designed as an early release valve for offenders who are within two to six months of release from prison, jail or an inpatient alcohol treatment facility. The Hampden DRC also accepts pretrial detainees. To be eligible for DRC, offenders cannot have any recent disciplinary reports on file. The primary focus differs for each program, but they all include an intensive level of contacts with participants, with one program reporting up to 10 contacts per day. Offenders in each of the DRCs are subject to curfews and drug testing. Most are required to participate in some

Table 2
BOOT CAMP PROGRAM CHARACTERISTICS[27]

Program Characteristice	South Carolina Shock Incarceration Program	Wisconsin Challenge Incarceration Program
Date Established	1986	1991
Host Agency	Department of Corrections	Department of Corrections
Program goals	Reduce prison crowding and costs. Improve self-esteem, self-control, and ability to cope. Provide punishment. Provide opportunities for self-discipline, hard work, education, counseling, and training.	Provide a safe, secure environment for the public, staff, and offenders. Reduce prison overcrowding. Provide an alternative to revocation for probation and parole. Provide productive inmate programs and work Produce a success rate equal to, or greater than, traditional parole.
Program duration	3 months (extendable to 4 months).	6 months.
Program capacity	192 males. 24 females.	75 males.
Eligibility criteria	17-29 years old. Eligible for parole in 2 years or less. Nonviolent offenders with no previous incarceration. Voluntary entry.	18-30 years old. Nonviolent offenders. Voluntary entry.
Services provided	Military drill and discipline. 7 hours/day work detail. 3 hours/day of education, life skills, substance abuse counseling.	Military drill and discipline. Inmates work 30 hours/week and are paid $2/day. Participation in individual and group therapy 25 hours/week 8 hours/week devoted to drug and alcohol treatment. 15 hours/week are spent in adult basic education.
Authority for release	Shock Incarceration Program	Challenge Incarceration Program
Aftercare requirements	Placed on regular parole supervision.	80% released to halfway house for 3-6 months. Six months intensive supervision and weekly attendance at AA/NA meetings.
Available outcome data	Program completion rate - 90 percent of males and 82 percent of females. Estimated cost savings - $2. 6 million over two year period.	Program completion rate - 40 percent. 10 percent of boot camp graduates were returned to prison within the first three years.

form of alcohol or drug treatment. Other services include employment assistance, substance abuse treatment, counseling and education. Additional supervision activities involve offender itineraries, telephone calls and electronic monitoring. The length of stay across Massachusetts' DRCs ranges from 42 to 85 days. A review of program data indicates that approximately 79 percent of the DRC participants successfully complete the program, with only five percent failing due to the commission of a new offense.

Citizen Involvement and Collaboration

With the emphasis on community-based correctional options such as the boot camps and day reporting centers described above, criminal justice agencies are increasingly recognizing the importance of a comprehensive, unified approach to crime prevention and crime control. State and local corrections agencies have developed many mechanisms for increasing citizen awareness and involvement and for collaborating with other local service providers.

A common approach to involving citizens is through the use of community advisory boards. The State Advisory Board in New Jersey is one of the most active boards in the nation. The role of the 21-member board is to advise the Supreme Court on matters related to probation. Primarily, the board assists in the administration and performance of probation services and serves as a liaison between the probation department and the community. Recent advisory board projects have included the development of performance measures, a public education campaign and the development of county-based probation advisory boards.

Minnesota and Vermont have instituted programs that involve citizen volunteers in the sentencing of offenders. These programs are based on a restorative justice philosophy by requiring offenders to make restitution to victims and communities for any damage caused by their behavior. Table 3 highlights their primary program characteristics.[30]

Equally important to involving lay citizens in the criminal justice system is collaborating with other local service providers. Such collaboration promotes system accountability by making more efficient and effective use of state and local resources and is a key strategy within a comprehensive, community-based approach to crime control. Many local service providers share common clients. To avoid a duplication of services or working at cross purposes, coalitions form around many substantive areas including family violence, drug and alcohol abuse, and educational programming. For example, in 1993, the Oklahoma Department of Corrections in Enid, Oklahoma joined forces with several other community agencies to develop a Family Center designed to strengthen families and neighborhoods by connecting them with activities and services that meet their needs. Services provided at the Family Center include family support, information and referrals, child health care, child care assistance, neighborhood organization, adult literacy and parent education. These services are convenient, easy to access and user friendly for all local citizens, including offenders.

This collaboration has been so successful that legislation was introduced in 1994 requiring the secretary of health and human services, the secretary of safety and security, and the secretary of education to submit a plan to the governor for the development of family service centers throughout the state. As a result, the Creating the Family-Centered and Community Designed Services Act (House Bill 2231 and Senate Bill 1237) was passed, requiring the heads of the Department of Human Services, the Department of Health, the Department of Rehabilitation, the Department of Corrections, the Department of Education, the Department of Mental Health and Substance Abuse and the Office of Juvenile Affairs to form a Commission on Children and Families responsible for coordinating the statewide delivery of services to children and their families.

Issues in Prison Management

Inmate health care costs have increased from $4.68 per day in 1990 to $6.07 per day in 1994.[31] These rising costs are attributed to an increase

Table 3
CITIZEN INVOLVEMENT IN SENTENCING

Program Characteristics	Vermont's Reparative Probation	Minnesota's Community Response to Crime Program
Date established	Piloted 1994, Statewide 1995.	Piloted May 1995.
Oversight organization	Department of Corrections.	Probation Department.
General nature of community involvement	Citizens voluntarily participate on a *Reparative Board* which determines reparative activities to be completed by offenders, reviews offender progress, and recommends successful discharge or violation of probation.	Volunteers serve on a *Community Intervention Team* which communicates to offenders the impact of their behavior on the local community, sets special conditions of probation, provides support to offenders and periodically reviews offender progress.
Volunteer selection procedures	The Commissioner of Corrections selects and appoints board members from a list of volunteers recruited by the program staff and nominated by local community leaders.	Team members are selected by interventionists or the program coordinator from a pool of volunteers.
Group size	Average 5.	8-12.
Decision-making mechanism	Variable - Local boards create their own bylaws.	Consensus.
Victim participation	Victim input is sought for consideration by boards. State is moving toward the inclusion of victim representatives on the boards.	Victim input is sought for consideration by team. Victim-offender mediation is used as a condition of release where appropriate.
Gatekeeper	Sentencing judge.	Sentencing judge.
Offenders targeted	Nonviolent misdemeanor or felony offenders.	Nonviolent offenders and chronic property offenders.

of older inmates and more prisoners with AIDS and tuberculosis. Nine states including Arizona, Colorado, Florida, Kansas, Maine, Maryland, Nevada, Oklahoma and Oregon are charging inmates a nominal fee for requested health care services.[32]

As of January 1, 1995, 5,472 inmates were confirmed as HIV positive, and 806 inmates were being treated for tuberculosis.[33] New York alone accounted for 1,567 of the HIV cases. A 1994 *Los Angeles Times* article reported that 25 percent of California inmates were tuberculosis carriers.[34] According to a report by the Bureau of Justice Statistics, all states have specific criteria for HIV testing.[35] Forty-five states test inmates with HIV-related symptoms or upon an inmate's request. Seventeen states test all incoming inmates. Hawaii and New York test inmates selected at random. Alabama, Missouri and Nevada have begun to test inmates upon their release.

Jonathan Turley of the Project for Older Prisoners at George Washington University reports that by the year 2000, there will be 125,000 geriatric prisoners. The annual medical and maintenance costs of an inmate over the age of 60 is $69,000 which is three times the cost of health care for younger inmates.[36] Some states have implemented policies to consider older inmates for release.

Juvenile Justice Gets Tougher

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) reports that juvenile arrests increased 57 percent between 1983 and 1992.[37] Furthermore, OJJDP reports on projections of demographic experts who predict that juvenile arrests for violent crimes will more than double by the year 2010.[38]

Responding to these disheartening trends in juvenile crime, most changes in the juvenile

justice system and legislation revolve around treating juvenile offenders more like adult offenders. Twenty-one states have some type of legislation allowing the waiver of juveniles to adult courts.[39] Crimes for which juveniles can be transferred to adult court generally include murder, attempted murder, specified forcible sex crimes and kidnapping. According to a State Legislative Report prepared by the National Conference of State Legislatures, in 1995: Alaska, Delaware, Indiana, Louisiana, Minnesota, North Dakota, Oregon, Tennessee, Utah, and West Virginia expanded the crimes for which juveniles may be prosecuted as adults; Iowa and Ohio passed legislation that requires that once a juvenile has been transferred to criminal court, any subsequent cases will also be handled in criminal court; Hawaii, Idaho, New Hampshire, North Dakota and Ohio passed legislation authorizing the opening of juvenile criminal records; Pennsylvania passed legislation allowing fingerprints and photographs of juveniles who allegedly commit misdemeanor or felony crimes; and Arizona, California and Maine passed laws granting additional rights to victims of juvenile crimes similar to those granted to victims of adult crimes, including notification of case status, the right to address the court and the requirement that courts must obtain victim input on juvenile cases.[40]

Indiana passed a legislative package mandating tougher treatment of juveniles in 1994.[41] Changes in the state juvenile code include opening courtrooms and juvenile records to the public and stricter determinant sentences for juveniles, ages 13-15, who commit murder, kidnapping, rape, criminal deviate conduct or armed robbery resulting in serious bodily injury. Youths aged 16 and 17 are tried and punished as adults for these crimes. Also included in the legislative package are mandated expulsions from school for anyone bringing a firearm or other deadly weapon onto school property and the authority to revoke or prevent the issuance of driver's licenses to youths who have been suspended or expelled from school.

Utah passed an equally tough package of juvenile legislation in 1993.[42] SB 4 and SB 8 address waivers to adult court for juveniles age 16 or older for specific violent offenses. HB 12 requires that a child age 14 or older who is arrested for an alleged offense that would be a felony if the child were an adult must be fingerprinted, and the records sent to the State Bureau of Criminal Identification. The fingerprints may also be distributed to other law enforcement agencies. HB 1 requires that in all cases when a child is required to appear in court, the parents, guardians or other legal custodians must appear with the child unless they are otherwise excused by the judge.

Another move toward the tougher treatment of juveniles includes the implementation of juvenile boot camps similar to those operating in the adult system. 1993 legislation in Colorado (HB 93S-1005) authorized the development of a three-phase, regimented training program for juvenile offenders.[43] The Colorado Division of Youth Services, the prime contractor for the boot camp, contracted with New Pride, Inc., a private, nonprofit corporation, for the design, staffing and operation of the program.[44] Males, ages 14-18, adjudicated delinquent for a nonviolent offense are eligible for the program. Youth can be referred to the boot camp before or after sentencing or when they violate conditions of probation. The program operates under the philosophy that a highly structured military experience in conjunction with positive role models promotes positive behavioral changes in youths. Of those entering the program during the first year, 25 percent were removed for new arrests. Preliminary data suggest that youths improved their educational performance, physical fitness and behavior during boot camp.

Not all juvenile legislation being introduced is for tougher sanctions. It is, however, designed to promote accountability on the part of juvenile offenders and the juvenile justice system. Pending legislation in California (Senate Bill 1188) is designed to incorporate victims' needs into the adjudication of delinquents and hold juveniles accountable to their victims and their communities for harm caused by their behavior.[45] Senate Bill 1188 earmarks $600,000 for a three-county pilot program in which victim-

offender reconciliation and community service would be the focus of sentencing for low-level juvenile offenders convicted of nonviolent offenses.

Holding Local Juvenile Justice Systems Accountable

A new program in Ohio is designed to promote accountability for juvenile court sentencing practices.[46] RECLAIM Ohio, which stands for Reasoned and Equitable Community and Local Alternatives to Incarceration of Minors, discourages juvenile courts from over-reliance on state training schools and encourages the creation of community-based options. The state allots each juvenile court a specified amount of money that may be used to buy treatment services for delinquent youths. However, when judges send youths to state-run institutions, the local treatment fund is charged approximately $75 per youth per day for the cost of treatment by the state. RECLAIM Ohio was first piloted in nine counties and resulted in a 43 percent reduction in commitments to the Department of Youth Services. Furthermore, the counties were able to keep approximately $3 million in RECLAIM funds and provide community-based treatment to nearly 1,000 adjudicated offenders. The program was expanded to all Ohio counties on January 1, 1995.

Performance-Based Measurement

Perhaps the ultimate attempt to introduce accountability into corrections is the development and implementation of performance-based measurements. Previously, recidivism has been the sole measurement of a correctional agency's success. As an all-or-nothing measure, recidivism poses many problems. First, many definitions are applied to the term "recidivism" and different definitions can produce radically different figures from the same data. Second, there is tremendous variance in the amount of time involved in recidivism studies. Third, recidivism rates are influenced by many internal and external factors such as increased or decreased law enforcement activities or a change in judicial philosophy. Lastly, recidivism measures provide little insight for policy modifications because they overlook the very activities that define the corrections profession. Probation, parole and correctional officers provide treatment and services, conduct surveillance and enforce court, parole board and prison regulations. By measuring *immediate* and *intermediate* outcomes in addition to recidivism, agencies can begin to disentangle program activities and components and determine what it is that leads to *ultimate* outcomes of behavioral change and reduced recidivism. Examples of immediate outcomes include: the number of offenders participating in a GED program; the number of offenders diverted from prison; and the number of offenders referred to the local mental health agency. Examples of intermediate outcomes include:the number of offenders obtaining their GED; the average number of drug-free days per offender;the number of offenders successfully completing a drug treatment program; the percentage of restitution paid; the number of community service hours performed per month; and the number of offenders employed. Additionally, by implementing alternative outcome measures, correctional agencies can better communicate to citizens and other interested stakeholders what it is they do and demonstrate their value to the state or local community. This is critical to an agency's survival. The public is demanding more accountability from tax supported programs, and legislators faced with the challenge of appropriating state funds are beginning to question the effectiveness of these public agencies. The following excerpt from a 1994 letter to all state funded agencies in Kansas demonstrates this new approach:

> "The House Appropriations and Senate Ways & Means Committees are committed to pursuing an innovative performance-based budgeting system that will bring your agency's mission, program priorities, anticipated results, strategies for achieving the desired results and budget into one document. This would aid the Legislature in allocating and managing our limited financial resources based upon established public policy priorities

and allow for resource adjustments based upon agreed to performance measures. The concept is straightforward. Agencies will be held accountable for accomplishments through the use of performance measurements and not on how much will be spent buying paper clips. "

Since that time, the Kansas Department of Corrections has developed a comprehensive system of performance-based measurements. Figure 4 provides sample measurements for the community corrections division. The American Probation and Parole Association recently developed a model for implementing performance-based measures in community corrections agencies.[47] Arizona, Minnesota and Texas are in the initial stages of implementing performance-based measures within their jurisdictions.

Conclusion

The past several years have delivered many challenges to policymakers and corrections professionals. Keeping pace with the growing cor-

Table 4
SAMPLE PERFORMANCE-BASED MEASURES — KANSAS DEPARTMENT OF CORRECTIONS, DIVISION OF COMMUNITY CORRECTIONS

Objective #1: Provide control over offenders assigned to community supervision which prevents reoffending and satisfies community safety concerns.

Strategies for Objective #1:
1. Provide staff, resources and a classification system that ensures appropriate correctional supervision.
2. Increase field contacts to enhance monitoring of offender behavior in the community.

Output measures:
1. Number of community corrections offenders under supervision in Kansas.
2. Number of community corrections offenders with new felony sentences committed to Kansas prisons.
3. Number of Kansas community corrections offenders who have absconded supervision.
4. Number of community corrections offenders revoked for conditions violations.

Outcome measures:
1. Absconders as percent of community corrections offenders assigned.
2. Percent of positive drug/alcohol test results.

Objective #2: Provide services and programs in the community which assist offenders in becoming law-abiding citizens.

Strategies for Objective #2:
1. Provide or coordinate access to community services consistent with the criminogenic needs of offenders' drug/alcohol counseling and treatment, mental health services, education.
2. Coordinate with SRS the provision of aftercare services for juvenile offenders released from state youth centers.

Output measures:
1. Number of offenders employed.
2. Number of offenders who complete vocational and education programs.
3. Number of offenders successfully discharged from community corrections.

Outcome measures:
1. Percent of community corrections offenders employed.

Objective #3: Expand activities directed toward victim and community restoration.

Strategies for objective 3:
1. Increase by 5 percent the amount of court ordered restitution and fees collected from offenders.
2. Increase by 5 percent the number of hours of community service work performed by offenders.

Output/Outcome Measures:
1. Restitution paid by offenders.
2. Court costs and fines paid.
3. Community service hours completed.

rectional populations and managing constant change is no easy task. Citizen involvement and collaboration, the development of capacity-based guidelines, and the implementation of performance-based measurements suggest a sincere effort to interject rationality and accountability into the system. As for the new tough sentencing policies, all that can be said at this point is that they seem to fulfill an expressive purpose — they are emotionally pleasing. Only time and comprehensive evaluation efforts will tell how effective they are in controlling crime.

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Developing Models for Environmental Management

Environmental management in the U.S. is beginning to decentralize from EPA's command-and-control strategy to other management models in which the state governments, the public and private business take the lead.

by R. Steven Brown

In the most recent *Book of the States* (1994-1995) this author reviewed some examples of environmental management strategies being planned or practiced by state governments.[1] These included sustainable development, environmental indicators, environmental mandates, pollution prevention, comparative risk, ecosystem management and wise-use. Two of the features these systems share are that they do not rely on traditional command-and-control management techniques, and they are inherently decentralized. This article presents some examples of these models being implemented in the states during the past two years.

The first 25 years of significant federal environmental law in the United States, the period 1968 – present, is characterized by the so-called "command-and-control" strategy. During this period, most significant decisions were made by Congress, interpreted and augmented by the U.S. Environmental Protection Agency, and implemented by the 50 states. States passed these "top-down" requirements on to the regulated community, that is, to industry and cities.

Flexibility was not a goal; instead compliance with the national standard was the goal. Federal policy administrators saw flexibility in implementation of federal laws as a thinly veiled excuse for not complying with federal law. This approach gradually became known as "command and control."

Because of these policies and attitudes, several things happened. First, environmental quality did improve. No one can say that the command-and-control strategy failed, when discussing improvements in environmental quality. But as conditions improved, the problems with command and control became more obvious. It became harder and harder to achieve environmental improvements, because more cases surfaced where the rigid approaches of command and control did not make sense, or even made the problem worse.

During the 1990s, a movement began among the state governments to reduce the amount of command-and-control decision-making from the federal level. States, being "laboratories of democracy," were better positioned to know their own problems and how best to solve them.

The era where state governments might look the other way and ignore environmental problems was over, in part because of a public sensitized to environmental problems.

Secondly, states had developed their own bureaucracies of staff who were not inclined to tolerate significant lessening of commitments to environmental protection. Lastly, we began to see real innovative solutions from the state governments for environmental problems. These innovations lent credence to the proposition that decentralization is a viable alternative.

Now for some of the examples of alternatives to command and control. The first example is from Pennsylvania, characterized by a mixture of heavy industry, agriculture and mining industries. Environmental management in Pennsylvania was reorganized last year, with the natural resources management functions being split off into a separate agency. The new Department of Environmental Protection is responsible for the traditional environmental venues of air, water and waste management.

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This agency retains its permitting functions.

However, the agency's new leadership is keen on changing the confrontational nature of the agency's relationship with the permittees. One of these initiatives is centered on the ISO14000 process. ISO14000 is a voluntary environmental management standard for industry to follow, and is being organized by the International Standards Organization, the same organization that produced ISO 9000 (the Total Quality Management standard). Please note that it is not an environmental *quality* standard it is a *management* standard. This means that companies complying with the standard have established procedures to seek out environmental problems and correct them, regardless of governmental supervision. In theory, at least, a company complying with ISO14000 will comply with the environmental quality standards of the nation where the company is located, whether or not the host nation makes any effort to enforce environmental law. ISO has a rigid qualifications and inspection process, and any company failing to meet the standards will lose its ISO14000 standing. The final standards for ISO14000 are expected in mid-1996.

Pennsylvania is considering what compliance with ISO14000 might mean for its permitting and inspection responsibilities. For example, if ISO14000 certifies that a company meets its standard, will it continue to be necessary to schedule monthly compliance inspections on significant industries, or will an annual inspection be enough? Will the agency continue to permit each pollution point in the industry, or will a much shorter permit application be possible because of ISO14000 compliance?

According to Secretary Jim Sife, of the agency, ISO14000 might mean all these things. Sife says ISO14000 is "potentially many times more effective in achieving significant environmental improvements than traditional . . . regulatory methods."[2] Sife notes that Pennsylvania has already sponsored workshops on the use of ISO14000, including: (a) inspection and permitting policy changes; (b) how small companies might be included; (c) how to deal with perceptions about reduced enforcement; and (d) which laws and regulations might need changing to accommodate ISO14000. The state has already proposed a policy to encourage the use of voluntary measures. Under this proposal, companies that conduct compliance audits (eco-audits) or that follow ISO14000 standards will not be subject to fines or penalties for violations the company uncovers, if the violations are reported and promptly corrected.

Pennsylvania expects this policy, and others that may follow, to reduce the time and resources committed to environmental protection by the state, while resulting in environmental improvements. Companies are expected to benefit as well, both environmentally and competitively.

The second example is also related to enforcement and penalties. The state of Mississippi is working with the small companies that face difficulties in following all the complex environmental laws affecting them. In the United States, large facilities usually have environmental personnel dedicated to assuring compliance with environmental law. However, medium and small companies may not have such a staff person, or this person may be responsible for many other things as well, such as worker safety issues. These companies may violate environmental laws without realizing they are doing so. In the past, these violations usually resulted in penalties (fines), as well as the cost of altering equipment to prevent future violations. Companies often felt they were beset with an impossible task. Realizing that this situation has created an atmosphere of confrontation, not cooperation, the Mississippi environmental agency has begun a new system based on training. In this system, a first-time offender of the state's law on leaking gasoline storage tanks can elect to receive environmental compliance training from the agency instead of paying a penalty. (The company still has to fix the problem, of course, and serious violations are not included.) The people taking the course are tested, and must achieve a passing score or pay the penalty.

Agency leadership believes that this training will result in several benefits. First, the agency expects a heightened awareness of environmental laws among small businesses and industries.

Second, it expects a reduction of future violations because of the training. Third, it expects fewer complaints from businesses and therefore a better relationship between the agency and the regulated community. Finally, and most importantly, it expects an improvement in environmental quality because of fewer violations.

States are beginning to investigate how to reduce environmental rules, the third example of decentralization. These states are simply removing environmental regulations off the books if they are never or seldom used, and they are changing the language to reduce the volume.

During 1995, Florida held a series of public and internal meetings to determine what rules might be suitable for deletion. By the end of 1995, 1,232 of the agency rules, or 54 percent, had been repealed, were scheduled for repeal, or if necessary were identified to the governor's office as requiring statutory change to allow repeal.[3] Many of the rules eliminated were "process" rules — the agency refrained from deleting standards. For example, the agency deleted the rule that required repair of leaking automobile air conditioner systems, originally enacted to help preserve the ozone layer. With the ban of freon production, and the realization that all freon already in existence will eventually leak, the agency decided to delete the rule. Only repair shops protested the rule change.

A fourth example of decentralization is the use of ecosystem management principles in which geographic areas are managed by environmental quality considerations rather than by stagnant standards. This management approach is being conducted in several states, notably Florida and Washington. In Washington, the department of ecology is taking a "watershed management" approach. This management scheme is holistic, integrated and decentralized. It is holistic because it includes consideration of disciplines not usually dealt with by environmental agencies, but which are affected by environmental management schemes: fish and wildlife, agriculture and transportation. Watershed management is integrated because it includes decision-making across several agencies, levels of government and the public. Finally, it is decentralized because much of the goal-setting and decision-making is done within the watershed. Washington's environmental agency has reassigned staff from both its central and regional offices into local watershed offices to help facilitate this transfer of decision-making. In return, the agency expects to see improved water quality, especially from nonpoint sources such as agriculture.

The last example of decentralization is the revised approach states are taking on environmental permits. Environmental permits have been the backbone of command and control: authority to issue them is delegated from EPA to the states, and then the states issue the stipulations under which the recipients (usually industry or municipal water treatment plants) may emit pollutants. Traditionally, environmental permits have been very proscriptive, requiring use of Best Available Control Technologies, or imposing a battery of proofs on technologies not commonly used to solve pollutant problems. Not only do these permit systems impose a burden on the regulated entities, they impose a burden on the regulator as well. Many states have experienced massive permit application backlogs, sometimes numbering in the thousands. These applicants are allowed to continue operation until their permit is reviewed, which sometimes takes years. Obviously, the permit system had begun to break down. However, most observers credit the permit system for the reduction in regulated emissions that the nation has experienced over the last 25 years. Environmental professionals searched for a way to reconcile these two observations.

States have been interested in permit reforms for years and have taken many different steps to improve the process. Massachusetts, for example, undertook a major permit revision process in 1989 designed to eliminate a backlog like the one described above. More recently, EPA has initiated a process intended to address the permits issue.[4] This process, called the Permits Improvement Team, has two chief recommendations: that permits emphasize performance (over technical specifications), and that

the public be provided with information that will assist it in monitoring the performance of the permittee.

EPA and the states are already cooperating on some revised permit processes that explore these new operational parameters. Oregon and Minnesota, for example, have issued "flexible" air permits, which, among other things, allow the regulated entities to make process and operational changes that they believe will result in fewer emissions, without triggering another permit review cycle (which had been the case anytime a change was made).

The EPA process is also investigating alternatives to individual permits, such as general permitting (a process in which requirements are based on a prototype facility), and permits-by-rule (in which a permit issued under one statute applies to another as well). Finally, the agency also wants to emphasize the use of pollution prevention, which may reduce the complexity of a permit, or even eliminate it altogether. However, whether EPA's process will gather much attention in the states remains in doubt. It is a very federally driven document, with nearly all of the perspective given from an EPA point of view. States issue most permits, not EPA. Nevertheless, EPA's effort is a step in the right direction, and should lead to some decentralization.

Finally, there is the question of what obstacles exist for decentralization. There are many. First, there is the tradition of 25 years of command-and-control legislation. It will not be easy to change these laws. Second, there is distrust among some of the environmental community (but not all) about the change. Third, there is distrust among the bureaucracies themselves, some of whom simply do not want change because it is difficult and disrupts schedules.

Fourth, even some businesses are suspicious of changes in environmental laws, fearing disguised attempts at creating more legal burdens. Finally, there is the fear, not of failure, but of the *risk* of failure: granting local governments new authority means they might make bad decisions. In spite of these obstacles, the likelihood for decentralization and reduction efforts in the United States seems high for the foreseeable future.

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Reforming Public Integrity Laws in an Era of Declining Trust

Lawmakers may judge the ethical climate of state government by their own best intentions, but the public sees it differently. In the midst of that perception gap, it usually takes a full-blown scandal to prompt major reforms.

by David Ensign

Public office is a public trust. That sentiment — and often those words — are enshrined in most state laws governing public integrity. Whether ethics codes, lobbying laws or campaign finance regulations, "public integrity" laws exist to articulate the basic principles of political ethics — independence, fairness and accountability[1] — and ensure that those principles are upheld. Gauging "reform" in this area requires examining the number, nature, and ultimately, the reasons behind state actions to enact or change public integrity laws over time.

The Watergate era saw a surge of state activity — 39 new commissions, agencies or committees were created between 1973-1978. This was followed by a 10-year period (1979-1988) during which states created eight new ethics commissions, agencies or committees. From 1989-1993 — as FBI investigations in Arizona, Kentucky and South Carolina became public — states created a dozen such bodies. In the past five years, more than 15 states made significant reforms to their campaign finance, lobbying or ethics statutes. Last year, 33 states made at least minor changes to their laws governing lobbying, campaign finance or ethics (Bowman, 1996). The changes ranged from slight adjustments of reporting requirements in several states to major overhauls of the campaign finance law in Ohio and the ethics code in Alabama.

Clearly, from 1973 to the present, lawmakers paid a significant amount of attention to public integrity. However, the mere fact that states take legislative and administrative actions tells only part of the story. Equally important is the strength of such actions.

For example, informal polls of lawmakers and lobbyists at CSG meetings usually rank Wisconsin as home of the nation's strictest ethics laws. Similarly, state ethics administrators cite Wisconsin's law (Bullock, 1994). Those rankings are based on the opinions of state officials, but a formal comparative study of legislative ethics laws produced some surprising results: Wisconsin's ethics code is relatively weak and the strongest ethics laws are in Hawaii, Kentucky, Tennessee and West Virginia (Goodman, *et.al.*, 1996).

The study identified 16 categories of ethics legislation and 61 distinct restrictions that lawmakers impose upon themselves in the 43 states that provided ethics laws for the researchers' review. The principle items within the broad categories include restrictions on the following activities in relation to legislators or close economic associates:

- The use of office for economic gain, contracts, employment and privileges.
- Legislative participation in floor or committee action if a matter concerns legislators or close economic associates.

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• The use of public resources for private concerns.

• The acceptance of gifts, services and favoritism.

• Representation of clients before the legislature and government agencies.

The content analysis of ethics codes covered only legislative ethics: "the internal guidelines that the lawmakers have developed to govern their behavior" (Goodman, *et.al.*, p. 53). Only 12 states received moderately high to high rankings in passing comprehensive ethics legislation (see Table 1).

This discrepancy between informed state officials and academics can be explained in part by looking at the process of reform and the reasons states undertake reform.

Minor changes in state public integrity laws can be brought about by a number of factors, as a brief look at legislative action in Connecticut last year demonstrates. Last year the U.S. Supreme Court, in *McIntyre v. Ohio Elections Commission*, struck down an Ohio law relating to the integrity and financing of political campaigns. Ohio's political campaign regulations required that literature supporting or opposing a ballot measure include information identifying the sponsor of the literature. According to a dissent by Justice Scalia, every state except California had a statute similar to the one struck down by the court. The majority cited the long-standing tradition of anonymous political literature in ruling the statute unconstitutional. Connecticut was perhaps the first state to respond legislatively, when the General Assembly revised the state's campaign finance law to delete the attribution requirements for campaign literature paid for by individuals acting independently of campaign organizations.

A state's own ethics procedures also influence the legislative agenda. For example, advisory opinions from state ethics agencies can lead to statutory changes. In Connecticut, the General Assembly amended the state's post-government employment statutes twice in response to opinions by the state's ethics commission. In July 1994, the commission advised a former state prosecutor not to negotiate with

Table 1
STRENGTH OF STATES' ETHICS LEGISLATION*

Low (N=16)	Moderate (N=15)	Moderately High (N=8)	High (N=4)
Arizona (9)	Alabama (13)	Connecticut (30)	Hawaii (34)
Arkansas (2)	Alaska (16)	Florida (21)	Kentucky (34)
California (9)	Colorado (14)	Iowa (24)	Tennessee (40)
Delaware (0)	Kansas (16)	Maryland (21)	West Virginia (33)
Georgia (0)	Louisiana (14)	Massachusetts (24)	
Idaho (7)	Maine (17)	Nevada (21)	
Illinois (7)	Nebraska (11)	Pennsylvania (23)	
Indiana (0)	New Mexico (11)	Rhode Island (22)	
Mississippi (8)	Ohio (16)		
Montana (7)	Oklahoma (15)		
New Hampshire (0)	Texas (13)		
Nevada (9)	Utah (18)		
North Carolina (2)	Virginia (11)		
North Dakota (4)	Washington (12)		
Oregon (9)	Wisconsin (14)		
South Dakota (0)			

The number in parentheses represents the state's total score regarding the comprehensiveness of its ethics legislation
* No data were received from Michigan, Minnesota, Missouri, New Jersey, South Carolina, Vermont, Wyoming.

Source: Public Integrity Annual, The Council of State Governments

any representative of the Division of Criminal Justice, a ruling that severely limited the former prosecutor's ability to practice criminal law. The General Assembly responded by crafting, over the course of two sessions, an exemption for former prosecutors in private practices.

Ethics reform also involves state-to-state communication and education. States draw on existing statutes, and perhaps on model legislation[2] from other states when reforming their own. That process leads to an accumulation of restrictions that cast a broader net. For example, Wisconsin set the early standard for restrictions on lobbyists' gifts to lawmakers when it imposed the so-called "no cup of coffee" gift ban more than 25 years ago [Chartock and Berking, (under Wisconsin's lobbying law as cited by Chartock and Berking in 1970, registered lobbyists are not allowed to furnish "any food, meal, lodging, beverage, transportation, money, campaign contributions or any other thing of pecuniary value" to any legislator or official or employee of the state), p. 235].

The Wisconsin ethics law received its relatively low ranking in the Goodman study because, while it restricts gifts from lobbyists as tightly as any state, lawmakers, lobbyists and staff in Madison face fewer restrictions in other areas than their counterparts in the dozen states ranked moderate to high.

Inconsistent coverage of areas such as gifts, economic gain, outside employment, financial disclosures, conflicts of interest, representative activities, use of public office and so on raises questions both about the relative importance of restrictions in certain areas and the difficulty of addressing certain issues in statutes.

Gift bans usually receive a disproportionate amount of press coverage during a reform process, perhaps because they are easy to convey and understand. Gifts are also easy to regulate because bill drafters can draw distinct lines based on dollar amounts to limit what lobbyists can give to members or staff.

On the other hand, few observers of the legislature believe that a cup of coffee or a meal influences the legislative process.

"In my mind, a cup of coffee is not important in the grand scheme of things. That's obvious," says Earl S. Mackey, executive director of Kentucky's Legislative Ethics Commission (Mackey, 1996). "What is important is that the public has a sense of the amount of money that's being spent to lobby a particular issue, who's spending it and who it is being spent on."

Mackey adds that the public, if asked, would probably prefer that legislators not receive food, beverages and entertainment at lobbyists' expense. Perhaps with that question of appearances in mind, at least a dozen states have followed Wisconsin's lead by either banning or severely restricting gifts and wining and dining of lawmakers by lobbyists, and all but two states (Georgia and South Dakota) place some type of restriction on the receipt of gifts by some categories of public officials (Bowman, 1996).

While it is impossible to be more restrictive on such expenditures than Wisconsin's zero-tolerance, there is more to public integrity laws than gift bans, and other states have moved beyond Wisconsin in many of the other areas of restriction.

Major changes to state public integrity laws follow a pattern: scandal and media pressure (Goodman, 1996). Recent experiences in Alabama and Kentucky illustrate this. Both states suffered major state government ethics scandals and the legislature responded in each case by significantly strengthening ethics laws.

In Alabama, scandals left a former governor under indictment and much of his administration under suspicion. While the Alabama law was not included in Goodman's study because it did not pass until the end of the 1995 legislative session, the comprehensive overhaul clamped down on numerous loopholes in a law that the researchers had rated as only moderately strong.

"I'd rather have my law than any other ethics law in the country," says E.J. "Mac" McArthur, director of the Alabama Ethics Commission (McArthur, 1995). McArthur notes that the Legislature strengthened the code in more than a dozen substantive areas, including:

• Requiring state officials to wait two years after leaving their state position before working as a lobbyist.

• Limiting the period in which public officials can solicit or accept campaign contributions to the 12 months prior to an election.

• Barring elected officials from using campaign funds for personal use or living expenses.

• Providing strong whistle-blower protection.

• Increasing the statute of limitations under the law and doubling the maximum penalty for felony violations, up to 20 years in prison.

Giving the Alabama Ethics Commission the power to initiate its own investigations of possible wrong-doing.

In Kentucky, the federal BOPTROT investigation led to the extortion and racketeering convictions of former Kentucky House Speaker Don Blandford three years ago and left the entire legislature under a cloud with several lawmakers and lobbyists in prison. In response, lawmakers reformed the state's lobbying regulations and created an independent legislative ethics commission to administer the law. The reform act, passed in 1993, allows lobbyists to spend up to $100 per legislator per year for meals and drinks. But the law requires complete disclosure and that has dampened the enthusiasm for wining and dining in Frankfort. When the legislature convened its 1996 session in January, legislators were the beneficiaries of a grand total of $26 in lobbyist spending for food and drink for the month.

Lobbyists are also barred from contributing to legislative campaigns and from serving as fund raisers or treasurers of campaign committees. In addition, lawmakers face a two-year revolving door restriction on lobbying the legislature after they leave it.

"Substantive, comprehensive and innovative" are the words Earl Mackey uses to describe the Kentucky reforms. He sees the reforms as the latest step in the evolution of state legislatures over the past three decades. Mackey, who once served as executive director of the National Conference of State Legislatures, argues that "legislatures, over the past 20 to 25 years, have probably undergone more reform and more institutional change than almost any other public institution in our country. These institutions have a very remarkable record in terms of how they've changed." He notes that the institutional reforms have brought increased focus on legislatures and their members and, as a result, increased attention to institutional failures (Mackey, 1996).

In both Alabama and Kentucky, the state government scandals were major news stories for months. The states' media outlets kept the legislative deliberations of reform under intense scrutiny and editorialized at length in support of strong reforms.

That fits Goodman's description of the process. "Ethics legislation is a function of an ethics scandal process. In state after state (e.g., Ohio, California, South Carolina, Kentucky and New York), we witness ethics legislation being passed after intense media coverage of a scandal" (Goodman, p. 55).

The campaign finance reform measure passed in Ohio last year fits that pattern, but not perfectly. While Goodman's study focuses exclusively on legislative ethics codes, campaign finance clearly touches the field of public integrity because of the crucial role that money from interest groups and lobbyists (in some states) plays in the campaign process. Given public perceptions about the propriety of that money, it is not surprising to see campaign contributions or funds at the root of many well-publicized scandals. Nor should it be surprising to see campaign finance reform become the focus of media attention in the wake of scandals. What may be surprising, however, is the role citizen pressure is playing in campaign finance reform absent specific scandals.

Columbus was not so much rocked by scandal as plagued by a widespread perception of a "pay-to-play" atmosphere. In a state with powerful newspapers in Cleveland, Columbus and Cincinnati as well as Dayton, Toledo and Youngstown, editorial writers repeated that phrase so often that it became almost a first name to the General Assembly. When Secre-

tary of State Bob Taft appeared before the House Ethics and Elections Committee to support a reform proposal, he compared Ohio to "the Wild West before law and order" (Ensign, 1995). Facing intense pressure from a citizen coalition that included leaders from the successful term-limits drive and Common Cause/ Ohio (which opposed term limits), lawmakers passed a measure that limits contributions from individuals and political action committees or other campaign committees to $2,500 for candidates for the House, Senate or statewide offices. The coalition had threatened to petition for a ballot measure that would have put a $1,000 limit on donations to political campaigns from individuals or PACs.

Such citizen pressure may alter the public integrity reform process. During the past two years, voters in Oregon, Montana and Missouri have passed citizen-initiated campaign finance reform measures and lawmakers in Massachusetts rewrote that state's campaign finance system to preempt a citizen initiative.

Prior to 1995, Oregon had no statutory restriction on the amount or source of campaign contributions or expenditures (Bowman, 1996, p. 271). Voters attempted a radical change by passing a constitutional amendment that would, among other things, require: candidates for any nonfederal office in the state to "use or direct" campaign contributions only from individuals who reside — at the time of their contribution — in the district in which the candidate is running. The measure expressly prohibits qualified donors (individuals residing in the appropriate district at the time of their contributions) from passing through money from unqualified donors (committees, organizations, out-of-district individuals and other entities that are not individuals residing in the district). A candidate who wins election but has more than 10 percent of his or her "total campaign funding" from non-qualifying sources cannot hold the office sought or any other subsequent elected public office for a period equal to twice the tenure of the office sought. A candidate who loses and violates the 10-percent rule is barred from holding any subsequent elected public office for a period equal to twice the tenure of the office sought (Bowman, pp. 271-272).

In July 1995, the U.S. District Court in Portland ruled Measure 6 unconstitutional. While the court's ruling means the voters' decision carries no legal weight, their voice is likely to carry substantial political weight. Citizen efforts to reform the campaign process may be the logical next wave following the term limits movement that swept through all 21 of the states with ballot initiative provisions.[3] Term limits were not driven by specific state government scandals but rather by the "trust gap" that plagues American politics in general at this point. While the term limits movement — clearly a visceral response to the trust gap — appears to have played itself out, the citizen-initiated campaign finance reforms could indicate that other public integrity reforms are gaining a place on the initiative agenda.

If so, scandal may become less important as the ignition for ethics reform.

Under the scandal-driven theory of ethics reform, Wisconsin's law may be relatively weak because the state has not suffered a significant scandal. To a degree, Wisconsin is an example of "if it ain't broke, don't fix it." But states such as Wisconsin, that have escaped major scandal thus far, may still see significant ethics reform if Mackey is correct. He believes that, while scandal-driven, Kentucky's reforms are part of a wave of ethics reform that will touch many states before it plays itself out.

Meanwhile, Mackey appreciates the research finding Kentucky's ethics law among the nation's strongest. Broad measures such as those employed by Goodman will likely be the yardstick by which future public integrity reforms are measured.

What does this all mean? Generally, while states have *acted* on welfare, health care and education reform, they have *reacted* on ethics reform. Perhaps, as Goodman says, when it comes to policing themselves "suddenly legislators lose their taste for innovation" (Goodman, 1996a).On the other hand, public officials

suffer from the same kind of "ethical myopia" that blinds most people to their own shortcomings and leaves their self-perception at odds with public perception. As Josephson puts it, we judge ourselves by our highest aspirations and best acts, but others judge us by our last, worst act (Josephson, 1992a). In other words, on welfare, health care and education, lawmakers clearly perceive a need for reform, but when it comes to questions of public integrity they judge the ethical climate of state government by their own good intentions and thus see no need for change.

Active or reactive, researchers and practitioners such as Mackey agree that the measure of an ethics code is not whether it restricts the cup of coffee, but how clearly and comprehensively it covers the variety of ethical decisions facing state officials and private interests in the course of daily life in state government. Down the road, however, the most important measure of public integrity laws taken as a whole may be whether or not they improve public trust in government.[4]

Unfortunately, despite considerable activity by lawmakers and regulatory agencies at the state level, public trust in government remains remarkably low. For example, a *Los Angeles Times* survey in 1990 (cited in Greider, 1992, p. 176) found that more than half (53 percent) of Californians believe state lawmakers take bribes from special interests. On a broader scale, a 1995 *Business Week* poll found that only 9 percent of the public expressed a great deal of confidence in state government (*Business Week*, 1995). That figure was actually an increase over the 5 percent of the public that expressed a great deal of confidence in state government in a 1992 poll conducted by the Advisory Commission on Intergovernmental Relations (ACIR, 1992). The landmark Kettering Foundation report, "Citizens and Politics," gives voice to the broad section of the American public who believe that "the present political system [is] impervious to public direction, . . . run by a professional political class and controlled by money, not votes" (Kettering, 1991, p. iv). These findings, along with a 10-year comparison of opinions of legislatures in several states (*State Legislatures*, 1995), indicate that overall, trust in state government has declined during a period of ethics reform.[5]

It is too late for state lawmakers to do anything but react to that gap and the deep divisions it represents. But it remains possible for lawmakers in most states to act before scandals in their own governments further widen the gap. Such action on the part of legislators will require the same type of innovative thinking that has marked state action on so many of the nation's most pressing issues over the past 15 years.[6] Indeed, the increased strictness of state ethics codes — the stronger laws generally have been passed more recently than the weaker ones — seems to suggest that lawmakers are learning from their experience.

Endnotes

[1] Thompson provides a concise description of these principles in relation specifically to legislative ethics in the opening chapter of *Ethics in Congress* (Thompson, 1995). Josephson identifies five principles of public service ethics: public interest, objective judgment, accountability, democratic leadership, respectability (Josephson, 1992).

[2] In addition to using state statutes as models, reformers can look to model bills drafted by Common Cause (1989), the Council on Governmental Ethics Law (1991) or the Josephson Institute (1992) for guidance.

[3] From 1990 to 1994 21 states (Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming) passed either state or congressional term-limit measures. The U.S. Supreme Court struck down the congressional limits. In Illinois, which has an extremely limited form of initiative, a term-limit measure was struck from the 1994 ballot by the state Supreme Court "on grounds that would seem to preclude the matter ever getting on the ballot

in that state" (Barcellona and Grose, 1994, addendum, p. 2).

[4] Some statutes actually address this concern quite directly. For example, Alabama's ethics code opens with the declaration that "It is essential to the proper operation of democratic government that public officials be independent and impartial. . . . It is important that there be public confidence in the integrity of government" (Alabama, §36-25-2). Hawaii's campaign finance law, enacted in 1995, notes in its first section that "The purpose of this Act is to amend the campaign spending laws to encourage citizen participation in the electoral process, prevent the actuality or appearance of corruption . . . " (Hawaii, Act 10, section 1). And Maryland's Public Ethics Law states as its first provision: "The General Assembly of Maryland, recognizing that our system of representative government is dependent upon the people maintaining the highest trust in their government officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of those officials and employees be maintained" (Maryland, §15-101-1a).

[5] Congress has also stepped up its activity in this area by passing the Congressional Accountability Act (January 1995) and the Lobbyist Disclosure Act (November 1995). At both the state and federal levels the pace of reform has increased along with the number of scandals while public confidence in governmental institutions at all levels has declined. Interestingly enough, many commentators argue that legislators themselves — both state and federal — are less corrupt and more capable today than they have ever been. Of Congress, Thompson writes, "most informed observers of the institution believe that the legislators' integrity and competence are greater than in the past" (Thompson, 1995, p. 3). State legislatures are both more democratic and professional today than they were 30 years ago, and behavior that was commonplace in prior generations is illegal today (Jones, 1994).

[6] Innovative thinking about public integrity — rather than merely passing tougher rules — is the most pressing need. Indeed, the Kettering research found that "initiatives such as campaign finance reform, new ethics codes, drives for easier voter registration, or limiting the terms of legislative members will provide only marginal benefit in reconnecting citizens and politics" (Kettering, p. 2). While constructing clear rules and holding public officials accountable is important, closing the trust gap will require something more like the "constructive and dynamic relationships among and between citizens, public officials, the media, and the sundry special interests that make up politics" called for in the Kettering report (Kettering, p. 2).

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Judicial and Legislative Enforcement of Federalism

A summary of recent efforts by the Supreme Court and proposals introduced in Congress to enforce principles of federalism through the courts.

by Richard Cordray

Deep concerns about federalism resurfaced in 1995. This renewed attention to an age-old problem was led by the Supreme Court, which invalidated a federal statute for the first time since the New Deal on the ground that it exceeded the permissible boundaries of congressional powers. Congress also embraced these issues by taking up several proposals designed to make it easier to block the federal government from encroaching upon the realm of the state governments. Wherever this new ferment may lead, it promises to rekindle long standing debates about how best to establish and enforce the proper balance between federal and state authority.

Historical Background of Federalism in the Courts

Issues of federalism are, of course, issues about the allocation of political power rather than traditional legal issues. As a consequence, the Supreme Court has typically been a reluctant and relatively ineffective umpire in this area. On those occasions when the court has determined to interpose itself to decide controversies between federal and state power, it has largely tended to favor the federal government of which it is itself an arm.

A brief survey of the Supreme Court's most important federalism decisions suffices to make these points. One of the court's first noteworthy decisions was its shocking ruling in 1793 that a state could be held subject to suit in the federal courts upon a debt owed to a citizen, even though this position had been squarely rejected by Alexander Hamilton in the Federalist papers.[1] A majority of the fledgling court explicitly rested this decision on the view that the states possessed only limited sovereignty in the new national democracy, an ominous position that was swiftly repudiated by adoption of the Eleventh Amendment. A decade later, the Court brought down its historic decision in *Marbury v. Madison*, 5 U.S. 137 (1803), which held that the Supreme Court is authorized to review the constitutionality of government actions, and to invalidate those actions judged to be unconstitutional. Over the years, the Supreme Court has used this principle to invalidate much more state legislation than federal legislation, and has much more frequently enjoined actions by state officials than by federal officials.

Finally, the court's formative decisions about the scope of federal powers weighed heavily in favor of the federal government. In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the court construed the "necessary and proper" clause in Article I to give Congress wide latitude in determining how best to implement the enumerated powers vested in it under the Constitution, and specified the reasoning by which state laws inconsistent with federal authority would be held invalid on preemption grounds. Equally if not more important, in *Gibbons v. Ogden*, 22 U.S. 1(1824), the court laid the groundwork for an expansive interpretation of congressional authority to enact legislation regulating interstate commerce, which has been the most significant basis of general residual authority for the Congress to enact federal laws on practically any subject that it chooses to address. Although the actual breadth of this power was not finally established and confirmed until the New Deal

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era, ultimately the court held that Congress could extend this power to economic regulation of intrastate activities as well.

The judicial groundwork laid by the Supreme Court in its first few decades was cemented into place by the Civil War and adoption of the postwar amendments. The Fourteenth Amendment, in particular, represents the most significant modification of the Constitution that bolstered federal authority to the detriment of the states, though the court's subsequent decisions have taken its provisions much further to make deep inroads into state authority.

First, by developing the notion of "substantive due process" around the turn of the century, the Supreme Court invalidated numerous state and federal laws that sought to address urgent issues of economic regulation and social welfare reform.[2] Although the court eventually retreated and began upholding key New Deal measures, the Court continues to take a freer hand in invalidating state and local laws under this branch of its jurisprudence.[3] Second, the Court gradually adopted the view that the Due Process Clause "incorporated" most of the Bill of Rights as direct constitutional limitations upon state governments. This development, combined with judicial review, has allowed the federal courts to strike down a multitude of state laws in the past few decades. Third, the court has devised intricate theories to enjoin state actions seen as inconsistent with federal law. An obvious barrier to bringing such suits is the Eleventh Amendment, which bars citizens from suing a state in the federal courts. In a 1908 case, however, the court deliberately skirted this barrier by erecting an acknowledged legal fiction that cases seeking injunctive relief can be brought against state officials in their personal capacity, and will be allowed to proceed.[4] In the last 30 years, the federal courts have used structural injunctions to take over the administration of state programs, state facilities, and sometimes portions of state budgets, for years at a time in order to enforce compliance with their views of the requirements of federal constitutional law.[5]

This brief overview thus counsels caution in relying on the Supreme Court to enforce principles of federalism in a manner that protects state authority and state interests. The fundamental issues here are political issues about the allocation of powers, and the Court inevitably tends to approach them from its initial vantage point as a *federal* institution. Although in different eras the court has been influenced by these facts to greater or lesser degrees, the overall direction of its jurisprudence in the area of federalism has not been promising for the states — a point that bears emphasis in assessing the significance of any more limited trends in the Court's recent decisions.

Recent Supreme Court Decisions on Federalism

The most important of the Supreme Court's federalism decisions in the last decade concern the Tenth Amendment. This final provision in the Bill of Rights reiterates that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In 1976, the court decided *National League of Cities v. Usery*, 426 U.S. 833 (1976), an apparent watershed case which recognized the continuing existence of state sovereignty and established the Tenth Amendment as a limit on congressional power. The court held that a federal law would be ruled invalid if it regulated the states in such a manner as to impair state sovereignty, particularly by infringing upon state operations in areas of their traditional functions. The constitutional issues posed are vital, because the basic question is whether and to what extent the federal government can impose mandates (whether funded or unfunded) upon state governments.

Over the span of a decade, however, the court found itself unable to formulate a satisfactory definition of the realm of "traditional state functions," and thus, several Tenth Amendment challenges to federal laws were unsuccessful.[6] Finally, in *Garcia v. San Antonio Metropolitan Area Transit Authority*, 469 U.S. 528 (1985), a divided court expressly overruled the *National League of Cities* decision, holding that "the Constitution does not carve out express ele-

ments of state sovereignty that Congress may not employ its delegated powers to displace."[7] The court thus appeared to abandon its previous efforts to refine judicially enforceable principles of federalism out of the text of the Tenth Amendment. In essence, the court suggested that rather than seeking to resolve such complaints in the federal courts, the states instead would have to exert their influence on the federal legislative process, and must look to Congress for any reconsideration of the current balance of power between the states and the federal government.

Despite these setbacks, the states doggedly continued to pursue such cases before the Supreme Court. Finally, in 1992, they were successful once again in securing the invalidation of a federal law on Tenth Amendment grounds. The rejected federal law, which governed disposal of radioactive waste, was ruled invalid because it achieved its objectives in part by ordering the state legislatures to adopt specific state legislation in accordance with federal guidelines.[8] The case has been read in very different ways: either as narrowly standing for the principle that the federal government cannot dictate the passage of legislation by the states, or as a broader revival of the Tenth Amendment and perhaps a return to the *National League of Cities* doctrine, even though the court expressly refrained from addressing the issue of whether to overrule *Garcia*.

The long-term importance of the *New York* decision is therefore unsettled at the present, and continues to be fought out in the lower courts. The most obvious issue the court must eventually decide in explaining this precedent is the extent to which Congress may require state officials to assist in implementing federal legislative policies. The court had recently suggested that the federal government could require some such assistance from state officials in adjudicating disputes under federal law and in performing certain executive duties.[9] On the latter point, indeed, the court had expressly overruled one of its Civil War-era federalism precedents, which it criticized as taking too narrow a view of federal power, particularly in light of the modern exercise of federal judicial power to enjoin unconstitutional actions by state officials.[10]

This issue (aside from the new *Lopez* decision, discussed on page 488) poses the most fundamental of the current judicial challenges to federal power. In contrast to the more modest debate over unfunded mandates, the Tenth Amendment claim is that the federal government cannot impose mandates upon the states *at all, regardless of whether they are funded or unfunded*. The continuing importance of this issue, as well as the strength of conviction that it arouses, is underscored by the fact that all of the Supreme Court's major decisions in this area have been rendered on 5-4 votes.

In other respects, the Supreme Court has made incremental progress toward reinvigorating state authority. On congressional waivers of state sovereign immunity from suit, the court has cleaned up some of the looseness of prior doctrine and has imposed upon the Congress a procedural "plain statement" rule that strongly disfavors such waivers unless the statute is emphatically explicit that Congress has enacted such a waiver.[11] In a similar vein, but potentially of greater significance, the court also imposed a "plain statement" rule in a case where the issue was whether federal law (the Age Discrimination in Employment Act) would preempt state laws and constitutional provisions that place a mandatory retirement age upon state judges. The rule was imposed, and was found not to be met, in part because of express concerns about the significant constitutional questions raised by such an application of federal law to interfere with the structural mechanics of state governments. Thus, the court again seemed to indicate, as it would do again in the *New York* case just a year later, that the issues it had addressed from opposing poles in *National League of Cities* and *Garcia* may now again be very much in play.[12]

Another area in which the Supreme Court has recently made some incremental progress toward protecting state authority and state interests concerns structural injunctions. As noted earlier, the modern practice of using structural injunctions as a means by which judges can take over the administration and oversight of state

facilities and state programs, often for extended periods, has made serious inroads on the constitutional authority of the states. Yet in several recent decisions, the court has eased the conditions for lifting structural injunctions, either in whole or in part.[13] The court has also now ruled that any significant change in either the facts or the governing law will provide sufficient grounds for granting appropriate modifications to consent decrees that have been entered in institutional reform litigation.[14] The upshot of these rulings will be to give the states somewhat more leeway in avoiding the tight and surprisingly durable constraints imposed by the federal judiciary through the tools of structural injunctions and consent decrees.

1995 Federalism Decisions by the Supreme Court

Just last term, the Supreme Court issued a significant and surprising decision in favor of the proponents of federalism. In *United States v. Lopez*, 115 S. Ct. 1624 (1995), the court invalidated the Gun-Free School Zones Act because Congress was judged to lack the proper authority to enact the law under the Commerce Clause. The decision was the first in more than 50 years to invalidate a federal statute on this basis. Much has been said about the future prospects for this ruling. The estimates range from hopes that it will lead a revival of the older doctrine that limits Congress to acting only within its enumerated powers to surmises that congressional authority has only been jarred by the ruling, but not severely circumscribed. Indeed, the court itself offers two possibly distinct lines of analysis to justify its ruling. The first, more expansive rationale is that the court could not reasonably find that the criminalization of much conduct under federal law (including the conduct at issue in the case, which was possession of a gun within 1,000 feet of a school) "substantially affects" interstate commerce. Absent such a connection to interstate commerce, the law is simply not within Congress' power to enact.[15]

Side-by-side with this analysis is a narrower ground for the court's holding, which is that in the unusual instance confronted in *Lopez*, Congress had made no legislative findings — either in the statute itself or in the committee materials that accompanied its passage — to draw the connection between this measure and its potential effects on interstate commerce. The court acknowledges that the existence of such findings would be an important consideration in its decisionmaking about the validity of the statute, but does not indicate whether it would afford them the customary deference that they often receive.[16] What remains to be seen about *Lopez*, therefore, is whether it will come to stand for rigorous judicial second-guessing of congressional determinations about where and why it derives the authority to legislate in a particular area, or whether instead it will come to represent only a minor procedural hurdle that Congress can easily surmount if it legislates carefully.

This question will play out initially in the lower federal courts, with predictably diverse results. Indeed, battles are already being waged over such measures as federal child-support enforcement and a hodge-podge of other federal criminal statutes. Eventually, however, the Supreme Court will probably have to revisit the issue and make a definitive decision about whether to extend *Lopez* more dramatically or instead to leave it simply as a modest warning shot to remind Congress that its apparent omnipotence can be tempered on occasion by the overarching processes of judicial review.

In May 1995, the Supreme Court struck down state-imposed term limits on federal legislators, ruling that they are inconsistent with the exclusive list of qualifications for such officeholders set out in Article I of the Constitution.[17] This ruling will stand as one of the most important decisions concerning federalism in the last decade, at least from a practical standpoint if not from a doctrinal standpoint. The great practical significance of this ruling is twofold. First, it sweeps aside a mechanism that had promised to reduce the distance between the Congress and the public, with potential benefits for the relationship between the states and the federal government. Second, it reinforces the unavoidable conclusion that the process of

amending the Constitutionis a profoundly "inside" process, with all proposals having to be initiated by the Congress, unless their partisans are willing to pursue the unattractive route of starting in the states, achieving a super majority of support there, and then proceeding by means of a constitutional convention, the last stage of which is regarded by many as a frightening prospect. Unlike many state constitutions, therefore, the U.S. Constitution contains no workable mechanism for bringing pressure to bear on the Congress to become engaged in the amendment process.[18] In the end, the term-limits case serves as a useful reminder that the Supreme Court is, after all, a *federal* institution, and historically its role in enforcing federalism usually tends to reflect that outlook.

The Tenth Amendment and Other Federalism Issues in the Lower Courts

In 1995, the lower federal courts considered two particular controversies that raise issues about the meaning and scope of the Tenth Amendment. A number of constitutional challenges have been brought against the Brady Act, contending that it violates the Tenth Amendment by requiring state and local law enforcement officials to perform background checks on potential handgun purchasers. The duties imposed on state and local officials are temporary, and will terminate when instantaneous computer checks become available, which is mandated to occur by 1998. A number of federal district courts have held that the Brady Act violates the Tenth Amendment,[19] at least one district court has held that it does not,[20] and those decisions have been appealed. The first decision by a federal appeals court on this issue recently rejected the former claim, essentially holding that the Brady Act is a regulatory program aimed at individuals and not the states, and that it represents only minimal interference with state functions that do not implicate central sovereign processes,[21] but other such cases are pending and the question may ultimately be decided by the Supreme Court.

Similarly, the constitutionality of the federal "Motor Voter" law has been questioned in several lawsuits brought by state officials who assert that the Congress may not require such actions to be undertaken by state officials. The Tenth Amendment issue in these cases is clouded, however, by the apparent applicability of the distinct and explicit authority that the Constitution confers upon the Congress to regulate federal election processes under Article I, Section 4. Thus far, the federal courts have rejected the constitutional challenges to this measure, resting heavily on the distinct and explicit authority conferred by this provision, and the Supreme Court recently declined to review one such ruling.[22] Further cases challenging other federal measures may also be pending, but have not yet attracted significant attention. It seems clear enough, however, that the states will be pressing to extend the contours of the *New York* decision in the coming years, though the current crop of challenges may not be especially appealing in this regard.

In addition, the lower courts continue to wrestle with difficult questions about the extent to which the Congress may exercise power to abrogate the sovereign immunity of the states from suit in the federal courts, an immunity that is expressly preserved in the Eleventh Amendment. A number of cases involving the Indian Gaming Regulatory Act have raised these issues in a particularly difficult context, and by the end of last term the Supreme Court had granted review to consider the questions presented in one of those cases.[23] Most directly at issue is whether the Supreme Court will continue to adhere to its fragmented ruling in *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989), in which a plurality of the court concluded that Congress could exercise its powers under the Commerce Clause to override the protections for state officials that were adopted in the Eleventh Amendment.

Congressional Proposals for Enforcing Principles of Federalism

At the same time that the courts have been considering new issues about the judicial enforcement of federalism, the Congress has stirred itself to consider new proposals that

would confer broader authority upon the courts to act in the role of umpire in disputes over state and federal authority. In this regard, the principal enactment thus far has been the Unfunded Mandates Reform Act of 1995. This statute uses innovative procedural methods to make it much more difficult for Congress to impose unfunded mandates upon state and local governments. In particular, when any legislative proposal is reported out of a congressional committee, it must now be accompanied by an identification and description of any federal mandates that it contains, along with an assessment of the magnitude of the costs and benefits of any such mandate imposed on either the public or private sectors. Any such proposal that imposes a substantial unfunded mandate is subject to a "point of order" objection made by any member that would block its consideration by the full body. Similar informational and procedural constraints are imposed on federal agencies before they issue new regulations, and the federal courts are given new authority, fairly limited in scope, to enforce these requirements against any agency that fails to comply. In addition, the Unfunded Mandates Act contains provisions that require more explicit notice to be given, again at the committee stage, about the predicted effects that any congressional proposal will have in preempting state legislation.

A further important congressional proposal, which has not been enacted as yet, has been dubbed the "Federalism Act of 1995." The central purpose of this measure is to impose further procedural constraints upon the Congress where it seeks to act in ways that would limit state authority, not limited to the issue of unfunded mandates. In one version of the measure, it would force Congress to do a number of new things every time it considers a bill: (1) identify and justify its authority to address specific matters rather than leaving those matters to the states; (2) consider whether the same goals could be achieved through alternatives that intrude less upon state authority; and (3) identify state laws that might be pre-empted by the bill and notify state officials that the issue is under consideration. In addition, the bill would limit the federal bureaucracy's power to pre-empt state laws without express congressional authority and would direct the courts to construe all federal laws so as to limit their intrusions upon state authority. The most significant object of these proposals is that they give the states greater ability to control the direction of the federal legislative process. By confining Congress within more rigid procedural constraints, it is thought that the states will be enabled to exert greater influence by having notice and an opportunity to be heard before legislation is passed. At the same time, another important object is to assure that intrusions upon state authority will not occur without conscious consideration. Similarly, these measures seek to limit the opportunities for federal administrators to impose new mandates and pre-empt state laws, and would give the courts the necessary authority to enforce these constraints. For now, however, it remains to be seen how far Congress will move in this direction of creating new procedural protections for principles of federalism.

Constitutional and Other Proposals Developed by a Consortium of State Officials

One final development occurred in 1995 that is of uncertain but potentially vast importance. In conjunction with the holding of an unprecedented "States' Federalism Summit," a consortium of groups of state and local officials — which includes both The Council of State Governments and the National Conference of State Legislatures — developed a set of bold proposals intended to improve the institutional mechanisms for enforcing the balance between federal and state authority. In the end, four of those proposals were expressly endorsed by the participants at the Federalism Summit, including a statement of support for passage of the Federalism Act of 1995, as just described in the previous section.

Another of these proposals deals with federal mandates upon the states. Although Congress has now enacted substantial procedural obstacles to the imposition of *unfunded* mandates, state officials remain concerned that nothing has been done to limit mandates that are im-

posed as conditions upon the receipt of federal funds. A decade ago, the Supreme Court held that Congress was free to impose such mandates, and that states are free either to accept or reject them. In many instances, however, mandates are framed as conditions that have little to do with the true purpose of the federal funding — funding that, as a practical matter, the states may not be able to do without. (In the Supreme Court case, for example, Congress required states to raise the drinking age as a condition for receiving federal highway funds, which effectively forced states to submit to the congressional mandate.) A constitutional amendment is thus proposed that would allow Congress to impose only those conditions that are tied directly to the purposes for which the federal funds are to be spent. Any further conditional mandates would be prohibited. It is not clear how Congress will react to this proposal, which would curb one of its most significant powers and go a long way to protect the states from being transformed into mere field offices of the federal government.

The Federalism Summit also presented an intriguing proposal to alter the current process for amending the Constitution. The fundamental nature of this measure cuts strongly against the grain of American constitutional conservatism, yet it has much to recommend it. Under Article V of the Constitution, Congress alone can propose an individual amendment for ratification; the states can only prompt the calling of a constitutional convention. Almost nobody wishes to risk the possible turmoil of a constitutional convention, for most scholars agree that it could not be limited to a single subject, and therefore could result in massive revisions to the Constitution. The result is that Congress has become, in practice, the sole gatekeeper for proposed constitutional amendments. The states believe, however, that they are entitled to an equal role in this process. They thus suggest a simple reformulation of Article V, whereby either Congress can propose individual amendments for ratification by the states or the states can propose individual amendments for ratification by Congress. This would preserve an integral place for Congress in the amending process, while restoring the states to parity and giving them more opportunity to press for congressional action on specific measures. A further virtue of this change is that the disturbing prospect of a runaway Constitutional Convention could then be dropped altogether.

The most controversial of the four proposals is a suggested constitutional amendment for "national reconsideration" of federal laws or regulations. Under the mechanism suggested, whenever two-thirds of the states take formal action within a five-year period to express their disapproval of particular federal laws or regulations, those measures would be repealed unless reinstated by Congress. This proposal would be the most far-reaching if adopted, for it poses a direct challenge to the accepted principle of federal supremacy laid down by the original framers of the Constitution. Yet it seems extremely unlikely that Congress would agree to submit any such measure for ratification by the states.

The formulation and endorsement of these four proposals reflects the view of many state and local officials that they cannot simply rely on the Supreme Court to protect their sphere of sovereign authority. Instead, they need to work through the political process to restore a more appropriate balance of powers between the federal government and the states. Whatever the result of these initiatives may ultimately be, the pursit of such measures is certain to reinvigorate an important debate that needs to be taken seriously by Congress and the American people.

Conclusions

The arena of federalism is likely to be the scene of intensified debate and bold new proposals over the next several years. Proponents of state power have many new opportunities to press their case both in the courts and in the Congress. The most thought-provoking of these new proposals — the set of constitutional and other measures recently presented by a consortium of state officials — is likely to spark the most reaction, regardless of whether any or all of them are ultimately adopted. But with the

Supreme Court and the Congress now interested in taking a fresh look at fundamental issues of federalism, it is impossible to predict just how much the established landscape may change over the next several years.

Endnotes

[1] *Chisholm v. Georgia*, 2 U.S. 419 (1973); *see also The Federalist* No. 81.

[2] See, *e.g., Lochner v. New York*, 198 U.S. 45 (1905); *Adkins v. Children's Hosp.*, 261 U.S. 525(1923).

[3] See, *e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade*, 410 U.S. 113 (1973); *Bowers v. Hardwick*, 478 U.S. 186 (1986).

[4] *Ex Parte Young*, 209 U.S. 123 (1908).

[5] See *e.g., Hutto v. Finney*, 437 U.S. 678 (1978) (unconstitutional conditions in Arkansas' prison system); *Milliken v. Bradley*, 433 U.S. 267 (1977) (Michigan required to bear costs of education programs under desegregation orders).

[6] Various versions of this test were not actually crystallized in *National League of Cities* itself, but were developed in more detail in the later cases that involved unsuccessful constitutional challenges. See, *e.g., FERC v. Mississippi*, 456 U.S. 742, 763-64 n.28 (1982) and *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 288 n.29 (1981).

[7] *Id.* at 550; see also *South Carolina v. Baker*, 485 U.S. 505 (1988).

[8] *New York v. United States*, 112 S. Ct. 2408 (1992).

[9] See, *e.g., FERC v. Mississippi*, 456 U.S. 742 (1982) (adjudicate disputes) and *Puerto Rico v. Branstad*, 483 U.S. 219 (1987) (perform executive duties).

[10] On this point, *Branstad* cites the court's longstanding doctrine of giving injunctive relief in the federal courts against state officials under the legal fiction established in *Ex parte Young*, 483U.S. at 227-28.

[11] *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234 (1985).

[12] See, *Gregory v. Ashcroft*, 501 U.S. 452 (1991).

[13] See, *e.g., Board of Education v. Dowell*, 498 U.S. 237 (1991) (in whole) and *Freeman v. Pitts*, 503 U.S. 467 (1992) (in part).

[14] *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992).

[15] On this aspect of the court's rationale, see, for example, 115 S. Ct. at 1628-30.

[16] *Id* at 1631-32.

[17] *U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842 (1995).

[18] Although the precedential effects of the decision are likely to be limited by its peculiar context, Justice Thomas suggests in dissent that the case may come to stand for a broader proposition rejecting the principle that "where the Constitution is silent, it raises no bar to action by the States or the people." *Thornton*, 115 S. Ct. at 1875 (Thomas, J., dissenting). If this suggestion were to be borne out by future decisions, then obviously to that extent the decision would become of much greater precedential concern to the states.

[19] See, *e.g., Mack v. United States*, 856 F. Supp. 1372 (D.Ariz. 1994), rev'd, 66 F.3d 1025 (9th Cir. 1995); *Printz v. United States*, 854 F. Supp. 1503 (D. Mont. 1994), rev'd, 66 F.3d 1025 (9th Cir. 1995); *McGee v. United States*, 863 F. Supp. 321 (S.D. Miss. 1994) and *Frank v. United States*, 860 F. Supp. 1030 (D. Vt. 1994).

[20] *Koog v. United States*, 852 F. Supp. 1376 (W.D. Tex. 1994).

[21] See *Mack v. United States*, 1995 WL 527616 (9th Cir. Sept. 8, 1995).

[22] See *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995), cert. denied, 116 S.Ct. 815 (1996).

[23] See *Seminole Tribe of Fla. v. Florida*, 11 F.3d 1016 (11th Cir. 1995), cert. granted, 115 S.Ct. (1995).

State Government Finances, 1994

State governments' fiscal health is better now than at the start of this decade. Factors such as devolution, downsizing and privatization will likely help determine whether the trend continues into the next.

by Henry S. Wulf

Introduction

When discussing state government finances, it is useful to keep in mind just how significant states are as economic entities. In a study comparing state government financial activity with *Fortune* magazine's ranking of the 500 largest industrial corporations, California would rank fourth between Ford and IBM while New York would be eighth between General Electric and Philip Morris. South Dakota, with the least amount of financial activity among the states, would rank 343rd, ahead of corporations such as American Greeting and E. W. Scribbs.[1]

State governments play three major public finance roles. First, they create and finance local government services. Many states, for example, have programs for funding various types of social services and every state (except Hawaii) has some mechanism for funding local government education programs. Second, states serve as a conduit and redistributor of federal funds for programs such as Community Services Block Grants, Low Income Home Energy Assistance and Food Stamps. Finally, the states provide some important services directly such as postsecondary education, hospitals, highways and corrections. These varied activities give state governments a pivotal role in intergovernmental finance.

What was originally a division of power between the national government and the states is now a tripartite system, with federal, state and local components. Their relationships are continuously in flux, and perhaps at a watershed because of the debate about devolution. Devolution means transferring powers and responsibilities to lower levels of government. Whatever the argument, the most contentious decisions states face are financial.[2]

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Overview of State Finances

The finances of state governments, as with most large business corporations, are tied closely to prevailing economic conditions.[3] The recession of the early 1990s buffeted all levels of government. However, states suffered reduced revenue capability and an increased demand for services while dealing with appeals from local governments for more financial aid and a federal government that was reluctant to assume any more financial burden than absolutely necessary. The federal government's reluctance is due in part to the significant build up of the national debt during the prior decade.

Reports indicate that the states' budgetary condition in the mid-1990s is quite good.[4] One major issue is what tack the states will take from this positive financial position. Various states are discussing tax cuts, increasing infrastructure funding and positioning themselves for major federal funding reductions.

Two important factors loom ahead. First is the general state of the economy. Will the economic climate remain positive? Second is the extreme uncertainty about federal programs and funding. Neither factor, taken independently, seems likely to create major problems for the states given their current fiscal situation. If, however, they should become unfavorable simultaneously, we might see effects similar to the difficulties of the early 1990s.[5]

State Government Revenue

State government revenues totaled $845 billion in 1994, an increase of 4.9 percent over 1993. In the past five years, the year-to-year percentage increases in total revenues have varied markedly. The growth has ranged from about 5 percent to more than 12 percent: 1990 to 1991, +4.5 percent; 1991 to 1992, +12.2 percent; 1992 to 1993, +8.5 percent; and 1993 to 1994, +4.9 percent.

Four major revenue sources accounted for 92 percent of the total: taxes (44.2 percent), revenue from the federal government (22.7 percent), insurance trust revenue (17.2 percent) and current charges (7.2 percent). These percentages have not changed much in the past two years. When compared with 1990, however, they show the percentage from taxes decreasing noticeably, with federal monies increasing about the same percentage as the taxes dropped and insurance trust and current charges remaining about the same. The 1990 totals were: taxes, 47.5 percent; revenue from the federal government, 18.7 percent; insurance trust revenue; 17.1 percent; and current charges, 6.8 percent.

Table A shows that there was some variation in the year-to-year changes among the various state revenue sources from 1993 to 1994. Wide fluctuations in the smaller sources often reflect particular situations in a few states. The four major sources show quite different growth patterns compared with 1993. The average change for all revenues was +4.9 percent. Revenues from the federal government (+8 percent) were considerably above the average. Current charges (+6.3 percent) and taxes (+5.7 percent) were a moderate percentage above the average. Insurance trust revenues had no change and were 5 percent below the average for all revenues.

These varying growth rates can have a considerable effect on the existence and extent of programs states offer. Insurance trust revenue, for example, is typically dedicated and largely untouchable for use in other activities. Federal monies, too, generally are not available for a wide variety of uses because they are directed to specific programs. The key for most states in covering their major expenses is what is happening with their taxes and, to some extent, charges and miscellaneous revenues.

Table A
PERCENT CHANGE IN STATE REVENUE BY TYPE OF REVENUE

Type of revenue	*Percent change, 1993 to 1994*	*Percent of total, 1994*
Intergovernmental revenue from local governments	19.0	1.6
Intergovernmental revenue from federal government	8.0	22.7
Current charges	6.3	7.2
Taxes	5.7	44.2
Total revenue	4.9	100.0
Liquor store and utility revenue	1.3	0.8
Insurance trust revenue	0.0	17.2
Miscellaneous general revenue	-1.2	6.3

State Taxes and Charges

Economic conditions improved in 1994 and the tax receipts of the states reflected some of that strength. Overall tax receipts grew 5.7 percent over 1993 and, as seen in Table B, the major categories of taxes clustered tightly around the average growth.

Of the major taxes, general sales taxes (one of the taxes most quickly affected by economic activity levels) showed the most robust increase. It rose 7.3 percent over 1993 and provided 33 percent of all state taxes. Forty-five states levy a general sales tax. Eleven states, primarily in the West and South, had increases of 10 percent or more. Two large states, California (+1.2 percent) and New York (+1.3 percent) showed anemic rises, reflecting the generally slower economic rebound there.[6] Michigan produced the highest year-to-year increase, up nearly 31 percent. Though this was due somewhat to economic growth, it largely reflected a shift in how the state funds education.

Individual income taxes, with 31.5 percent of the total, were the second largest tax source for states. However, seven states do not use this

tax at all and two others use it only in a limited way. The growth of personal income taxes of 4.9 percent from 1993 to 1994 continues the pattern since 1990 in which the year-to-year increases have been within a few points of 5 percent. The nature of the administration of individual income taxes creates a slight lag, therefore personal income tax receipts are not as indicative of economic conditions in the short run as sales taxes. In addition, the individual income tax has often been a focal point when states decide to reduce tax burdens.

In general, the Midwestern and Southern states showed the highest year-to-year changes in individual income tax collections and those in the mid-Atlantic and Northeast the lowest. Looking at the individual states, the changes in individual income tax collections from 1993 to 1994 ranged from highs of +14.8 percent (Kansas) and +13.6 percent (Michigan) to a low of -3.2 percent (Montana). The Kansas change was influenced, in part, by rate increases in upper income brackets.

An interesting change that has taken place recently in state taxes is a reduced reliance on severance taxes in the oil and gas producing states. Nationally, severance taxes were 1.4 percent of all state taxes in 1970. In 1982 it hit a high of 4.8 percent. By 1987 it had decreased to 1.6 percent and in 1994 constituted just 1.1 percent.

This change, by and large a result of lower oil prices and decreasing production, affected the tax revenue in three states especially: Louisiana, Oklahoma and Texas. For example, in 1982 severance taxes ranged from 26 to 31 percent of all tax collections in these states. The comparable figures for 1994 were: Louisiana, 8.4 percent; Oklahoma, 8.7 percent; and Texas, 4.7 percent. Alaska still remains heavily dependent on severance taxes (66.7 percent of the total in 1994) but, even there, the state is looking toward considerably reduced severance tax revenues within the foreseeable future and, possibly, the reintroduction of a personal income tax.[7]

The growth rate of general current charges has slowed considerably from the pace of the early 1990s. From 1989 to 1992 they were rising at an average annual rate of more than 11 percent, a pace that would have doubled the amount in about six years. The change from 1992 to 1993 was 8.4 percent and from 1993 to 1994, 6.3 percent.

Current charges will be affected by the debate in government about instituting more pay-for-service and the desire to lower tax burdens. State government current charges are concentrated in education — primarily tuition from public postsecondary education institutions and state hospitals.[8] Almost four out of every five dollars received by states in current charges derives from these two sources.

The direction of current charges likely will continue upward. The primary question, given the sharply diminished increases in 1993 and 1994, is how fast. States increased tuition considerably in the early 1990s when faced with lower levels of general state support for higher education. There is increasing pressure in some states to hold the line on these increases. Virginia, for example, has frozen higher education tuition rates for two years starting in the fall of 1996. Hospital charges are heavily influenced by federal reimbursements and general costs for medical care, two highly volatile areas where it is extremely difficult to determine what will occur in the near future.

Table B
STATE TAXES BY TYPE OF TAX
(Dollar amounts in billions)

Type of tax	*1994*	*1993*	*Percent change, 1993 to 1994*
Miscellaneous taxes—property, death & gift, severance and others	$20.5	$19.1	7.6
Sales and gross receipts taxes—general and selective	185.9	174.7	6.4
Total taxes	373.8	353.5	5.7
Income taxes—personal and corporate	143.2	136.4	5.0
License taxes	24.2	23.2	4.1

State Government Expenditures

State government expenditures were $780 billion in 1994.[9] The steady and strong upward growth of state government expenditures in the late 1980s and early 1990s slowed in 1993 and 1994. This followed the pattern of revenues. The first part of the 1990s showed consistently strong expenditure increases: 1989 to 1990, 9 percent; 1990 to 1991, 9.9 percent; and 1991 to 1992, 11.5 percent. This changed rather dramatically from 1992 to 1993 with only a 6.1 percent rise. This trend continued from 1993 to 1994 with a 4.9 percent increase.

Education and public welfare outlays together comprised more than one-half (53 percent) of all state functional expenditures. Education accounted for 29.6 percent and welfare 23.7 percent. A comparison with 1990 data (education, 32.3 percent and welfare, 18.3 percent) shows that the percentage of state expenditures devoted to education has been dropping while the percentage of state expenditures devoted to welfare is increasing. For years the data have shown a slight trend in this direction, but this sharper shift toward welfare is a recent phenomenon. This is illustrated by looking at data from 1980 when education accounted for 34.1 percent and welfare 17.2 percent of state expenditures.

Only a few other major expenditure categories besides education and welfare stand out. Insurance trust expenditures were 10.7 percent, followed by highways (6.9 percent), health (3.7 percent), hospitals (3.6 percent), interest on general debt (3 percent) and corrections (3 percent). This leaves only 16 cents out of every state expenditure dollar for all other activities.

Table C shows data about the state expenditures in terms of their accounting character. The muted increases from 1993 to 1994 occurred in most major areas of expenditures. The range was fairly closely grouped; for six out of every seven dollars states spent, the increases were in a moderately small band of less than 5 percent. They ranged from 4 percent (salaries and wages) to 8.8 percent (current operations other than salaries and wages). This contrasts with the average year-to-year increases from 1990 to 1994 for these same expenditure categories, which ranged from 3.8 to 12.3 percent.

Insurance benefits and repayments decreased about 4 percent. This change was due primarily to a drop in unemployment compensation outlays. Removing the influence of the more than 19 percent drop in unemployment compensation outlays would make the insurance benefits and repayments category increase 6.2 percent, right in line with the other expenditure categories. The improved performance of the economy had an obvious influence on the decline in unemployment compensation expenditures.

Salaries and wages are another key component of state expenditures. Table C shows steady growth in salaries and wages from 1990 to 1994, with an average increase of 4.4 percent. The change from 1993 to 1994 is 4 percent. From a longer range perspective, however, it appears that 1992 marked a considerable change in the growth pattern of this category.

In 1992, the percentage change for salaries and wages from the prior year was 4.7 percent, the lowest year-to-year increase in the past four decades. From 1992 to 1993 the increase was even lower, 2.3 percent, and from 1993 to 1994 it was up 4 percent. Comparing the average increases for the last few decades demonstrates how major this change has been. In the decade of the 1970s, the average rise was 10.5 percent. The low was 7 percent and the high 15 percent. The increases in the 1980s averaged 7.8 percent. The low was 6.6 percent and the high 11.5 percent. Since 1990, the average has been 4.4 percent with a low of 2.3 and a high of 6.7 percent.

The reasons for this shift are complex. Part of the increases in the 1970s was driven by high inflation. In contrast, low inflation during the 1990s certainly contributed to a lower rate of increases. Other factors include the growth of state services that rely more heavily on salaries and wages (e.g., higher education), downsizing and privatization of state services.

Downsizing and privatization have long-term implications for state governments relating to current versus future costs. There is speculation that some states may not be fully funding their retirement systems. Depending on the extent to which this is true, a shift toward

Table C
PERCENT CHANGE IN STATE EXPENDITURE BY CHARACTER AND OBJECT

Type of expenditure	*Percent change, 1993 to 1994*	*Percent of total 1994*	*Average annual percent change 1990 to 1994*
Current operations other than salaries and wages	8.8	32.1	12.3
Capital outlay	5.5	6.8	3.8
Intergovernmental expenditure	5.4	28.9	6.6
Assistance and subsidies	5.1	3.0	8.1
Salaries and wages	4.0	15.4	4.4
Interest on debt	-1.2	3.1	2.3
Insurance benefits and repayments	-4.0	10.7	11.3
Total expenditure	4.9	100.0	8.1

privatization will force them to fund services now. Otherwise, they will be able to put off part of these costs to retirement system payments well into the future.

Another pattern evident from the data in Table C is the continuation of the growth in current operations other than salaries, meaning those non-salary services the state pays for directly. This growth continues to crowd the two other major expenditure categories of payments to local governments and employee salaries. The most significant pieces of the direct payment category are public welfare expenditures for vendor services and cash assistance. In 1994, these expenditures amounted to 52 percent of current operations other than salaries and wages. This was about the same ratio as for 1992, but as recently as 1990, the figure was 44 percent.

State governments are not investing in infrastructure anywhere near the extent they were in the 1980s. Capital outlays can fluctuate considerably, depending on factors such as interest rate levels and growing populations. In the 1980s, the average year-to-year increase was 7.1 percent. The high was a rise of 20 percent and the low a decrease of more than 3 percent. The changes from 1990 to 1994 averaged 3.8 percent.

The trend in capital expenditures could be significant. Factors include the relationship between economic growth and an adequate supply of publicly provided infrastructure. For state governments, this relates predominantly to highway construction, since in 1994 about 57 percent of all state capital spending was for highways.

The opportunity for financing capital expenditures in the 1990s has been very good. Bonds are the normal source of funding this activity and interest rates were at their lowest point since the 1970s. It did not occur, however. The intensifying competition for state dollars from current non-capital spending especially education, welfare and other social services together with pressure to hold the line or reduce taxes probably were significant factors.

As the results of the current debate about the future of the American federal system become known, this competition in the states could become heated. There is a major push to give states responsibility for social services. In the political arenas of the states, such new responsibilities might be competing with business and industry interested in sufficient public infrastructure to spur growth.[10]

State Aid to Local Governments

State aid to local governments is one of the most significant activities in which states engage. If viewed as one state program, it would

be the largest by far. However, state aid is funneled into a variety of programs for highways, education, health and the like. The very size of the aid programs, relative to other outlays of the states, attests to the considerable responsibility states have assumed for their subordinate governments. If the federal government were to share revenue with the state governments in a proportionate manner, the resulting federal payments to the states would amount to approximately one-half the current total state outlays.[11]

State aid, viewed broadly, would include both direct financial assistance to local governments as well as myriad programs that provide indirect financial assistance. This analysis describes, for the most part, only the direct financial assistance. A complete analysis of state aid would also consider the wide-ranging, and often substantial, indirect programs. A partial list of the latter might include: subsidization of municipal debt by exempting bond interest from state income taxes; state loan programs; bond banks; local government investment pools; and on-behalf payments for local employees in state retirement systems.[12]

State aid in fiscal year 1994 amounted to $222 billion, or 28 percent of all state expenditures. The increase from 1993 to 1994 was 5.5 percent. Although this was the lowest increase since 1983, it was in line with increases since 1989. Four of the five increases fell within a range of about 1 percent, from 5.5 to 6.6 percent.

Since 1970, the aid portion of total state expenditure has ranged from about 34 percent at the beginning of the period to about 28 percent in 1994. The percentages fall into three distinct periods: 1970 to 1982, 1983 to 1990, and post-1990. In the earliest period, aid averaged 32.7 percent of the states' budgets and the range spanned 3.3 percentage points, from 31.2 to 34.5 percent. In the second period starting in 1983, the average dropped to 30.4 percent and ranged from 29.8 to 31 percent. At least part of the drop in 1983 was due to a change in the federal General Revenue Sharing program that eliminated states after federal fiscal year 1982. States had passed through a portion of that federal money to local governments.

The data show another change in 1991, when the state aid total dropped to 29.1 percent, nearly a full point below the prior year. The same thing occurred in 1992, the percent dropping about another point to 28.2 percent, the lowest it had been in 40 years. It has stayed in this range for 1993 (28.3 percent) and 1994 (28.5 percent). The most obvious explanation of this phenomenon is the relative growth of various other expenditures, especially welfare. The effect is to sharpen the competition for remaining state funds. The activity this will likely have the most significant effect upon in state aid is the largest portion, education.

Aid for education is the single largest piece of the state intergovernmental aid. More than three out of every five dollars in 1994 was for education (61.2 percent). The second largest function, public welfare, accounted for 13.8 percent, followed by general local government support (8.1 percent), and highways (4.3 percent).

Total state aid for education in 1994 amounted to $136 billion. The increase from 1993 was 3.6 percent. Normally these data remain fairly comparable from year-to-year in each state. The California data, however, contain a good example of the discontinuities that sometimes occur in public finances, as well as the interrelatedness. California's 1994 total for aid to education was down 13 percent from 1993. To show the relative impact this had, taking California out of the calculation for all states would have meant a rise of 6.8 percent. Yet the change in California was due to an extra $2.5 billion state intergovernmental payment in 1993 for financing elementary and secondary education capital expenditures. The source of this money was state-issued general obligation bonds. California makes this type of payment periodically, creating data fluctuations that make overall trends difficult to discern without sufficient disaggregation of the information.

Future state aid to education will likely be shaped by legislation and lawsuits to equalize education spending across all school districts within a given state. State aid has always been the primary method for achieving some balance. At least 16 states have been involved in litigation related to equal funding for school districts: Alaska, Florida, Illinois, Louisiana,

Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Vermont and West Virginia.[13]

In 1994, Michigan made a change in school funding that other states might be considering. Looking for a way to reduce school system reliance on local property taxes, Michigan increased the rate of the state general sales tax and imposed a new state property tax. The state dedicated the increased revenues to support local education. Michigan's action, however, is one of an extremely broad spectrum of responses among the states to fund local education services.

Excluding Hawaii, where the state has elected to run the elementary and secondary school system, the two extremes are represented by New Mexico and New Hampshire. The New Mexico education state aid program funds about 75 percent of the local education program. New Hampshire makes the funding and administration of elementary and secondary education almost entirely a local government function. About nine out of every ten dollars for that service comes from local sources.

State funding for education will remain a volatile matter for a number of years. If nothing else, the legal disputes will keep this issue simmering. Moreover, the sheer size of this program for the states will continue to put it in competition with other major state programs such as corrections and social services. Further confusing the matter will be the influence of the many proposed changes in federal funding.[14]

Public welfare programs at the local government level received the next most aid from the states in 1994, $30.6 billion. Unlike education, where state aid programs exist in every state except Hawaii, there is more variety in public welfare. For example, 15 states provide no welfare aid or less than $1 million, primarily because they have chosen to administer public welfare programs directly instead of through their local governments. California and New York remain the major states where the funding is primarily state and the administration local. California predominates in this type of aid, accounting for about 45 percent of the national total. New York comprises another 28 percent.

State Direct Expenditures for Services

Direct spending constitutes about seven of every ten dollars of state outlays. In 1994, it totaled $554 billion. The largest amounts were for: public welfare ($151 billion); insurance trust expenditures ($83 billion); higher education ($77 billion); highways ($44 billion); hospitals ($28 billion); interest on debt ($24 billion); corrections ($21 billion); and health ($19 billion).

State direct public welfare programs comprised 19.4 percent of all state expenditures in 1994, the highest ever. Welfare programs have been claiming an increasing share of state government resources for at least two decades. In the 1990s, however, the pace of this change has accelerated considerably. The 1970s saw this percent grow from 9.6 to 12.8 percent. In the 1980s, the rise was a modest 1 percent, from 12.9 to 13.9 percent. The 1990s, however, have seen this ratio jump almost 5 percent, from 14.5 to 19.4.

What wrought this change was primarily Medicaid, especially changes in the Federal handling of so-called "disproportionate share" payments. These payments to state governments were reimbursements for the states' subsidization of low-income hospital patients. This was controversial because, as one analyst noted, there were, "manipulations by state governments of the Medicaid open-ended entitlement system to generate what was essentially general revenue sharing for states."[15] A change in federal law is now curbing this program, which exists in about half the states. The effect through 1994 in certain states, however, was dramatic. Louisiana, for example, quadrupled its Medicaid payments between 1988 and 1994. In New Hampshire, the special Medicaid Assessment Program Tax became the biggest tax source, about twice as large as any other single tax.[16]

It will be interesting to watch the budgetary effect both in public welfare programs and overall as the federal restrictions take effect over the next few years. States also are experiment-

ing with various forms of welfare programs to try to reduce costs. But the major catalyst will be the shape of federal reforms that rewrite the rules, responsibilities and relationships in welfare federalism.[17] Insurance trust expenditures, although the second largest category of state direct expenditures, receive different emphasis in the overall state government funding picture. The reason is that the source of these payments is restricted money used for fixed, agreed upon formula-driven payments. Of the $83 billion total, $44 billion went for state and local government employee retirement programs, $28 billion for unemployment compensation and $9 billion for workers' compensation.

The $77 billion outlay in 1994 for higher education expenditures amounted to 14 percent of direct spending and 10 percent of total state spending. When the individual states are arrayed comparing the direct expenditures for higher education to the total direct expenditure for that state, an interesting geographic pattern emerges as can be seen in Table D. The ten states with the highest percent, led by Utah with 26.8 percent, were all in the West, Midwest or South. Of the ten states with the lowest ratios, ranging from Maine with 11.7 percent to Alaska with 6.7 percent, seven of the ten were New England or Middle Atlantic states. Two exceptions in this latter group were Alaska and Hawaii, states with geographic, population and governmental characteristics that often make them statistical outliers in such analyses. Florida might be included in the lower group because of that state's demographics.

There are many reasons that such a pattern exists. Since this is a longstanding pattern, however, at least part of the basis for this configuration probably has some deep historical roots. For example, it could relate to the extent that states rely on private universities to provide higher education to their populations.

One activity of states that has received considerable publicity recently is corrections. Corrections had been one of the most rapidly growing activities of state governments. In the 1970s, corrections spending grew 240 percent, while total state expenditures rose 164 percent. The 1980s saw corrections expenditures increase another 228 percent, out pacing the total expenditure increase of 104 percent. The changes since 1990, however, have been mixed. Corrections expenditures from 1990 to 1994 rose 34 percent compared to the 36 percent increase in total expenditures. But the corrections increases varied considerably: 1990 to 1991, 12 percent; 1991 to 1992, 3.5 percent; 1992 to 1993, 3.6 percent; and 1993 to 1994, 11.4 percent. Before the 3.5 percent change in 1992, the lowest year-to-year increases since 1970 were 9.3 and 9.6 percent.

Table D
STATE RANKING OF HIGHER EDUCATION EXPENDITURES AS A PERCENT OF TOTAL DIRECT EXPENDITURES

Rank	*State*	*Percent of total direct expenditure*
1	Utah	26.8
2	Colorado	25.0
3	Indiana	23.4
4	North Dakota	23.2
5	Nebraska	20.7
6	Iowa	20.4
7	Virginia	20.3
8	Alabama	20.2
9	Kansas	19.2
10	Tennessee	19.0
U. S. Average		**13.9**
41	Maine	11.7
42	Pennsylvania	11.0
43	Hawaii	10.4
44	Florida	10.4
45	Rhode Island	9.5
46	New Jersey	9.2
47	New York	8.4
48	Connecticut	7.8
49	Massachusetts	7.5
50	Alaska	6.7

There are many different factors influencing state spending on corrections. For example, a number of states have passed legislation designed to target career criminals. This has taken the form of so-called "three strike" statutes and laws limiting or abolishing parole. They illustrate the complex relationship between social policy and state finance. Connecticut, for example, abolished parole in 1981. However, rising corrections costs caused it to start this program again in 1990. North Carolina had to rewrite sentencing laws after its prisons also became overcrowded.[18] As the "three strike" laws and the like take hold, the prison population could age, and then, prison health care costs will increase. One study found that, in California, the costs for maintaining prisoners less than 30 years old averaged $21,000 per year, but rose to $69,000 for those 60 and older.[19] To reduce costs, some states are experimenting with alternative sentencing. Vermont has instituted such a program for low-risk inmates and coupled it with programs designed to reintegrate ex-convicts into the community.[20]

Indebtedness and Assets

Debt is traditionally less important in state government finances than revenues, expenditures and assets. This can be demonstrated by comparing state debt with federal and local government debt. The state amount of $411 billion at the end of 1994 was only about 60 percent of the debt of all local governments and less than 10 percent of the federal amount.

The $411 billion total was up 6.2 percent over the prior year. The three factors that influence the direction of state indebtedness are interest rates, general financial conditions and the role the states assign to debt in financing infrastructure, particularly highways. Interest rates, which had been at their lowest point in the past two decades in the early 1990s, have remained generally favorable. Yet, year-to-year increases in debt since 1987 have been fairly steady. In that seven-year period, the average increase was 6.6 percent and ranged between 4.2 and 8.6 percent.

Reports continue to cite unmet needs in infrastructure. The moderate rate of bonding activity under relatively favorable circumstances would seem to indicate that other financial requirements are creating impediments for the states. One federal initiative seeking to promote greater activity among the states is a U.S. Department of Transportation pilot program that will establish infrastructure banks in ten test states. The objective is to stimulate more bond activity by allowing alternatives to standard bond practices. This might include, for example, more public-private partnerships and greater use of taxable financing.[21]

States held almost $1.3 trillion in cash and investments at the end of 1994. This included: $792 billion in employee retirement trust funds; $205 billion in funds held as offsets to long-term debt; and $260 billion in miscellaneous insurance trust funds, bond funds, "rainy day" funds and others. States dedicate about 87 percent of this money for specific purposes. The two most common examples are redemption of long-term debt and insurance trust obligations like employee retirement programs. States held the single largest portion of their assets, $792 billion, in state employee retirement trust systems. This accumulation of assets places the state employee retirement systems among the major investors in capital markets. The amounts held in long-term debt offsets ($205 billion), reduced the net long-term debt to slightly more than $200 billion.

The high percentage of assets reserved for these limited purposes leaves $168 billion or 13 percent of total assets available for financing general government activities. This is a relatively small amount. It is misleading, however, to imply that even the $168 billion is available for any purpose. Often, state constitutions or laws place considerable restrictions on access and use of these monies. The Texas Permanent School Fund and the Alaska Permanent Fund are two of the largest and best examples of these specially restricted funds.

There is an interesting trend concerning reserve funds or the so-called "rainy day" funds. The primary purpose of these monies is to help states weather fiscal downturns. Some states are trying to add more discipline to the fund-

ing system and greater regulation of their use. There is some movement toward a formula-driven system for maintaining these funds instead of the hit-or-miss practice of relying on appropriations or year-end surpluses. In Arizona, Indiana, Michigan, South Carolina, Virginia and Washington, for example, the funding formula is now keyed to revenue growth. Several states are changing their constitutions to limit using these funds for fiscal emergencies instead of current spending.[22] In the next few years, however, the greatest use for these funds and the greatest strain on the budgetary health of the states might not be to counter the effects of an economic downturn, but rather, to cope with the alteration of the federal intergovernmental financial landscape.

State Finance in the Era of Devolution

Throughout American history, we have seen a number of shifts in the balance of government power and responsibility among the federal, state and local governments.[23] That we are now witnessing a significant change in our federal system of government seems certain. Officials at all levels of government and in both major political parties have voiced broad support for: fewer federal programs; less funding and control of those federal programs that remain; elimination or reduction of unfunded mandates; and a general relaxation of federal rules governing state and local government activity. The states, in their central position between the federal and local governments, are concerned that this devolution process shifts more than just the funding responsibility. They have also expressed a need for concomitant power.[24] From the states' perspective, two financial issues stand out — a switch from categorical to block grants and potential relief from mandates.

Block grants promise financial relief for the federal government, especially from open-ended categorical entitlement programs. The prime benefit for state governments is increased flexibility that could reduce administrative costs and allow more efficient local solutions. Since it seems certain that the states will receive less federal money with block grants, the competition for the reduced pot will probably affect all state programs.

Most of the discussion about block grants relates to social service programs. This might mean that the true financial test will not occur until the next recession. Block grants will effectively cap federal participation and this will leave the states with choices such as putting in more resources, reducing benefits or devolving responsibilities further to their local governments.[25] An additional matter to consider is the development of block grant formulas. This could be an interstate battle pitting high population growth states against low growth states and historically high-benefit states against low-benefit states. The rallying cry for both sides might well be "fair share."[26]

The federal Unfunded Mandates Reform Act of 1995 marked a key change in federal-state-local government relationships. It does not necessarily end federal mandates. It does, however, make it harder for the federal government to require that state and local governments perform certain tasks that require financial outlays. How this will play out financially for the state governments is far from clear. There is hope that mandate reform will ease the financial burdens of state and local governments. The financial effects of mandate relief will not be immediate and future changes probably will be intertwined with other details of devolution discussions. States should be very cautious about depending on mandate reform for any type of short-term financial windfall.[27]

Endnotes

[1] Robert D. Behn, "The Fortune 500 and the 50 States: A Combined Ranking," Institute of Policy Sciences and Public Affairs, Duke University (February, 1993).

[2] This analysis uses information primarily from the U.S. Bureau of the Census surveys of state and local government finances. The reference point for the state information is fiscal year 1994, noted in this discussion as 1994. For all states except four, this is the period from July 1, 1993 to June 30, 1994. The four with a

different reference period are (reference period end date in parentheses): Alabama and Michigan (September 30, 1994); New York (March 31, 1994); and Texas (August 31, 1994).

[3] For example, as private business and personal incomes change, so do the revenues that states derive from income taxes. As sales rise and fall, so does the income that states derive from general or selective sales taxes. In good times, there are fewer persons that need social service and income maintenance programs. If economic conditions turn sour, there is an upsurge in the demand for these activities. As consumers of goods and services, state governments' negotiating positions shift when land and construction prices fluctuate.

[4] See, for example, the results of the budgetary survey of legislative officers made by the National Conference of State Legislatures. Their newsletter reported that in FY 1995 and 1996 fiscal conditions were better than they had been for years and that the year-end balances — generally considered an important fiscal health index — reached a record amount in FY 1995. "Strong fiscal conditions make budgeting easier for FY 1996," *The Fiscal Letter*, National Conference of State Legislatures (November/December 1995).

[5] See, *The Fiscal Crisis of the States: Lessons for the Future* by Steven D. Gold (Washington D.C., 1995) for a discussion about the states response to the 1990-91 recession. It notes that the states coped with this in part by using accounting manipulations, devolution to their own local governments, often without concomitant funding, and program cuts in social services.

[6] California tax receipts, especially from its general sales tax, likely will improve considerably if its economy picks up as predicted. See, for example, "UCLA Report Forecasts Lots of Sunshine for California Economy Over Next Few Years," *The Bond Buyer*, December 14, 1995. New York, as with most of the other northeastern states, still appears to be suffering residual effects from the early 1990s recession and its tax receipts will be affected accordingly. See, also, the 1995 *Development Report Card for the States*, issued by the Corporation for Economic Development, for a good summary of economic performance in the states.

[7] "Alaska's Budget Prepares for the Post-Petroleum Era," *The Bond Buyer*, December 19, 1995.

[8] The National Center for Education Statistics provides an indispensable statistical source each year to help frame discussions about tuition rates at state postsecondary institutions. The latest is *Basic Student Charges at Postsecondary Institutions: Academic year 1994-95* (November 1995).

[9] The Census Bureau data are a statistical compilation, not an accounting balance sheet. The practical application of this is that total revenues nearly always exceed total expenditures, but this cannot be equated with a budget or accounting "surplus" or "deficit." The reasons for this are manifold, but has to do with varying treatments of items such as debt, capital expenditures, accruals and insurance trust system transactions.

[10] See, *Is There a Shortfall in Public Capital Investment?*, Federal Reserve Bank of Boston (June, 1990). This is a general discussion of this issue by some of the leading authorities in the field.

[11] This calculation is intended only to demonstrate the magnitude of the states' financial commitment. The comparison is flawed because of the unique responsibilities borne by the Federal government.

[12] For a discussion of state aid generally and a listing of other state programs that might be included in a total analysis, see the annual report of the National Association of State Budget Officers, *State Aid to Local Government.*

[13] "School Finance Litigation Affects 16 States." *The Fiscal Letter*, National Conference of State Legislatures (May/June 1995).

[14] See, "The Outlook for School Revenue in the Next Five Years," Steven D. Gold, Research Report-034, Consortium for Policy Research in Education (1995). This report examines the environment for education funding and concludes that the state governments, for a number of reasons, are unlikely to increase their effort in the near future. Two good illustrations of the competition aspect of this issue are pro-

posals in New Jersey and New York to cut overall state spending or provide tax relief from funds that might otherwise be used for education. See, "Cut Government Spending at Expense of Schools?" *New York Times*, Nov. 23, 1995 and, "Pataki Seeking School Money to Trim Taxes," *New York Times*, Dec. 14, 1995.

[15] "Small Provisions Turn into a Golden Goose," *Washington Post*, January 31, 1994. See, also, "Louisiana Took, 'Every Federal Dollar We Could Get Our Hands On,' " *Washington Post*, January 31, 1994.

[16] See, "The End of the Hospital Tax Charade," *Governing* (November 1995), pp. 59-61. The "disproportionate share" tax procedure worked approximately as follows: (1) states would levy a tax on hospitals to qualify for the federal matching grants; (2) they would then obtain the federal grants, which were available on a more than 1:1 ratio; (3) from the federal money, they would reimburse the hospitals for the "tax" they had paid; and (4) they would retain the balance, which could be used for other outlays.

[17] See, "States Are Already Providing Glimpse at Welfare's Future," *New York Times*, September 21, 1995.

[18] See, "Rise in Inmate Population Forces Out of State Transfers," in *What's Working in State and Local Government* (July 15, 1995).

[19] "Senior Class; Inside Prison, Too, a Population is Aging," *New York Times*, January 18, 1996 and "Health care behind bars," *Fiscal Notes* (Texas), January 1996.

[20] "Vermont," *The Bond Buyer*, October 23, 1995.

[21] "Transportation Agency to Seek RFPs on Pilot State Banks," *The Bond Buyer*, December 11, 1995.

[22] "Patching the Fiscal Umbrella," *Governing* (December 1995).

[23] For an interesting historical view of fiscal federalism, see, "The Crisis and Anticrisis Dynamic: Rebalancing the American Federal System," by James Kee and John Shannon, *Public Administration Review* (July/August 1992).

[24] "The Challenge of Flexibility," by Hal Hovey, *State Legislatures*, Vol. 22, No.1 (January 1996).

[25] See, "The ABCs of Block Grants," by Steven Gold in *State Fiscal Briefs* (March 1995) for a brief discussion about block grants. Some of the perspectives of local governments can be found in, "Cities Discover Federalism," *Wall Street Journal*, December 8, 1995.

[26] For a succinct description of the arguments states are likely to make see, "Funding Debate Goes On," *Fiscal Notes* (Texas), April 1995.

[27] Two articles with discussions of the federal mandate legislation are "Federal Mandates: Getting Beyond the Rhetoric," by Mary Kay Falconer and Francis Berry, *Spectrum: the Journal of State Government*, Vol. 68, No. 2, and "Deregulating Federalism: The Politics of Mandate Reform in the 104th Congress," by Timothy Conlan, James Riggle and Donna Schwartz, *Publius: The Journal of Federalism*, Vol. 25, No. 3. The U.S. Advisory Commission on Intergovernmental Relations has released two reports on this subject: *Federal Mandate Relief for State, Local, and Tribal Governments* (January 1995) and *The Role of Federal Mandates in Intergovernmental Relations* (Preliminary Report) (January 1996).

State Health Care Reform

Debating access, quality and cost.

by Linda Demkovich and Dick Merritt

If you think health care reform is dead, think again.

It is true, of course, that by September of 1994, President Clinton's Health Security Act, designed to guarantee insurance coverage for all Americans by the end of the decade, had been laid to rest after one of the most intense, sometimes downright vitriolic, lobbying campaigns the nation's capital had seen in decades. And if there were any lingering doubts about the public's feelings towards "big-government" solutions to social problems, the fall elections seemed to put them to rest with a resounding finality.

It is also true that a number of states once considered to be on the leading edge of health care reform have rolled back recently enacted laws, again largely in response to the 1994 elections, and that others contemplating taking steps toward comprehensive change have demurred, at least until it becomes a bit clearer what Congress has in store for Medicaid.

The best example of the former, perhaps, is Washington, where key provisions of the landmark 1993 reform law, including the one that mandated "universal access to health care" by 1999, were erased from the books earlier this year, before target implementation dates had rolled around. While the repeal effort was spearheaded by Republicans, who had gained control of the state House of Representatives in the November elections, the law in fact had already been doomed by Congress' failure to give states the ability to experiment in the absence of national reform. An example of the latter is Montana, where the now defunct Health Care Authority, in deference to a public mood it perceived as anti-tax and antigovernment, shelved recommendations for systemwide reform as too costly, pursuing instead what members called a "sequential" plan — a step-by-step overhaul that at most will change the existing structure at the margins.

But there's been a larger force at work that has conspired to change the health care system and keep the states — even the most reluctant recruits — active players in the game. In a word, that force is costs. Though it has slowed since the 1980s, for example, medical care inflation continues to outpace the increase in overall consumer prices by a ratio of nearly 2:1; health insurance rates also remain on an upward track, pricing more and more working class people out of the market. As overseers of payment for care, primarily through Medicaid, and also as front-line providers of services, state policymakers have thus had very little choice but to stay engaged in the system's rapid evolution.

Systemwide Reform

ERISA: Sorting out the Signals

Since its enactment 21 years ago, the Employee Retirement Income Security Act (ERISA) has stood as a major impediment to the states' efforts to expand access to health insurance, whether through mandated benefits, which require plans to cover specific services (e.g., in vitro fertilization) or specific providers (e.g., psychologists); high-risk pools, which provide a source of coverage for people with a medical condition that makes them "uninsurable"; or broader "pay-or-play" schemes, which require companies to provide their employees with insurance or pay an assessment to underwrite coverage for the uninsured.

The reason is a clause in the law that gives companies that choose to self-insure — today, between 40 and 60 percent of the market — a

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'bye' from complying with state laws governing such initiatives. For most of those years, state officials have pressured Congress to end or at the very least modify the ERISA preemption, which they see as an unintended loophole, the ramifications of which could not have been imagined in 1974 when self-insurance was a relatively rare phenomenon.

The pressure intensified last year, when a half-dozen states with aggressive reform agendas pushed for an amendment to ERISA that would have allowed them to proceed with implementation of their enabling laws. Among them were Oregon and Washington, both of which had approved employer mandate plans that were contingent on bringing self-insured firms into the fold, and Massachusetts, where an employer mandate plan enacted in 1988 remained unimplemented. Not unexpectedly, the amendment died and with it, any hope the six states harbored of being able to proceed with their reforms.

In Washington, the 1993 law, including its employer mandate, was largely repealed earlier this year. In Oregon, Gov. John Kitzhaber had conceded by last spring that an exemption from ERISA to proceed with the mandate was unlikely and had begun exploring other, voluntary options for covering the working poor. As part of that effort, the legislature acted earlier this year to expand the reach of recently enacted insurance reforms beyond the small group market. Meanwhile, enrollment in the Medicaid portion of the state's health plan, which was launched in February of 1994, has been slowed somewhat by budget shortfalls but on the whole is proceeding as planned. And finally in Massachusetts, the legislature voted last December to delay implementation of the employer mandate for a third time (the original date was 1992) and to convene a bipartisan blue ribbon commission to develop a replacement plan. Parallel with that, the state has received a federal waiver that permits it to design a program that could lead to coverage of another 400,000 residents over the next four years.

Because of Congress' reluctance to reopen the ERISA question, decisions regarding its reach have been left to the courts, which, to the dismay of state officials, have been inconsistent in their interpretations. Take the issue of uncompensated care as an example. In October 1993, the U.S. Court of Appeals for the 2nd Circuit held that three separate surcharges imposed on hospital rates by New York state to finance indigent care violated ERISA's preemption clause. Just a few months earlier, however, a 3rd Circuit Court panel reversed a lower court ruling to the same effect on a similar uncompensated care surtax imposed by New Jersey.

The matter was seemingly put to rest in April of this year, when the U.S. Supreme Court reversed the 2nd Circuit decision, holding that the New York surcharge system does not run afoul of ERISA. That allowed the state to keep the system in place for the remainder of the year and in fact the legislature voted earlier this summer to extend it for another six months, through next June, while it explores alternative financing mechanisms. In New Jersey, on the other hand, legislators scrapped the surcharge at the end of 1993, before the Supreme Court had ruled, substituting dollars from the unemployment compensation fund.

The Supreme Court decision appears to give a green light to states that want to raise revenues by taxing and regulating providers, and some are likely to do so in the coming year, especially in view of deep cuts looming at the federal level. But uncertainty over the legality of other types of financing plans remains. Indeed, the decision will most likely depend on court determinations of whether a particular law has a direct or indirect effect on self-insured plans. If the effect is direct, the courts are likely to declare an ERISA preemption; if it's indirect, they are more likely to rule in favor of the state.

Managed Care

Managed Care: Taking the Market by Storm

At the same time, pressure from the private sector to stop the cost spiral has changed the face of the financing and delivery of medical services, as a trend loosely called "managed care" supplants the decades-old "fee-for-service" system. Pushed hard by companies that bear a

large share of the burden of paying for health insurance for their employees, enrollment in managed care plans has surged dramatically over the last few years.

A recent Group Health Association of America (GHAA) report, for example, estimated that by the year 2000, 50 million nonelderly individuals will be enrolled in private sector health maintenance organizations (HMOs), the oldest and still the most dominant form of managed care. Just 20 years ago, fewer than 5 million Americans were HMO members. While the definition of HMO includes the traditional group practice model, the most popular and rapidly growing type of plan is a spin-off on the theme: independent practice associations (IPAs), which are most often run by doctors themselves. At the same time, a host of other arrangements that offer a mix of insurance and medical services are carving out their niche in the market. The models range from the older preferred provider organizations (PPOs) to newer hybrids, like physician-hospital organizations (PHOs), management services organizations (MSOs) and integrated delivery systems (IDSs).

At the core of the managed care movement are two strategies that have long been the hallmark of HMOs: prepayment, either on a per-person or per-illness basis, to lock in rates in advance of treatment as a guard against use of unnecessary services, and an emphasis on prevention, to get both physicians and patients to recognize the value of healthy lifestyles and to treat illnesses before they become more serious (and more expensive). A key to success is reliance on "gatekeepers": physicians or other medical professionals who take responsibility for routine care and handle referrals to (more expensive) specialists. The *quid pro quo* for doctors to provide discounted care is a guaranteed pool of patients.

In response to the managed care trend in the private sector, the states have moved to exert greater control over the market and the amalgamation of entities that have come to dominate it. As part of that process, they have had to sort out how far their regulatory control over health insurance reaches and, the corollary, when ERISA, the federal law that exempts self-insured or self-funded firms, kicks in. (Self-insured plans assume financial responsibility for their own risk but do not necessarily administer their own plans. Instead, many contract with benefits management firms, including commercial carriers or Blue Cross-Blue Shield plans to perform administrative functions.)

Any Willing Provider Laws: Bitter Battles Between Providers and Insurers

One of the first major fights that the states have been called on to referee is the one that pits managed care plans against doctors who aren't part of them, by choice or by default. By extension, the battle also affects patients, whose choice of a physician is often limited to participating providers on the plan's list (or "closed panel," in HMO industry lingo).

The most common vehicle for opening up choice has been so-called "any willing provider" (AWP) legislation, which requires managed care plans, including HMOs and PPOs, to contract with any provider (most often pharmacies) who accepts their terms and rates. A second strategy that's gained in popularity this year is the American Medical Association's (AMA) model "Patient Protection Act," the most controversial provision of which seeks to give consumers leeway in choosing a doctor, both within and outside of the plan in which they are enrolled. (Most HMOs deny coverage to enrollees who go to an out-of-plan provider, except in emergencies or if they're outside the service area; PPOs and some HMOs, however, do offer a "point-of-service" option that permits patients who are willing to absorb higher out-of-pocket costs to see nonparticipating providers.)

The emergence of the legislation has touched off a heated debate. On one side is the managed care industry, which says that the AWP and patient protection laws undermine one of the most important cost-saving tools at its disposal: "selective contracting," based on criteria that permit plans to examine physicians' past practice and utilization patterns, for example, and choose those they deem to be the most cost-efficient, best-trained and most cooperative. Limiting the number of providers, plans say,

also reduces their overall administrative costs and lets them negotiate lower rates by offering a higher per provider caseload.

That view has the backing of the Federal Trade Commission (FTC), which has historically supported selective contracting as a means of promoting competition. In a recent statement, the agency advised states that AWP laws "may discourage competition among providers" and limit the ability of managed care plans to reduce the cost of delivering care "without providing any substantial benefit." The National Governors' Association has also adopted a policy of opposition to "overly restrictive AWP laws" in order to retain the flexibility afforded states by managed care plans.

On the other side of the issue are providers — specialists, in particular — who perceive the selective contracting process as a threat to their ability to practice. Increasingly dependent on managed care enrollees as a source of income, they have lobbied aggressively for laws that would obligate managed care organizations to contract with anyone who meets the terms for reimbursement and utilization review imposed on other providers who are part of the plan. Also active in the fight are community pharmacies and laboratories, which often find themselves competing against larger out-of-state firms that operate on a regional or national scale, as well as minority physicians, who see AWP legislation as a way to fight discriminatory practices by health plans and to assure that the poorer communities in which many of them practice have continued access to medical care.

Organizations representing consumers, meanwhile, have been divided on the issue. Some see the flexibility for patients to choose their own physician as essential, while others see that flexibility as a threat to efforts to hold down medical costs.

Arkansas' Any Willing Provider Law: High Stakes

The battle about to play out in the federal courts in Arkansas sheds light on the high-stakes nature of the debate. At issue is a Patient Protection Act enacted in February, which managed care plans say has all the markings of an AWP law, despite its name. Backed by a powerful coalition of health care professionals and facilities, the law bars insurers from "limiting the opportunities" of any provider who accepts the terms and conditions set forth in a managed care contract and from imposing financial terms — incentives or disincentives — that may affect a patient's choice of a physician. In effect, it shields 21 medical specialties, from doctors, dentists and pharmacists to optometrists, chiropractors and physical therapists, from potential discrimination by managed care companies in contracting and reimbursement.

On July 27, 1995, the day before the law was slated to take effect, the Prudential Insurance Company of America and two of its state subsidiaries filed suit to permanently prevent the law's implementation on grounds that it violates, among other things, ERISA, the federal HMO Act and the commerce clause of the U.S. Constitution. Several weeks later, Blue Cross and Blue Shield of Arkansas, which filed a similar action in another federal district court on June 30, sought to have its case dismissed and join in the Prudential's. Other plaintiffs in the Prudential's case are Tyson Foods, the state AFL-CIO and the United Paperworkers International Union; GHAA has also announced plans to file an *amicus* brief in support of the Prudential. The legislature doesn't meet again until January of 1997, which will give the legal battle time to play itself out before lawmakers decide if and how to change the act.

Patient Protection Acts: Variations on the Theme

Currently, any willing provider laws are on the books in 32 states, though unlike the broad-based Arkansas statute, most of them narrowly apply to pharmacies. In addition, legislatures in 5 states have enacted versions of the Patient Protection Acts in the months since the AMA model first surfaced, and the concept got at least a hearing in 14 others.

And in a variation on the theme, three governors — Maryland's Parris Glendenning and Oregon's John Kitzhaber, both Democrats, and New York's George Pataki, a Republican—all

signed patient protection laws that require HMOs to offer enrollees a point-of-service option.

• Maryland's Patient Access Act, signed on May 25 and called a first-of-its-kind, says that people whose only insurance plan choice is an HMO must be offered the option of seeing out-of-plan doctors, as long as they are willing to pay more for the privilege. In addition, the law requires insurers to establish reasonable criteria for determining membership on their provider panel, along with review and appeals procedures.

• Oregon's measure, which became law July 18, mandates that insurers who require enrollees to designate a primary care physician permit them to change physicians up to two times a year, spell out the policyholder's rights in writing and make available to them a point-of-service plan. It also lays out conditions for conducting utilization reviews.

• New York's law, which Pataki hailed at the August 2 signing as a "landmark," is aimed at an estimated one million residents who buy insurance on their own. The law, Pataki said, "combines the best aspects of managed care and fee-for-service," by requiring HMOs to offer a "hybrid" point-of-service plan to enrollees beginning January 1, 1996. That means people can see out-of-plan providers if they are willing to pay higher out-of-pocket costs (capped at $3,000 a year for individuals, $5,000 for families). It also requires HMOs for the first time to offer a standardized plan covering inpatient, outpatient and emergency hospital services, physician services and — particularly salient, given the retreat of Empire Blue Cross and Blue Shield from the individual market — prescription drugs bought from participating pharmacies. Again, out-of-pocket costs will be capped, with an annual limit on deductibles for prescription drugs of $100 for individuals and $300 for families, plus copayments.

In Texas, meanwhile, Gov. George W. Bush vetoed a version of the Patient Protection Act earlier this year, arguing that it "imposed too much regulation . . . and unfairly affected some health care providers while exempting others." Instead, Bush charged the Department of Insurance with developing rules for HMOs and other managed care plans. In releasing the proposed rules, Insurance Commissioner Elton Bomer said they will "achieve the same overall goals" as the act but at a fraction of the cost.

On the consumer side, the rules seek to require the disclosure of benefits to prospective policyholders, ensure continuity of treatment, restrict use of financial incentives that could adversely affect care, prohibit "unfair and unreasonable denial" of reimbursement for emergency care, give enrollees the right to select a network provider as their primary care physician and direct plans to submit data on quality, costs and access to the department. On the provider side, they require plans to make application information available to interested medical professionals, issue written explanations for denial or termination, offer advisory review panels and begin making payments to providers within 30 days of their selection. To keep costs down, the "point-of-service" requirement was eliminated. Managed care plans will also be permitted to withhold proprietary information on marketplace strategies from their competition.

And a postscript on a related front: A handful of states this session has shown interest in barring hospitals from denying or revoking the staff privileges of physicians who may not be part of a managed care network. A newly enacted Oklahoma law, for instance, prohibits hospitals or other health facilities from denying doctors an application for staff privileges as long as they're duly licensed; another requires them to consider providers' medical education and board certification when issuing them credentials.

New Systems

Sorting out the Market

In their role as referees/regulators, states are also focusing close attention on the proliferation of new network constructs that have arisen from the market-driven restructuring of the delivery system, as well as on the widening scope of contractual arrangements among insurers, institutions and individual practitioners.

Often, they have simply reinterpreted or expanded the laws and licensing regulations governing HMOs and other, more conventional insurer/provider arrangements to the new breed of networks and joint ventures, either by including networks in existing definitions of "health plan" or by using a broad term that encompasses all possible arrangements. Other times, they've started from scratch, writing laws or rules to cover entities that did not exist a few short years ago.

Take the entities known as PHOs, short for physician-hospital organizations, for example. Like HMOs, PHOs — joint ventures between one or more hospitals and an individual doctor or a group practice — typically assume at least limited financial risk for patient care. Unlike HMOs, however, there are no clear emerging standards to govern their financial solvency, including capital reserves and reinsurance capacity, or the quality of care they provide. Should they fail, patients could be left holding the bag for potentially large unpaid bills; should their quality of care fall short, consumers may find there are no grievance or appeals procedures in place to address complaints.

A 50-state telephone survey conducted by GHAA earlier this year, which looked at the range of PHO financial arrangements, from no-risk to full-risk, found that 41 states have licensure requirements for PHOs that assume the full actuarial risk for costs incurred for groups they contract with, typically under HMO licensure laws already on the books; only 25, on the other hand, license PHOs that assume only partial risk. (No-risk arrangements escape scrutiny entirely in all but two states, according to the survey.)

In an attempt to address the issue, the National Association of Insurance Commissioners, which seats representatives of all 50 states, has put out guidelines governing regulation of risk-bearing PHOs and is developing risk-based capital requirements for all types of health care organizations, due out next year. In general, the consensus on the part of the commissioners seems to be that PHOs and other risk-bearing entities should be regulated. Although approaches vary, the most common has been to reinterpret the definition of HMO to include PHOs as well as PPOs, MSOs — or whatever name the new networks go by. In a few instances, however — Iowa, Minnesota and Tennessee — the legislatures have enacted separate statutes governing PHOs.

As a measure of the interest in the evolving market, more than 1,200 bills and resolutions relating to the organization and regulation of health care delivery systems were introduced in the 49 states whose legislatures met this year. As of the end of the second quarter, more than 100 of them had been approved.

Providers

Hospitals: Easing the Rules

In their ongoing quest to control the cost of care and spark greater competition in the marketplace, more and more states have also become involved in a policy area that has typically been reserved for federal agencies — notably, the FTC and the Justice Department: antitrust.

Beginning with Maine in 1992, 19 states have approved hospital cooperation acts (HCAs) or, as they're more commonly called these days, Certificate of Public Advantage laws (COPAs), which apply to all types of providers and facilities and sometimes insurers. In essence, the laws grant the partners in approved cooperative ventures immunity from federal and state antitrust laws; in a handful of cases, the COPAs also extend to mergers.

The laws operate under a doctrine called "state action immunity," which holds that certain activities — for example, jointly purchasing expensive equipment — may be exempted from antitrust prosecution if the state meets a two-pronged test. First, it must make clear the reason it is reducing competition and allowing the collaboration in a specifically defined market area. Second, it must actively review and supervise the area in which the competitive forces have been removed. In addition, most of the laws use a balancing test to review proposed cooperative arrangements, such as sharing equipment or personnel or referring patients. If the parties to the agreement

can show that the benefits of their arrangement outweigh any potential disadvantages that may result from decreased competition, they will get a COPA from the state. They're usually required to submit annual reports on activities under the agreement as well.

From the start, state attorneys general have tended to question the value of the laws, asking whether they're necessary to carry out joint ventures and whether they provide adequate protection for less obviously beneficial activities that might trigger greater scrutiny. In Minnesota, for example, an attorney in the attorney general's office expressed skepticism about the need for the 1992 Hospital Cooperation Act. "Almost everything can be done without it," he said. At most, it gives hospitals some "comfort around the gray zones."

Practice may be bearing out that sentiment. For while state hospital associations have promoted the laws as useful cost containment tools and as a necessary ingredient to compete with insurer-dominated networks, they've seldom used them. In most instances, hospitals and other providers instead appear to have decided to enter into legitimate joint ventures, where they can avoid the costly, time-consuming paperwork requirements inherent in the process of reporting to state regulators and still not run afoul of antitrust laws.

On another front, Certificate of Need (CON) programs, which are designed to discourage facilities — hospitals and nursing homes in particular — from overbuilding, overbedding and overbuying are back on the legislatures' radar screens. By the late 1970s, all states except Louisiana had CON programs on the books, as adjuncts to the National Health Planning and Resources Development Act of 1974. Under the CON process, state reviewers weigh in on plans to build or renovate institutional facilities, add services or buy major medical equipment and can veto those proposals they think run counter to a community's interest.

In 1986, Congress repealed the planning law, and the antiregulatory, free-market mood that fed that action swept the states as well. Within the next year or two, eleven of them, mostly in the West, had suspended their CON programs entirely. Now, for the first time in seven years, another two states have followed suit. In response to critics within the hospital industry who argue that the CON process has failed to control costs and is expensive and unduly burdensome, Ohio and Wisconsin lawmakers this year resolved long-standing battles by terminating their expenditure reviews of hospitals; the long-term care segment of the market will remain under the program.

That may not signal a trend, however, because despite the deregulatory pressures that still prevail, a number of states have in fact strengthened their programs in recent years in the face of rising costs. An Alabama law enacted last year, for example, raised the threshold at which hospitals and HMOs must submit expenditure expansion plans from $500,000 to $1.5 million for major medical equipment and from $1.5 million to $3.2 million for all other capital projects.

Physicians: A Watchful Eye

In addition to their role as licensers, the states have demonstrated interest in recent years in regulating various aspects of physicians' practices. One early manifestation of that interest surfaced in 1992, when the Florida legislature approved the first state-inspired law to limit doctors from referring patients to facilities in which they have an investment or ownership interest. The action, which followed a study by the state's Health Care Cost Containment Board that attributed half a million dollars in excess health costs to so-called self-referrals, triggered a storm of protest on the part of the medical community over the objectivity of the firm that financed the study. But even in the face of the intense lobbying campaign, the bill passed overwhelmingly: 107-4 in the House, 39-0 in the Senate.

(As part of the Omnibus Budget Reconciliation Act of 1989, Congress had already acted to bar physicians from referring Medicare patients to clinical laboratories in which they have an ownership interest, effective in 1992. In 1993, it expanded the law to ten other types of services and included Medicaid as well as Medicare in the proposed restrictions; final

rules were expected to be issued by the end of 1995. Now, however, as part of the Medicare and Medicaid budget tightening, Congress may be on the verge of rolling back the rules.)

In the years since, 32 states have approved laws restricting provider self-referrals. Some have very limited reach (e.g., a 1995 Alaska law that applies only to dentists and dental practices), while others are broadly cast (e.g., a 1993 California law that applies to physicians, surgeons, psychologists, acupuncturists, optometrists, dentists, podiatrists and chiropractors and covers specific services including laboratory testing, diagnostic nuclear medicine, radiation oncology, physical therapy and rehabilitation, psychometric testing and home infusion therapy). At the same time, a number of states have gone back to amend earlier laws, making allowances for providers in rural areas where no alternative services may be available.

All told in 1995, nine bills restricting self-referrals and imposing financial penalties for kickback arrangements became law — three of them in Washington State, where the legislature reenacted a prohibition that had fallen under the repeal of the comprehensive 1993 reform law.

In an effort to control the physician side of the cost ledger, several states had included rate-setting strategies in their more comprehensive reform laws. To date, those provisions have had widely differing fates:

• Minnesota's Regulated All-Payer Option, which would have set rates for doctors outside managed care networks who continued to bill on a fee-for-service basis, was repealed earlier this session.

• Florida's 1993 rate-setting law has been upheld by a state court of appeals, but it has yet to be implemented.

• Maryland's 1993 law, which called for the development of a physician rate-setting strategy, is moving ahead, as a newly appointed committee begins the process of setting target levels for fees. Under the law, doctors whose rates fall below the targets would be exempt from the rate- setting. (Maryland is the only state that still has an "all-payer" hospital rate-setting system, for Medicare, Medicaid and private insurers, still in place.)

Medicaid

On the Home Front: Medicaid Managed Care

Like their payer-counterparts in the private sector, states are also engaged in a major battle against rising health care costs. Taking a major hit from yearly insurance rate hikes for their own employees and soaring Medicaid costs, they are increasingly seeking ways to leverage their buying power in order to control costs and, wherever possible, expand coverage to the uninsured within their borders.

Medicaid in particular has become a bugbear. Estimates by the Congressional Budget Office suggest that in the absence of cuts, the program's budget would nearly double over five years, from $131 billion in the fiscal year just ended to $260 billion by 2000. For the states, which have contributed between 17 percent to 50 percent of program dollars, depending on their per capita income, Medicaid's bite of their total operating budgets over that period was expected to jump from an average of 20 percent to 25 percent, further limiting their ability to devote resources to other public priorities such as education. In 1990, the average was 9 percent.

As in the private sector, managed care has become the watchword for Medicaid officials intent on containing costs. Since March of 1993, according to the Health Care Financing Administration (HCFA), the federal agency that oversees the program, 11 states have been awarded Section 1115 waivers that permit them to experiment with statewide managed care demonstrations and another dozen or so have either filed applications for waivers or are reviewing plans to do so. In addition, almost all of the states are operating narrower Section (1915)(b) waivers that allow managed care to be implemented at a local, regional or statewide level. The pace of waiver activity, accelerated by implementation of Section 1115 plans statewide in Tennessee and Oregon in January and February of 1994 respectively, has raised the

percentage of Medicaid recipients who get their medical care from managed care plans from 14 percent in 1993 to 23 percent, or nearly one in four, today.

With the growth have come concerns that accompany any fast-paced, far-reaching trend. In the case of Medicaid, those worries encompass the quality of care that people are receiving; the adequacy of the pool of physicians in managed care organizations who are willing to accept Medicaid clients — particularly the supply of "gatekeepers" whose job is to oversee basic care and steer clients from hospital emergency rooms and other high-cost providers, as well as the supply of providers to serve so-called "special needs" populations; and the tactics some marketers may be using to sign on new enrollees. An attendant concern is that low rates and administrative hassles, which have plagued the Medicaid fee-for-service system for years, may deter some doctors from taking part in the program.

One of the biggest issues raised to date has been the care of vulnerable populations. Most Medicaid managed care plans so far have applied only to recipients of Aid to Families with Dependent Children, the bulk of whom are poor women and children. While that group makes up about 75 percent of Medicaid recipients, it consumes only about 25 percent of all program dollars. Neither the states nor managed care plans have much experience providing care to the more vulnerable disabled and elderly groups that account for the lion's share of Medicaid resources. Thus, as the states increasingly incorporate those two groups into managed care arrangements, the providers who traditionally care for them are cautioning against sudden shifts that might jeopardize essential services.

Nor is managed care necessarily the "silver bullet" needed to produce large-scale savings. According to figures released over the summer by the Kaiser Commission on the Future of Medicaid, significant savings for the overall program cannot be achieved as long as enrollment is focused only on low-income families. Even if managed care achieves savings of 5 to 15 percent over fee-for-service, the Commission said, that translates into only 1 to 2 percent savings overall; that's because the bulk of program dollars go to services for the elderly and disabled — an area where experience with managed care is limited and the potential for savings is unknown.

"Safety net" providers have also sounded an alarm. In June of 1994, for instance, the National Association of Community Health Centers filed suit in federal district court seeking to halt Section 1115 programs already under way and kill others in the pipeline. Traditionally, centers in the national network have provided not only health care but an array of support services like transportation and translation for minority populations. In recognition of those varied services, centers that met federal qualifications were guaranteed cost-based reimbursement, as opposed to the capitated rates that are the keystone of managed care. Many of the waivers, however, have allowed the states to bypass that guarantee for managed care contracts. In its suit, the association raised the issue of how those special services would fare in the cost-conscious managed care environment. In the long run, officials argued, the very survival of the centers would be in jeopardy, depriving their clients of access to a major source of care. All legal papers were filed by October of 1994; a year later, the suit is still pending, with no word on a trial date.

The concerns raised by the national association resurfaced this summer, at a hearing of Rhode Island's Children's Code Commission. According to an item in the national news service Health Line citing the *Providence Journal-Bulletin*, critics offered testimony that the state's network of community health centers is facing "life-threatening deficits" in the wake of the August 1994 implementation of RiteCare, a statewide managed care demonstration program designed to expand coverage to greater numbers of poor pregnant women and children. With Medicaid caseloads and payment levels on the decline and the population of uninsured clients on the rise, they say that center program is "slowly withering away." The hearing also gave rise to advocacy complaints about the lack of primary care providers and the failure to educate patients about the new program rules.

As is the case in the reconfiguration of the private sector, state policymakers are being challenged to sort out the ever-growing cast of managed care characters and to devise safeguards to protect patients from potential abuses in the evolving system. In this case, they must also answer to skeptics who question whether the Medicaid plans will produce the savings supporters predict — savings that many states have earmarked to expand care to other low-income working residents who don't meet the program's eligibility criteria.

Tennessee: A Case Study

Tennessee offers an interesting case study of potential problems inherent in the transformation from fee-for-service to a capitated managed care system. Facing a $740 million Medicaid budget shortfall, officials abruptly terminated the program in January of 1994 and shifted 800,000 recipients into a managed care program known as TennCare virtually overnight. This was expedited by the formation of 12 insurer groups that are known as managed care organizations (MCOs), some operating statewide, some on a regional basis. Today, TennCare officials proudly tout the program's record: $1 billion saved over the first 18 months and 98 percent of residents covered, including the 400,000 who had no health insurance previously.

TennCare critics contend that the program has "double counted" Medicaid recipients and new enrollees and that the number of uninsured continues to rise. Likewise, according to representatives of both the state's hospital and medical associations, the system that's now in place isn't managed care at all, but rather is the same old fee-for-service system at a discount. Not only are fees low (doctors, for example, say they are paid an average of $14 for an office visit, compared to $45 for privately insured patients), the MCOs, which act as fiscal intermediaries in the system, aren't funnelling the funds to providers in the manner promised. The groups also continue to express concern about the state's lax oversight of the MCOs and about its failure to install "gatekeepers" to monitor patient care.

Meanwhile, in the face of new budget constraints, the program has suspended open enrollment of residents who don't receive insurance as a benefit of their employment. (Medicaid eligibles and people with preexisting medical conditions that render them "uninsurable" continue to be enrolled as planned.) And come January, officials may ask the legislature to consider a cap on enrollment, along with copayments and higher premiums for the uninsured who have incomes above 100 percent of poverty. That agenda is troublesome to the TennCare Monitoring Group, a coalition of patient advocates, providers and "concerned citizens" that keeps close tabs on program developments. Asking the poor to pay more for insurance, an official of the group warns, will simply force them back into emergency rooms, undermining the goal of assuring a regular source of care through the physician-gatekeeper system.

Going Slow: Bumps in the Road

While some states hold up the often-prolonged, paperwork-laden process of applying for a federal waiver as the reason they've not pursued one, some have hesitated even after they have a waiver in hand. In Ohio, for example, officials have opted to forego experimentation altogether pending the outcome of the Medicaid block grant debate in Congress. In pulling back on Gov. George Voinovich's OhioCare plan, which would have moved most of the 1.4 million current clients into managed care and used the savings to finance coverage of another 375,000 working poor uninsured residents, state officials cited the possible loss of federal funds should the block grant be approved.

On the other hand, the block grant debate has increased the urgency of waiver requests from some states — Illinois and Louisiana are examples — where the federal share of Medicaid dropped when new rules affecting payments to hospitals went into effect. Concerned that Congress will base the formula for distributing funds on their current Medicaid shares, these states are trying to get into a better position at the starting line. Gov. Lawton Chiles of Florida has made just that plea to his legislature, which still has not authorized implemen-

tation of a waiver granted in September of 1994.

Mindful of the pitfalls of the "TennCare experiment" and of their own budget limitations, other states — even those with a relatively larger concentration of managed care entities — have elected to phase in their Medicaid waiver programs. In Hawaii, for instance, state officials have moved to tighten eligibility requirements in its HealthQuest program, a Section 1115 waiver plan that pools Medicaid and general assistance clients as well as lower-income residents and participants in the State Health Insurance Program, which provided coverage to people with incomes under 300 percent of the federal poverty line.

Implemented in August of 1994, HealthQuest exceeded its first-year enrollment target of 110,000 by 40,000, in part because of a worse-than-expected economy. Under the stricter rules, the income level to qualify has been ratcheted down from 300 percent of the poverty line to 200 percent, and people with higher incomes (between 100 and 133 percent of poverty) will be asked to pay a larger share of premiums. The situation has prompted complaints from patient advocacy groups, who say that poorer residents may be forced to drop their coverage.

But a go-slow approach is not necessarily a prescription for trouble-free enrollment. In New York, for example, which has had a voluntary Medicaid managed care plan in effect since 1991, the legislature has been entertaining a Pataki-backed plan to phase in mandatory enrollment over the next three years, moving from 600,000 recipients now to 1.1 million by April of 1996 and 3 million by January 1998. According to the governor's figures, the infrastructure exists to serve that many new clients. But lawmakers weren't buying. Fearful of thrusting the poor into a situation where their needs may not be met, their initial response was to table the plan at least until January.

In the interim, problems that have surfaced in New York City, which has one mandatory managed care demonstration program in place in southwest Brooklyn and has its own Section 1115 waiver in the pipeline, could well set back the governor's timetable even further. Over the summer, the two largest Medicaid HMOs in the city — Health First and MetroPlus — were forced to cease enrolling clients after concerns surfaced about their capacity to guarantee enough doctors to meet clients' needs for care. Program officials chalked the problem up to bad scheduling, but advocates for the poor suggested that the system was simply not up to handling the caseload. In addition, advocacy groups raised questions about potential abuses in the marketing of Medicaid managed care. In response, both the state and the city have clamped down on marketing practices, prohibiting plans from directly enrolling clients and inserting the City's Human Resources Administration as an intermediary in the process to guard against fraudulent or otherwise unethical sales techniques.

In Maryland, where enrollment is on a slower track, the attorney general has also announced a crack-down on marketing managed care to the Medicaid poor. In June 1995, the attorney general's office filed misdemeanor charges against 16 HMO marketers for "unethical practices," including lying to clients about why they should join a plan, bribing them with money and gifts and forging their signatures on application forms. State officials who allegedly took bribes from agents for disclosing confidential information were also part of the case. Under new contracts issued to participating HMOs, plans will be barred from marketing at local social services offices and will be subject to fines of up to $10,000 for each incident of fraud.

Finally, following an exposé of problems in the state's managed care industry, Florida's Agency for Health Care Administration (AHCA), which was created by the legislature in 1992 to oversee a broad-based reform law, has issued rules that, among other things, bar Medicaid managed care organizations from conducting door-to-door solicitations and marketing in food stamp or welfare offices. The rules, which took effect July 1, 1995, also institute quality safeguards, including a rule that says physicians, not plan employees, agents or a physician under contract, will make determinations

about whether an enrollee needs emergency (i.e., out-of-network) care.

To advocates, part of the answer to avoiding such abuses is better education. Even if there are enough physicians willing to see them, patients — many of whom lack fluency in English and face a host of other stresses not directly related to their health — must be taught to break their old habits of turning to emergency rooms for routine care and to embrace the primary care principles built into the managed care concept. And that, they caution, could take years.

Uninsured

Access I: Leveling the Playing Field

Beyond expanding coverage to working poor families through Medicaid, more and more states have moved to help other uninsured residents gain a foothold in the marketplace. Their focus has been on two groups long spurned by commercial carriers as being too risky to insure: people who are self-employed and those who work for small firms that do not provide health insurance as a job-related benefit.

The basic idea behind the initiatives, broadly cast under the rubric "insurance reform," has been to "level the playing field" and thereby stabilize the market, by putting an end to a practice that's known in industry lingo as "skimming" or "cherry picking." Most often, the measures begin by targeting small groups (2 or 3 to 25, sometimes 50), although increasingly, they are being expanded both upward to larger groups and downward to bring in individuals. A June 1995 report from the General Accounting Office (GAO) identified 45 states that had enacted small group market reforms between 1990 and 1994. The key ingredients of the reforms are:

• Guaranteed issue, which means that any insurer that sells in the small group (or other specified) market must make coverage available to any group in the state that applies, regardless of the health conditions of employees in the group.

• Guaranteed renewal, which means pretty much what is says: that insurers must renew policies for a company it has previously covered.

• Portability, which means people can take their eligibility for insurance with them when they change jobs, in an effort to avoid a phenomenon known as "job lock." (While the common understanding of portability is that people can carry coverage to a new job, the state laws simply require that waiting periods/underwriting requirements be reduced in proportion to their previous coverage.)

• Limits on exclusions for preexisting conditions, which define the maximum period (most often 12 months) during which insurers can refuse to sell to people who had or still have an illness that presumably makes them a "bad risk."

• Rating restrictions such as community rating, which means that insurers must apply a single rate to everyone covered under the same plan, regardless of their health status or other risk factors. Systems that allow insurers to charge different rates for factors such as gender or age, thereby creating rate "bands," are known as modified or adjusted community rating. (Many states have less stringent requirements that limit how much premiums can vary for similar groups but that still allow underwriting practices to be used.)

For years, Blue Cross and Blue Shield plans were the only carriers that routinely used community rating, making them the insurer of last resort for many people in the two target groups. In the last decade or so, however, most of the Blues' plans, in order to stay afloat financially in the increasingly competitive market, have been forced to underwrite for factors such as age, sex and health status. That has left more and more people unable to buy insurance, even if they can afford it, and has spurred the states to intervene.

And now the tide seems to have turned. Since 1991, by IHPP's count, the legislatures in 19 states have enacted full or partial community rating laws. Initially insurers — especially small to medium-sized commercial carriers who opposed being put into the pot with larger, nationally based plans — sounded warnings that they'd be forced to leave states where com-

munity rating was in effect. For the most part, however, that hasn't happened, and where it has, state officials have tended to say "good riddance." An example is Vermont, which implemented the first community rating law back in July of 1992. Asked if early concerns about insurers leaving the state had come true, Gov. Howard Dean said. "Yes, thank heaven. We got rid of some of the fly-by-nights and the cherry pickers and we've kept the reputable ones. What we've done is to refine our insurance markets."

New Jersey: A Big Umbrella

The experience in New Jersey, which has phased in its 1992 community rating law over three years, is an interesting example of how the market can adjust. An incentive for carriers to move into the individual market, legislators crafted a unique "play or pay" scheme that imposes an assessment on carriers unwilling to take part in the new Individual Health Coverage (IHC) program, to offset the potential losses of companies that have opted to play.

Since it was implemented in August of 1993, 28 insurers have joined, and upwards of 137,000 people had enrolled as of the quarterly count released in mid-July. What's more, 12 of the original 21 plans announced their intent to rebate "millions of dollars" to policyholders — a sign perhaps that enrollees are not the bad risk some had predicted or that they're using fewer services than had been expected. The overall assessment for companies opting to pay instead of play amounted to $40 million last year, down from $54 million in 1993; it's expected to be even lower this year, ending entirely in another year or two.

In addition to the IHC program, the 1992 law established a Small Employer Health Benefits program for companies with between two and 49 full-time workers. In place since January of 1994, the program has 50 participating carriers and 750,000 enrollees, many of them previously uninsured. As with the IHC, enrollees are given a choice of five standardized benefit plans, from a "bare bones" model to a "Cadillac" model. Those are the only plans available to individuals and after next March, they'll be the only ones available to small groups as well if the legislature doesn't again push back the effective date. (That date was set originally for March of 1994; the two-year grace period was granted in deference to complaints that the rule interferes with an employer's right to negotiate a plan that best meets its needs.)

Rounding out the reach to the uninsured, a program called Health Access New Jersey got off the ground in April. To join, enrollees must meet specific income requirements and cannot be eligible for employer-sponsored coverage or Medicare or Medicaid. So far, five insurers are taking part in the program, which offers two of the five standardized plans available to individuals and small groups. In the first three months, 5,700 people had signed up and enrollment was growing by 1,000 per week. The first-year budget is set at $50 million, enough to cover about 30,000 residents — only a small portion of the state's one million uninsured but a step in the right direction, program officials say. Key to success is employer behavior, said Access administrator Judy Hale. If private companies continue dropping their coverage of dependents, "all we'll do is tread water," she said.

Purchasing Alliances

Access II: Strength in Numbers

In tandem with the insurance reforms, a number of states have also launched health insurance purchasing alliances (also called cooperatives) in an effort to give smaller- to medium-sized businesses and self-employed individuals more clout in negotiating for affordable coverage. In at least one instance — Kentucky — the alliance also encompasses state and local government employees, and there has been talk in a few places of eventually folding in Medicaid recipients as well.

The only common element so far among alliances serving the private small group market is that they are voluntary. Beyond that, their designs vary widely. Some of them impose limits on the size of the employee group, some do not; some define regional boundaries, some are statewide; some actively bargain on behalf of

enrollees, some are simply a "supermarket" at which enrollees can shop, a handler of administrative tasks like collecting premiums and paying plans.

But they all have a shared objective: effecting economies of scale in administration in order to enhance the group's purchasing power. In addition, all rely on the insurance reforms enumerated above. Because they must take everyone who applies, the pools cannot shift costs and cannot achieve the efficiencies if plans outside operate under different rules. The idea is to minimize risk selection by broadening the pool of people covered.

Based on recent interviews with officials in several key states, interest in the alliance concept still appears strong. Some examples:

• Launched in July of 1993, the Health Insurance Plan of California, a statewide alliance for small employers known as The HIPC, continues to attract new enrollees. As of September 1, 1995, 5,000 employer groups were taking part, up from 3,700 a year ago, and total enrollment stood at 94,000, up from 67,000. (Coverage is available to firms with between 4 and 50 employees; the alliance is still most popular in the San Francisco Bay area, Los Angeles and San Diego.) One carrier has been added in the last year, boosting the total to 24, and enrollees can choose from a variety of HMO and PPO options. Next year, a point-of-service plan may be added to the mix. Although its day-to-day operations are administered by an outside consulting firm, the Managed Risk Medical Insurance Board, the state agency charged with overseeing the plan, has taken an active role in negotiating rates for its member. That strong hand appears to be paying off: in July of 1994, alliance premium rates were 6.3 percent lower than in the previous year; this year they dropped another 3.4 percent.

• Operational since July 1, 1994, the Des Moines-based Independent Health Alliance of Iowa has adapted the California model to a less-populous rural setting, where market penetration by HMOs and other prepaid plans is much less intense. Officials remain encouraged by the response of small businesses. In the first year, the number of employer groups taking part has risen from 300 to 850 (companies with one to 150 workers are eligible) and total enrollment has surged from 1,450 to nearly 6,000. Two more carriers have also joined, raising the total to seven, and there are two new plans to choose from: a point-of-service plan and an indemnity plan with a deductible ($500) set between the two other indemnity offerings ($250 and $1,000). (Indemnity plans are key in rural areas, where the concentration of capitated plans is still fairly low.) The next step, according to program director Bill Skow, will be to double the number of agents licensed to market the alliance's products, from 2,000 to 4,000 by the beginning of 1996. "Our goal is to have an agent in every single community in the state," he said, in order to improve market recognition. In addition, officials have targeted 5,000 additional companies, in hopes of making bids for their business. On balance, Skow pronounced alliance officials "very pleased with the market penetration" achieved so far and "very optimistic" about continued growth in coming years.

• Enrollment in Florida's 11 regional Community Health Purchasing Alliances (CHPAs), which began offering insurance to small groups and the self-employed in June of 1994, also continues at a steady pace. As of September 8, 1995, about 12,400 employer groups were participating statewide, up from 2,600 a year ago, and total enrollment of employees and dependents stood at about 56,000, up from 11,500. With 332,000 small businesses dotting the state, that's still a drop in the bucket but nonetheless a start, agency officials say. Unlike the California model, Florida's AHCA takes a more hands-off approach in the negotiation process. The alliances are run by people from the business community, and the policies are written by insurance agents. The state's role, an AHCA official once explained, is limited to "referee" (to resolve conflicts), "scorekeeper" (to collect data) and "cheerleader" (to encourage enrollment). To date, 36 carriers, from national giants like Aetna and the Prudential to more home-grown firms like Neighborhood Health Partnership, Inc., have been designated as "accountable health plans," and they offer more than 100 plans, both capitated and indemnity mod-

els. In the one-year period ending in May of 1995, statewide rate averages fell by nearly 9 percent for HMOs but climbed by almost 7 percent for PPOs and 10.8 percent for indemnity plans.

Kentucky: Expanding to the Public Sector

One of the new kids on the block, the Kentucky Health Purchasing Alliance, got out of the gate galloping. During the week of July 17, its first in business, the statewide alliance took 7,000 phone calls and gave 3,200 price quotes to individuals and small companies inquiring about buying coverage from one of the13 participating insurers. Since then calls have averaged 1,000 per week. And January 1, 1996, 200,000 public employees were automatically folded in, state officials say the alliance enjoys even greater clout. "From a carrier's perspective, the alliance can deliver a considerable market share," executive director Helen Barakauskas said in explaining its appeal. From a consumer's point of view, "because we will be attractive to carriers, we can negotiate favorable rates." [*Editor's note: As of the end of March 1996, there were approximately 158,000 enrollees; 140,000 of which are public sector employees, and the remaining 18,000 are individuals or employees of small businesses.*]

Under the 1994 health care reform law that created the alliance, all insurers, whether they're part of the pool or not, may offer only four standardized benefit plans. That goes not only for new customers but for existing ones as well when it's time for them to renew. Simultaneously with the alliance, the state is implementing insurance reforms (guaranteed issue and renewal, portability, limits on exclusions for preexisting conditions and modified community rating) in an effort to make the market more hospitable to those who are locked out of it.

With HMO and indemnity models and high and low options, the four plans designed by the Health Policy Board — another creation of the 1994 law — translate into 29 different options. In each of the seven designated alliance regions, a minimum of three carriers are offering plans, and program officials seem optimistic even more will join as the open enrollment period slated for October nears.

One insurer watching to see what happens is industry giant Humana Inc. Steve Russell, director of products and administration, said the company has joined similar alliances in other states, including Florida, Illinois, Texas and Wisconsin, and decided "to add Kentucky to our market experience." The alliance concept "makes sense," Russell said: using collective bargaining to negotiate for small groups that would otherwise face prohibitive rates and achieving administrative savings in the bargain. But in such arrangements, "price is everything." Because plans are standardized, carriers "will go in only if they can be price competitive." Kentucky, Russell added, could be a particularly fertile field once public employees join and expand the size of the pool. "We've reached no conclusions about whether it will be a success, but we've been selective about [the alliances] we've joined, and we'll stay in this long enough to evaluate."

Other insurers continue to sound the alarm, however. Of the 3 million residents who will be affected by alliance-mandated plans, said Curtis Dickinson, an Indianapolis, Indiana-based attorney who represents Golden Rule — a major carrier in the state — 180,000, including 15,000 Golden Rule policyholders, are individuals who pay premiums out of pocket. "Those people have the right to keep their insurance." Citing early estimates by a state-paid consultant, Dickinson said that if the alliance stands, "the consequences will be draconian." People who try to replace an existing policy [with a standardized plan] could see their rates double, he said, "and no one knows if current rates are high enough." Last year, Golden Rule asked a federal district court judge to throw out the 1994 law on grounds that it violates the Constitution's contracts clause. In May, it won a preliminary injunction stopping enforcement of the nonrenewal of existing contracts. In the wake of that ruling, 11 other carriers and the Health Insurance Association of America filed a similar suit in the same court. Final disposition of the Golden Rule case is expected soon.

Major State-Legislated Strategies

The following section describes activities that states have taken in the areas of access and delivery system reform. It is divided into four parts — access to care, managed care, cost containment and provider availability — with each focused on major legislated strategies.

Access To Care

• **Comprehensive Plans for Universal Coverage** — For states once considered bellwethers of reform, including Washington, Minnesota, Florida, Oregon and Massachusetts, 1995 has proved to be a disappointing year. In Washington and Minnesota, where sweeping health care reform laws were already on the books, legislators learned the hard way that enacting comprehensive reform is one thing, implementing it is another. In fact, major provisions of the reforms in both states were repealed, some of them replaced with more incremental ones. Florida legislators did not even consider the Florida Health Security Act, a major element on the state's reform agenda. Oregon is likely to see its pay-or-play go down the drain come January unless it obtains an ERISA exemption from Congress — a highly unlikely event. Finally, in Massachusetts, where legislators pushed back one more time the implementation date of its employer mandate, things are on hold until a new commission exploring alternative strategies reports and Congress shows its hand on Medicaid. Hawaii is the only state thus far that has been able to implement a mandatory financing scheme.

• **Health Care Commissions** — Commissions play an important role in the process of both planning and implementing reform. They help measure and develop public support for hard choices, serve as forums for building consensus among interested parties and offer platforms for investigating strategies tailored to the specific needs of each state. Indeed, the first stage in reform is often the creation of a commission to study the problem and analyze possible solutions. Commissions often continue past adoption of their proposals to become involved in the second stage — implementation — although the more recent trend has been to reduce their power to an advisory capacity once they have finalized a report. Increasingly, commissions form a component of state strategies to synchronize local with federal reform as well, using their technical expertise to analyze the implications of federal proposals and articulate state-level concerns. In many cases, they are jointly responsible to the legislature and the governor, a structure that highlights the interrelationship of the processes of defining and implementing health policy. Virtually all states have studied some aspect of reform recently; at last count, 42 had set up some type of entity to study some aspect of the health care system. While earlier commissions were asked to develop comprehensive plans, the focus today is often on an explicit schedule of studies supporting incremental implementation stages and "foundation reforms" designed to reorganize the delivery system in preparation for further state or federal action.

• **Insurance Market Reforms** — An important group of reforms are designed to make the private health insurance market function in a way that makes coverage more affordable to more workers. Collectively known as insurance market reforms, several different approaches have been tried historically, usually in this order: (1) medical high-risk pools (27 states); (2) basic benefits packages (41 states); and (3) small group insurance market reform (46 states), including guaranteed issue (37 states) and community rating (19 states). Although the reforms generally begin with small employer groups (typically three to 25 workers), many states have extended them, at least in part, to individuals and larger groups. Seventeen states, for example, have enacted individual reforms. A more recent strategy has been to experiment with health insurance purchasing alliances. In the two years since managed competition entered the public dialogue, 23 states have initiated a spectrum of experiments to test that approach, while two have launched studies of the issue.

• **Medical Savings Accounts/Tax Incentives** — Tax incentives have been used from time to time as a tool for encouraging access.

Three strategies are common: (1) equal tax treatment for all buyers; (2) transitional tax credits to small businesses insuring for the first time; and (3) tax-exempt individual medical savings accounts (MSAs). Twelve states offer tax incentives to increase coverage, while 17 permit MSAs to be established on behalf of individuals, employees or families, with an annual limit on the amount that may be deposited for each principal and each dependent, usually $2,000 and $1,000 respectively.

• **Coverage for Targeted Populations** — Given limited resources, many states have created special programs for those populations least likely to have coverage and most at risk of being uninsured. Such programs devote public funds and/or encourage the private sector to expand coverage to these vulnerable populations. To date, 43 states have adopted laws to increase coverage for one or more special populations. The breakdown: children (27 states), indigents (31 states) and other uninsured groups (16 states), alone or combined.

• **Medicaid** — Increasingly, states are turning to managed care to control costs in their Medicaid programs. To date, 43 states have implemented waiver programs under Section 1915 (b) of the Social Security Act, which allows them to bypass certain program rules governing Medicaid. Such waivers are typically used in implementing managed care when the state wants to restrict beneficiaries' choice of provider by requiring them to enroll in certain health plans or with certain providers. The waiver is also necessary to do selective contracting for certain services. In addition, several states are using the authority under Section 1115 of the Social Security Act to implement statewide research and demonstration projects. Under Section 1115, they may waive any requirements of the Medicaid program, including health plan composition, eligibility rules and payment requirements. Five states are currently implementing a Section 1115 program; six have had waivers approved by the federal government and are expected to start the implementation process in the immediate future; four have federal approval but still need their legislature's okay; and eight have submitted a waiver but have not yet received final approval. In addition, five states have received a legislative green light to develop a waiver, and one is developing a proposal without specific legislative authorization. Finally, one state's waiver was disapproved by the federal government, and another withdrew its application in anticipation of a rejection.

Managed Care

• **Any Willing Provider** —All told, 32 states have enacted any willing provider laws, which require managed care organizations to accept any provider who accepts the terms and conditions of the organizations's contract. Most frequently, the any willing provider laws concern pharmacies (22 states). Only six states have enacted laws that apply to a broad spectrum of providers.

• **Freedom-of-Choice** — Fourteen states have enacted freedom-of-choice laws, which require managed care organizations to permit enrollees to select the provider of their choice. Like any willing provider, the laws generally apply to pharmacies only. Ten states have such laws for pharmacies; only one has a broad statute that applies to a number of providers.

• **Patient Protection** — Since 1994, when the first law based on the American Medical Association's Patient Protection Act model legislation was enacted, a number of states have considered similar legislation. The Patient Protection Act requires states to develop standards for certification and provides certain protections to providers (e.g., the right to know the criteria for selection and termination) as well as consumers (e.g., point-of-service option). Only five states have enacted the model legislation so far, and not necessarily in its entirety. Two have adopted broad legislation, including a requirement that managed care organizations offer a point-of-service option to enrollees. One state limited its version of the Patient Protection Act to a point-of-service requirement, while another adopted only the Patient Protection Act provisions relating to certification standards.

• **HMO Acts** — With Hawaii's action in 1995, all 50 states have now passed HMO enabling legislation.

• **Accountable Health Plans** — Ten states have enacted legislation authorizing the formation of Accountable Health Plans: Arizona, Florida, Iowa, Kentucky, Mississippi, New Hampshire, New Mexico, North Carolina, Oklahoma and Oregon. The law authorizing Accountable Health Plans was repealed in Washington in 1995.

• **Networks** — Twenty states have dealt with the issue of provider networks, either through regulation, oversight of their development in the insurance market or both.

• **Regulation of Utilization Reviews** — Thirty-five states regulate utilization review (UR) companies in some way or the other. Among the strategies: requiring registration, certification or licensure of UR companies or requiring certification but allowing or requiring accreditation by a private entity. In addition, some states have enacted laws that relate to utilization review but are not comprehensive and do not require certification. New York is one of few states without any requirement.

• **Selected Clinical Mandates** — Ten states have laws on the books that require managed care organizations to cover certain treatments or procedures. More specifically, five states require the coverage of bone marrow transplants for the treatment of cancer, while four mandate the coverage of 48-hour inpatient care after normal delivery. Two other 48-hour coverage bills are pending (in California and Massachusetts).

Cost Containment

• **Certificate of Need** — Thirty-eight states have implemented certificate of need programs that regulate expenditures for the introduction or expansion of health facilities, institutional health services and/or the purchase of major medical equipment.

• **Facility Rate-Setting** — Two states — Maryland and New York — have a facility rate-setting system in place. Maryland's is an all-payer system, while New York's includes all but Medicare payments. New Jersey and Massachusetts have deregulated their systems. Connecticut and Maine use a system of hospital budget review and approval.

• **Regulation of Physician Fees** — Two states — Florida and Maryland — have enacted laws providing for the regulation of physician fees, but neither program has been implemented yet.

• **Uniform Claims Form** — Thirty-eight states require all health carriers to use standardized forms in claims for service coverage in order to facilitate the exchange of claims-based information and decrease administrative costs.

• **Data Collection** — Forty-six states have established data collection programs or are in the process of doing so. Colorado's program was allowed to sunset in 1995.

• **Clinical Practice Guidelines** — Eleven states have enacted laws that require the use of guidelines that specify the appropriate course(s) of treatment for certain health conditions. A clinical practice guideline demonstration project is taking place in Utah. In Maryland, the program is still under development.

• **Self-Referral Restrictions** — Thirty-four states have laws that restrict or prohibit providers from referring patients to a designated health service (e.g., clinical lab, diagnostic imaging, outpatient surgery) in which providers or their immediate family members have a financial interest.

• **Antitrust Immunity** — Twenty-four states have included antitrust immunity in their statutes.

Provider Availability

• Scholarship and/or Loan Forgiveness/Replacement Programs — Forty-eight states have loan forgiveness programs, which provide financial assistance to medical students for tuition, loans or debts in return for a commitment to practice for a specified period of time in underserved areas or in specialties where there is a shortage of health care professionals. Montana and Hawaii are the only states without such programs.

• **Quota Measures** — Only six states (Arizona, Minnesota, North Carolina, Tennessee, Washington and Wisconsin) have passed quota or outcomes-based measures requiring medical schools to graduate a certain percentage of primary care providers.

• **Charitable Immunity** — Protection

granted by state statute to providers who deliver free care or charity care, absent gross negligence or malicious conduct — a protection also known as charitable immunity — now exists in 22 states.

Conclusion

Overall, the nature and pace of health care reform among the states are changing. But though the quest for universal coverage has been stymied — at least for the near future — many states are continuing to experiment with ways to expand coverage to some of their most vulnerable residents as well as to the working poor. At the same time, many of them are launching new and more sophisticated cost containment strategies and are undertaking efforts to improve the efficiency and accountability of their health services delivery systems.

State Action in a Global Framework

Organizational and programmatic change follow in the wake of states' growing awareness of and involvement in the international arena.

by Dag Ryen

The past hundred years have rightfully been called the American Century. Politically, economically, socially and culturally, the United States achieved an unprecedented level of global influence during the 20th century. While thriving on a robust, consumer-driven economy, our nation enjoyed technological and material advances that made it the envy of the world.

From the McDonald's outlet on Red Square to denim clothing on assembly line stitchers in Latin America to microchips in electronic labs in Asia, American ideas have spread. Baseball caps, sneakers and blue jeans have become the accepted uniform of a generation of international consumers who chew gum and listen to rock 'n' roll while their parents in Bangkok, Sao Paulo and Almaty commute to and from work in automobiles (perhaps the ultimate symbol of the American century) and watch "evening news" on television. Clearly, American innovations and ideas have made a lasting mark on every corner of our world.

But the American Century is rapidly coming to a close. Many scholars argue convincingly that the end of American dominance in international affairs is at hand. Paul Kennedy suggests in his compelling analysis, *The Rise and Fall of the Great Powers*, that the real question is how fast America's fortunes will decline. The task before American statesmen over the next decades is "to manage affairs so that the relative erosion of the United States' position takes place slowly and smoothly . . . ," Kennedy writes.

Others have sought to isolate the forces causing that erosion. In a recent article in *Foreign Policy*, Richard Halloran argues that, "the 2lst century will see the rise of the East with such strength that it will break the monopoly of the West on world power."

There is also evidence that not only the United States, but nations in general are losing potency as actors in the international arena. As Samuel P. Huntington points out in his groundbreaking article in *Foreign Affairs* on "The Clash of Civilizations," nation-states are being subsumed by broader cultural and social forces. "Westerners tend to think of nation-states as the principal actors in global affairs. They have been that, however, for only a few centuries. The broader reaches of human history have been the history of civilizations," Huntington writes. Or, as Japanese analyst Kenichi Ohmae and others suggest, the nation may be replaced by new economic and political entities, such as city-states or regions. In *The End of the Nation State: The Rise of Regional Economics*, Ohmae writes that "the qualifications needed to sit at the global table and pull in global solutions . . . correspond not to the artificial political borders of countries, but to the more focused geographical units where real work gets done and real markets flourish."

Researchers for the Lincoln Institute have identified what they call new engines of economic prosperity. In a study of 12 city regions in Europe, Asia and the Americas, they concluded that "we are seeing the emergence of a new kind of human settlement, with its own distinct social and economic structures and associated physical forms."

Clearly a new regional dynamic is at work in the international arena. After centuries of dominance by nation-states, smaller subnational jurisdictions are waking up to their global

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potential — and to their global responsibilities. Increasingly, they are forging ties with each other and with neighboring areas in other nations to take advantage of special opportunities in international commerce and in cultural and educational exchanges.

The 50 American states and the American island commonwealths are very much a part of this development. Examples of the states' growing degree of involvement in cross-border and cross-cultural activities abound. Global awareness and international understanding are rapidly becoming important components of policy-making as states move into areas once exclusively reserved for federal policy-makers. In many ways, it will be up to the states to determine whether American influence will increase or decline in the 21st century. To a great extent, it will be state strategies and state alliances across a broad range of international issues that will determine our nation's relative success in the global marketplace of the future.

Structures for International Success

The level of preparedness to deal with this new global framework varies greatly from state to state. Almost every state has established a trade promotion program, usually housed within a cabinet-level economic development or commerce department. However, in *The International State*, the most comprehensive analysis of state trade programs published to date, William Nothdurft and Carol Conway report that nearly half of those offices were in the process of being reorganized in 1992. This is clear evidence that state governments have not yet arrived at satisfactory administrative structures to achieve development and trade goals.

The whirl of trade negotiations at the national level has added a sense of urgency to the situation. With the advent of the World Trade Organization (WTO) and ongoing discussions to refine and perhaps expand the North American Free Trade Agreement (NAFTA), state officials increasingly will be called upon to articulate their economic development goals and refine policies in accordance with international agreements. As part of this process, each state has identified a point of contact for communications with the United States Trade Representative's (USTR) office. For the most part, these individuals head up state international trade programs or intergovernmental liaison activities in Washington, D.C. (As a curiosity, Arizona chose to "privatize" its efforts in this area by naming an attorney with expertise on international trade issues.) A report on these new channels of communication issued last year by The Council of State Governments, concludes that, "State laws and policies in economic development, banking, insurance, intellectual property rights and a host of other areas can no longer be adopted in isolation from the trade treaty obligations of the United States. State officials must continue to nurture a close working relationship with the USTR in order to achieve success in their economic development and trade agendas."

Many analysts argue that most states have a long way to go in developing the expertise and organizational structure necessary to capitalize on international opportunities for growth and cultural and educational enrichment. Conway has noted that the field of export development relies too heavily on anecdotal information, cumbersome program models and spotty research.

"In stark contrast to mature fields in public policy, such as education, transportation, technology, rural development and housing, the field of export development lacks well-defined professional and performance standards, robust dialogue . . . regional alliances and a solid foundation of data, institutional memory and research . . . ," Conway writes.

Attempts to consolidate other types of international activities have met with varying success. A California Senate office of international affairs has survived that state's recent belt-tightening, while a legislative office of federal and international affairs in Kentucky has been scaled back by a new administration. The Texas House of Representatives has established a standing committee on International and Cultural Affairs. For the most part, however, governors and legislators rely on trade and inter-

governmental relations staff for advice and assistance on international affairs. Or, they may hire private consultants to assist with protocol and public relations during sensitive negotiations on major projects. Florida's governor can call on the services of a permanent independent public-private body, first created by legislative action in 1990, as the Florida International Affairs Commission. Another comprehensive example is provided by the Commonwealth of Puerto Rico, which maintains a separate State Department, including a protocol office, responsible for international affairs.

The ideal organizational solution for international interaction is bound to vary from state to state. But as states explore different administrative processes, they are already seeing an explosive growth in activities that are essentially international in scope and that involve direct contact with foreign citizens and foreign jurisdictions. Global awareness and international understanding are rapidly becoming important components of state policy-making.

Key areas of state activity

The primary area of state involvement in international affairs remains economic development. State leaders have always been concerned with the status of commerce and employment within their jurisdictions, but as the global marketplace blossomed during the post-World War II years, states recognized the need to deal with a new set of forces. The numbers are staggering.

Exported goods and services account for slightly more than 10 per cent of the gross national product. Officials in Texas estimate that one million jobs in that state are dependent on exports. In 1993, Michigan exported $25.1 billion worth of products to foreign markets. In 1994, Ohio exported $7.6 billion worth of products to Canada alone. California, the largest exporting state, sends more than 12 percent of its manufactured products overseas.

Beginning slowly in the 1970s and growing steadily since then, state leaders, acknowledging these developments, have sought foreign markets for their goods and services and courted foreign investors. The first officials to venture abroad were often criticized for taking unnecessary junkets and accused of wasting taxpayer money. Virginia officials were ridiculed by the press and political opponents when they opened the first overseas state office in Europe in 1969. Today, 39 states and Puerto Rico operate an average of four overseas offices each, including representation in such exotic places as Kuala Lumpur, Johannesburg, Budapest and Harare, Zimbabwe. The most popular locations are Tokyo, Seoul, London, Frankfurt and Mexico City. (See Fig. 1.)

The advantages of foreign representation became obvious in the 1980s after a few major deals, many involving the auto industry, were concluded. Ohio lured a Honda factory to Marysville; Tennessee lured a Nissan plant to Smyrna; Kentucky lured Toyota to Georgetown. In the Kentucky example, the incentive package to the Japanese auto manufacturer totalled $147 million. But an analysis conducted by the University of Kentucky showed that the state's annual rate of return on that investment has been 30.8 per cent. The plant directly employs 6,000 people and is credited with creating an additional 15,000 jobs statewide.

The courting of car makers continues unabated, with a BMW facility now on-line in South Carolina and a Mercedes plant under construction in Alabama. (It is interesting to note that foreign investment in the United States is driven largely by the same factors that force American companies to move overseas. Among the most significant of those factors is labor costs. The United States has recaptured the automotive crown because American autoworkers are paid less than their Japanese or German counterparts. The average industrial hourly wage in Germany, for instance, is $27.37, compared to $17.10 in the U.S.) In Alabama's successful courtship of Mercedes, officials working closely with the state's contract trade representative in Germany endured 18 months of intense and sensitive negotiations before landing the $300 million investment. "The hard part was getting everybody to keep their mouth shut," quipped one negotiating team member. The state's total incentive package to the auto-

Figure 1
OVERSEAS STATE OFFICES

	State Foreign Office		Number of Staff			Office Type			
State	*Office Location*	*Budget*	*Profs.*	*Admin.*	*Total*	*State*	*Contract*	*Other*	*Year Opened*
Alabama	Hannover, Germany	$300,000	2	1	3		C		1991
	Tokyo, Japan	$433,100	1	1	2		C		1980
	Seoul, Korea	$110,000	1	1	2		C		1985
Alaska	Tokyo, Japan	$452,741	1	1	2		C		1965
	Seoul, Korea	$248,581	2	1	3		C		1985
	Taipei, Taiwan	$25,000	1	0	1		C		
Arizona	Tokyo, Japan	$280,000			2		C		1993
	Mexico City, Mexico	$300,000			3	S			1992
	Taipei, Taiwan	$169,100			3	S			1987
Arkansas	Brussels, Belgium		2	0	2	S			1976
	Tokyo, Japan		1	0	1		C		
	Mexico City, Mexico		1	0	1		C		1994
	Kuala Lampur, Malaysia		1	0	1		C		
California	Frankfurt, Germany					S			
	Hong Kong					S			
	Jerusalem, Israel						C		
	Tokyo, Japan					S			
	Mexico City, Mexico					S			
	Johannesburg, South Africa					S			1995
	Taipei, Taiwan					S			1994
	London, United Kingdom					S			
Colorado	Tokyo, Japan	$170,000	1	0	1		C		1987
	Guadalajara, Mexico	$60,000	1	0	1	S			1994
	London, United Kingdom	$27,000	1	0	1		C		1994
Connecticut	Shanghai, China		1	0	1		C		1995
	Tinjin, China		1	0	1		C		1995
	Xiamen, China		1	0	1		C		1995
	Hong Kong		2	0	2		C		
	Guadalajara, Mexico		1	0	1		C		
	Mexico City, Mexico		2	0	2		C		
	Monterrey, Mexico		1	0	1		C		
	Taipei, Taiwan		2	0	2		C		
Delaware	None								
Florida	Sao Paulo, Brazil		1	0	1		C		
	Toronto, Canada		2	1	3		C		
	Frankfurt, Germany		3	1	4		C		
	Tokyo, Japan		2	1	3		C		
	Seoul, Korea		2	0	2		C		
	Mexico City, Mexico		2	1	3		C		
	Taipei, Taiwan		2	1	3		C		
	London, United Kingdom		2	1	3		C		
Georgia (a)	Brussels, Belgium	$526,642	3	1	4	S			
	Toronto, Canada	$73,000	1	0	1		C		
	Tokyo, Japan	$484,358	2	1	3	S			
	Seoul, Korea	$45,000	1 (b)	0	1		C		
	Mexico City, Mexico	$61,000	1 (b)	0	1		C		
	Hsin Chu City, Taiwan		1 (b)	0	1		C		
Hawaii	Tokyo, Japan	$250,000	1	0	1		C		1988
	Taipei, Taiwan	$80,000	1	0	1		C		1994
Idaho	Tokyo, Japan	$28,000					C		
	Seoul, Korea	$5,500					C		
	Guadalajara, Mexico	$94,000	1	1	2			S/C	1994
	Taipei, Taiwan	$96,000	1	1	2			S/C	1988
Illinois	Brussels, Belgium		2	2	4	S			1968
	Hong Kong		2	1	3	S			1973
	Budapest, Hungary		1	1	2			S/C	1990
	Tokyo, Japan		2	1	3			S/C	1987
	Mexico City, Mexico		3	1	4	S			1989
	Warsaw, Poland		1	1	2			S/C	1990

Source: NASDA 1995 State Export Program Data Base

OVERSEAS STATE OFFICES — Continued

State	State Foreign Office		Number of Staff			Office Type			Year
	Office Location	*Budget*	*Profs.*	*Admin.*	*Total*	*State*	*Contract*	*Other*	*Opened*
Indiana	Toronto, Canada		2	1	3		C (c)		
	Beijing, China		2	1	3		C		
	Tokyo, Japan		2	1	3		C		
	Seoul, Korea		1	1	2		C		
	Mexico City, Mexico		2	1	3		C		1993
	Amsterdam, Netherlands		2	1	3		C		
	Taipei, Taiwan		1	1	2		C		
Iowa	Frankfurt, Germany	$270,000	1	1	2	S			1977
	Hong Kong	$65,000	1	0	1		C		1994
	Tokyo, Japan	$317,000	1	1	2	S			1986
	Mexico City, Mexico	$60,000					C		1994
Kansas	Sydney, Australia		1	0	1		C		
	Brussels, Belgium		2	0	2		C		
	Tokyo, Japan		2	0	2		C		
Kentucky	Brussels, Belgium					S			
	Tokyo, Japan					S			
Louisiana	Mexico City, Mexico	$102,000	1	0	1		C		1990
	Breda, Netherlands	$80,000	1	1	2		C		1992
	Taipei, Taiwan	$134,200	1	1	2		C		1989
Maine	None								
Maryland	Brussels, Belgium		2	2	4		C		1986
	Yokohama, Japan		1	1	2		C		1986
	Taipei, Taiwan		1	0	1		C		1988
Massachusetts	Guangdong, China								
	Berlin, Germany								
	Jerusalem, Israel								
Michigan	Brussels, Belgium		5	0	5	S			
	Toronto, Canada		3	1	4	S			
	Hong Kong		3	2	5	S			
	Tokyo, Japan		1	1	2	S			
	Mexico City, Mexico		2	0	2		C		
	Harare, Zimbabwe		2	1	3		C		
Minnesota	N/A								
	(The Minnestoa International Information Network and World Trade Centers are used to respond to this need.)								
Mississippi	Mississauga, Canada		0	2	2			O (d)	1995
	Santiago, Chile		1	1	2		C		1995
	Frankfurt, Germany		2	1	3		C		1992
	Seoul, Korea		1	2	3		C		1987
	Taipei, Taiwan		2	2	4		C		1987
Missouri	Dusseldorf, Germany		3	1	4		C		
	Tokyo, Japan		2	1	3		C		
	Seoul, Korea		2	1	3		C		
	Guadalajara, Mexico		2	2	4		C		
	Taipei, Taiwan		1	1	2		C		
Montana	Kumamoto, Japan	$62,000	1	0	1				1991
	Taipei, Taiwan	$74,000	1	0	1	S			1987
Nebraska	None								
Nevada	None								
New Hampshire	None								
New Jersey	Raanana, Israel		1	0	1		C		
	Tokyo, Japan		1	0	1		C		
	London, United Kingdom		1	0	1		C		
New Mexico	Mexico City, Mexico	$150,000	1	2	3		C		1992
New York	Montreal, Canada	$60,000	0	1	1		C		1987
	Toronto, Canada	$300,000	2	1	3		C		1976
	Frankfurt, Germany	$195,000	2	0	2		C		1982
	Tokyo, Japan	$430,000	2	1	3		C		1963
	London, United Kingdom	$425,000	2	1	3		C		1962

Source: NASDA 1995 State Export Program Data Base

OVERSEAS STATE OFFICES — Continued

	State Foreign Office		Number of Staff			Office Type			Year
State	*Office Location*	*Budget*	*Profs.*	*Admin.*	*Total*	*State*	*Contract*	*Other*	*Opened*
North Carolina	Dusseldorf, Germany		1	1	2		C		
	Hong Kong		1	1	2		C		
	Tokyo, Japan		1	1	2		C		
	Mexico City, Mexico		1	1	2		C		1994
North Dakota	None								
Ohio	Brussels, Belgium	$327,000	2	1	3	S			1976
	Toronto, Canada	$168,000	2	1	3	S			1990
	Hong Kong	$246,000	2	1	3	S			1992
	Tokyo, Japan	$502,000	2	1	3	S			1976
	Mexico City, Mexico		2	1	3	S			
Oklahoma	Frankfurt, Germany	$150,000	1	1	2	S			1991
	Seoul, Korea	$70,000	1	1	2		C		1992
	Mexico City, Mexico	$138,000					C		1993
	Singapore	$140,000	1	0	1		C		1987
Oregon	Tokyo, Japan	$750,000	3	1	4	S			1984
	Seoul, Korea	$55,000	1	1	2	S			1987
	Taipei, Taiwan	$140,000	1	1	2	S			1987
Pennyslvania	Brussels, Belgium	$300,000	1	1	2		C		
	Toronto, Canada	$40,000	2	1	3		C (e)		
	Frankfurt, Germany	$300,000	1	1	2		C		
	Tokyo, Japan	$280,000	1	2	3		C		
Rhode Island	None								
South Carolina	Frankfurt, Germany	$485,600	1	1	2	S			
	Tokyo, Japan	$360,000	1	1	2	S			
	Sawley, United Kingdom		1	0	1		C		
South Dakota	None								
Tennessee	Mexico City, Mexico		3	2	5			S/C	
Texas	Frankfurt, Germany	$279,400	2	0	2		C		
	Tokyo, Japan	$162,100	1	1	2		C		
	Mexico City, Mexico	$255,572	2	2	4		C		
	Taipei, Taiwan	$190,546	1	2	3		C		
Utah	Waterloo, Belgium	$270,000	1	1	2		C		1990
	Tokyo, Japan	$105,000	1	1	2		C		1984
	Seoul, Korea	$35,000	1	0	1		C		1987
	Seoul, Korea	$25,000	1	0	1		C		1987
	Mexico City, Mexico	$55,000	1	1	2		C		1992
	Taipei, Taiwan	$80,000	1	1	2		C		1987
Vermont	None								
Virginia	Frankfurt, Germany	$300,000	2	1	3	S			1969
	Tokyo, Japan	$370,000	3	1	4	S			1981
	Botswana, South Africa	$100,000	1	1	2	S			1994
Washington	Paris, France	$115,000	1	1	2		C		1992
	Tokyo, Japan		2	1	3		C		1982
	Vladivostok, Russia						C		
	Taipei, Taiwan	$130,000	1	1	2		C		1988
West Virginia	Nagoya, Japan	$290,000	2	0	2	S			1990
Wisconsin	Toronto, Canada	$150,000	2	1	3		C (f)		1990
	Frankfurt, Germany	$401,000	2	1	3		C		1984
	Hong Kong	$290,800	2	1	3		C		1986
	Tokyo, Japan	$451,000	3	1	4		C		1991
	Seoul, Korea	$131,980	2	1	3		C		1991
	Mexico City, Mexico	$185,000	2	1	3		C		1994
Wyoming	None								
Total	162				335	40	111	7	
Average	3.1	$196,634	1.456	0.764	2.279				

Source: NASDA 1995 State Export Program Data Base.
(a) Office staff is part-time.
(b) Georgia will open 4 additional contract overseas offices during FY 96.
(c) Shared office with Pennsylvania and Wisconsin.
(d) Dedicated phone line with customized answering service; contractual office space for staff/clients when in area.
(e) Shared office with Indiana and Wisconsin.
(f) Shared office with Indiana and Pennsylvania.

maker reached an estimated $250 million.

On the other hand, the overt courting of foreign companies has some state leaders worried. Competition between states is often fierce, and for every state that wins, several others must write off staff time and other expenses to experience. Moreover, incentive packages have become so staggeringly large that critics are asking whether the jobs are worth the price. The package, for instance, offered to entice a foreign-owned steel mini-mill to locate in Gallatin, Kentucky, will cost the state approximately $380,000 per job.

Among the strongest voices calling for an end to the bidding wars is Illinois Gov. Jim Edgar. In a recent address Edgar called for a new era of state cooperation, suggesting that progress could be made through innovative regional alliances beyond shared offices and joint trade missions. States need "to brainstorm how we can work together," he said.

In general, states are entering a new era of sophistication in their trade and economic development activities. They have realized that it doesn't do the trick simply to open an office in Brussels or Hong Kong. With a decade of experience in marketing and negotiation behind them, states are getting smarter in how they approach trade and development issues. The most successful state programs today are highly focused and set realistic goals. In Oregon, the International Trade Division negotiates detailed contracts with client firms for specific and intense assistance in identifying and capitalizing on trade leads. Other states are reaching out to the academic community, federal government agencies and the private sector to build trade promotion coalitions. One strategy, pioneered in Arizona under the leadership of analysts at Arizona State University, is to build on strength by identifying industries within the state that already have the potential for significant growth. Assistance is then focused on these so-called cluster industries. Clusters can organize to share ideas, develop joint ventures, influence public policy and streamline state and federal assistance efforts. One outcome of the Arizona cluster initiative is the nurturing of trade relationships with environmental technologies industries in Taiwan. This effort is being supported by a $120,000 grant from the United States-Asia Environmental Partnership administered by The Council of State Governments.

And states are getting serious about measurable results, axing programs that don't measure up. Washington last year sunsetted its Pacific Northwest Export Assistance Project (PNEAP) when an audit showed the program costs taxpayers two dollars for every dollar generated in export sales. The same audit showed that another Washington program, the Local Trade Assistance Network, generated $8 in sales for every program dollar expended. The PNEAP failed in part because it tried to reach too broad a spectrum of industries and potential exporters.

Good Neighbors

Another area of intensified state activity on the international front involves relations with neighboring Canadian provinces and Mexican states. There has been a veritable explosion of cross-border meetings and cooperation in the last few years, partially in response to opportunities and demands of NAFTA, but also in areas unrelated to trade or economic development.

The acceleration of cross-border contacts is testing the limits of traditional legal standards. The Constitution of the United States says categorically that, "No state shall enter into any treaty, alliance or confederation with any foreign power." It also says that "no state shall without the consent of Congress enter into any agreement or compact with another state or with a foreign power." On first reading, it would appear that this constitutional language places strict limitations on the ability of states to conclude formal agreements with foreign entities. But rulings by the Supreme Court have greatly expanded state options.

As early as 1893, the Court ruled in *Virginia vs. Tennessee* that congressional consent could be implied. That is, Congress does not have to approve an agreement expressly if earlier congressional action clearly indicates that approval would be granted. The Court refined this position most recently in the 1978 decision in *U.S. Steel vs. Multi-state Tax Commission*, stating

that the congressional approval clause only applies to agreements that would increase the political power of the states or agreements that encroach on areas of federal regulation.

Armed with this interpretive leeway, states have increasingly entered into formal cooperative arrangements with neighboring jurisdictions in Canada and Mexico. These agreements cover a wide variety of issues and human activities. Some address policy concerns such as water resources, disease or wildlife, which are blind to political boundaries. In recent years, for instance, American states and Canadian provinces have set up various cooperative arrangements to control the spread of zebra mussels in the Great Lakes basin or Eastern spruce budworm in Northern forests, while American and Mexican states have entered into agreements to monitor the spread of tuberculosis along the U.S.-Mexico border.

Others agreements seek to streamline normal contact and commerce between neighbors. They cover transportation, taxation, hydro-electric facilities, hunting and wildlife management, educational and cultural exchanges, air and water pollution, fire protection, vehicle safety standards, waste disposal, interjudicial assistance, tourism and many other topics. The implementation of NAFTA, for example, has led to a proliferation of bilateral agreements on standards for international trucking.

Most of the agreements currently in place share two important elements. They are primarily consultative in nature; that is, they create task forces, committees or other channels of communication to ensure that activities in areas of common interest are properly coordinated. And secondly, the agreements are voluntary, relying on the good will of the signatories to remain effective and with no provisions for enforcement. But the increased frequency of contacts between neighboring states and provinces and the importance of issues being discussed indicates a desire for more than casual information-sharing. Recent agreements often build on the premise that neighboring jurisdictions can accomplish more if they pool resources and work together.

Neighbors across the border are identifying and acting on common interests and common needs. The North American Clean Air Alliance, for instance, an association of several Northeastern American states and Canadian provinces, promotes the commercialization of zero-emissions vehicles as a step in resolving air pollution problems across the northern tier. And North Dakota has recently entered into agreements with Saskatchewan and Manitoba to coordinate research on mineral development issues, while Washington, Oregon, Idaho and British Columbia have joined together to promote the use of natural gas as a clean fuel alternative. These types of arrangements show that states and provinces often have similar long-term policy goals. They are not merely indicative of joint solutions to common practical or logistical problems, but are true policy alliances.

Research currently being conducted by the University of Toronto's John Kirton has identified 447 specific instances where Canadian provinces have established formal cooperative arrangements with foreign entities. These include binding agreements sanctioned by the U.S. and Canadian governments, voluntary arrangements signed by provincial and state leaders and memoranda of understanding between states and provinces or provinces and binational associations. They range from the earliest agreements on cross-border transportation to formal contracts for the sale of surplus electricity to detailed arrangements on wildlife habitat management, forest fire containment or nuclear emergency response.

A number of recent Canadian-American agreements have been concluded under the auspices of the Northeast Governors and Eastern Canadian Premiers organization (NEGECP). In the past few years, NEGECP has finalized agreements on regional trade cooperation, tourism marketing, government data bases and the information superhighway, and higher education student exchanges.

Among the most active Canadian actors in this regard is the Quebec National Assembly, which has solidified its relations with Northeastern neighbors by joining the Eastern Regional Conference of The Council of State Governments as a dues-paying international

associate member. Quebec, of course, has a long history of formal international activity, dating back to a series of cultural and educational agreements signed with France in the 1960s.

The activity is equally vigorous along the Mexican border. In 1995, Texas and three neighboring Mexican states signed a comprehensive memorandum of understanding to promote trade, investment and policy coordination. In Arizona, a binational health and environmental task force, consisting of state and local officials as well as representatives of the general public, has been in operation for two years. The task force has recently embarked on five new projects, including monitoring of respiratory diseases and pesticide surveillance. A 1993 agreement between New Mexico and the state of Chihuahua calls upon officials from both jurisdiction, among other things, to develop a regional environmental compact that will provide solutions to common problems.

Many of these activities have their inception in comprehensive environmental, health or transportation treaties between the United States and Mexico. In recent years federal agencies have come to rely heavily on state agencies to monitor the results of such national initiatives. And, in the wake of NAFTA, states have taken on a whole new set of responsibilities relating to transportation and law enforcement. Working as agents of the federal government, state officials are rapidly developing independent expertise on these issues. The result is a renewed commitment to solving cross-border issues and a new sense of bi-national activism.

International Ties and Their Consequences

There are numerous other ways in which states are expanding their interaction with the world beyond national borders. The following list highlights a few of the areas where states have begun playing an important role in the formulation of policy regarding the rest of the world.

• **Immigration**. States are demanding a greater say in immigration policy, an area previously reserved for the federal government within its foreign affairs mandate. Suits filed by California, Florida and others to recoup costs incurred by states in providing services for undocumented aliens have been rejected by federal appeals courts. But the legitimate concerns raised by states are being heard with increasing sympathy by national leaders and the topic has emerged as a major issue in the 1996 presidential election campaign.

• **Regulation of multi-national and foreign-owned enterprises**. While the global economy has stimulated U.S. interest in foreign trade and export activity, we generally underestimate how much impact foreign investment at home and our taste for imported products have on our lives. Dealing with foreign owned shopping malls, manufacturing facilities and service shops has become a major function of state's regulatory apparatus. Issues such as disclosure laws, competition policy, financial security assurances and bonding mechanisms offer special challenges for state law makers and policymakers. Trade is a two-way street and states are slowly awakening to the need for special skills and expertise in dealing with foreign partners in trade and commerce.

• **Technical assistance and professional exchanges**. The end of the Cold War engendered federal largesse as Congress sought to buttress new democracies in Europe and Asia. Many American states and state organizations were quick to take advantage of these funding opportunities to send their own experts overseas and to receive delegations of foreign visitors hungry for answers to common public policy problems. Both granting agencies and foreign visitors often find that state decision-makers relate to counterparts in the former Soviet Union and elsewhere better than federal bureaucrats. As a result, states and state officials have been actively involved in public administration assistance, technical assistance in the environment, transportation, policing and criminal justice. Millions of dollars in grants are funneled through state universities for educational assistance and academic exchanges. And although federal grant programs are being scaled back, private foundations and foreign institutions have bought into the advantages of state and local involvement. Different terms are used in

different countries — decentralization, devolution, federalism or subsidiarity — but all revolve around common themes, and American familiarity with these issues has become a much sought-after commodity. At the same time, states and municipalities gain insight and experience from these exchanges that translate into better policies and programs at home.

• **Sister states**. In the spirit of international understanding, states have identified kindred jurisdictions around the world with which to build closer cultural ties. Every state has at least one foreign sister state; some have as many as eight. The strength of these pairings varies, but the best programs involve regular consultations between political leaders, formalized and funded student exchanges and reciprocal visits by arts groups. (See Fig. 2.)

• **Tourism**. Foreign visitors to the United States spend approximately $60 billion a year. Tourism is on its way to becoming the nation's largest export. Recognizing the importance of this industry — international tourism is estimated to generate nearly one million jobs — most states have launched campaigns to attract visitors from overseas. The American states and island commonwealths spent more than $50 million for international promotion last year. Many have formed regional tourism alliances and target their advertising dollar toward specific groups of foreign visitors.

• **Finances.** Alaska became the first state to try overseas financing when the Alaska Housing Finance Agency in 1984 offered bonds in the Eurobond market. Five years later Kentucky sold approximately $80 million in bonds on the Japanese market to finance economic development projects and low-interest loans to new businesses. State pension funds annually invest billions of dollars in foreign stock markets. These activities generate a demand at the state level for people with a thorough knowledge of foreign money markets and international finance in genereal.

These often overlooked areas of international contact all contribute to the American states' growing interest in and responsibility for decisions and policies in the arena of world affairs. They form an important part of the growing internationalization of state agendas.

Conclusion: The Question of Regions

We are in the midst of a sea change in international politics. As Paul Kennedy's political analysis and Kenichi Ohmae's economic one have pointed out, the nation-state is fading as the dominant actor in global affairs. It remains to be seen what will replace nations. Suggestions range from multi-national corporate conglomerates to aggregate trading blocs (EU or NAFTA or Asian Tigers) to religious and ethnic movements to city-states. A great deal of research indicates that, at least in the economic sphere, the basic driving force in the world today is metropolitan regions with populations of at least 50 million and high-tech communications and transportation infrastructure. Leaders in the European Community have recognized the legitimate needs of local and regional governments by creating a Committee of the Regions. Initially, there were 123 regions recognized in the European Community, but with the admission of Austria, Finland, Sweden and Denmark, the number has grown to more than 230.

A similar understanding of this dynamic has not surfaced in the United States. No one has undertaken a definitive analysis of what constitutes "economic regions" in the American context. And state governments are only beginning to look at how their own policies toward cities and municipalities have an impact on competitiveness and growth in a global marketplace. (The recent creation of a nonprofit Conference of World Regions has as its primary mission to track such international developments and analyze their impact on business practices in the global economy.)

While leaders in the American states make giant waves about relieving the federal government of power and programs, state decision-making structures can be as out-dated as those of the declining nation-state. The mobility of people, goods and ideas may be erasing state boundaries as quickly as national boundaries. And the economic forces unleashed by world trade and global information technologies are

Figure 2
SISTER STATES AND TERRITORIES

Alaska
Heilongjiang Prov., China
Hokkaido Pref., Japan
Khabarovsk Region, Russia

Alabama
*Guatemala
Hubei Prov., China Taiwan, China

American Samoa
Maui County, HI
Oceanside, CA

Arizona
*Durango, Oaxaca, Mexico
Taiwan, China

Arkansas
*Eastern Bolivia
Taiwan, China
State of Bavaria, Germany

California
Catalonia, Spain
Taiwan, China
Puglia Province, Italy
(San Francisco)
*Mexico (Mexico City)
(Southern)
*Argentina (Buenos Aires)

Colorado
*Minas Gerais, Brazil
Hunan Prov., China
Taiwan, China
State of Bavaria, Germany

Connecticut
*Paraiba, Brazil
*State of Baden Wurttenburg, Germany
Shandong Prov., China

Delaware
*Panama

District of Columbia
*Brasilia, Brazil

Florida
*Northern and Central Colombia

Georgia
*Pernambuco, Brazil
Kagoshima Pref., Japan
Guam Cebu, Philippines
Koje Island, Korea
Lorraine Province, France
Republic of Georgia
Taipei Municipality, China
Tsushima Island, Japan

Hawaii
Azores, Portugal
Cheju Island, Korea
Fukuoka Pref., Japan
Ilocos Sur Province, Philippines
Guangdong Prov., China
Okinawa Prefecture, Japan

Idaho
*Cuenca, Guayaquil, Ecuador
Chungchong Bukdo Prov., Korea
Taiwan, China
Shanxi Prov., China

Illinois
*Sao Paulo, Brazil
Liaoning Prov., China

Indiana
*Rio Grande do Sul, Brazil
Moscow Region, Russia
Taiwan, China
State of Baden Wurttenburg, Germany
Zhejiang Prov., China

Iowa
*Yucatan Peninsula, Mexico
Hebei Prov., China
Stavropol Region, Russia
Taiwan, China
Trenggunu State, Malaysia
Yamanashi Pref., Japan

Kansas
Henan Prov., China
*Paraguay

Kentucky
*Quito, Ambato, Santo Domingo, Ecuador
Taiwan, China
Jiangxi Prov., China

Louisiana
*El Salvador
Taiwan, China

Maine
*Rio Grande de Norte, Brazil
Jilin, China

Maryland
Anhui Prov., China
Jalisco, Mexico
Kanagawa Pref., Japan
Kyongsangnam Do, Korea
Leningrad Region, Russia
Lodz Province, Poland
Nord Pas de Calais, France
*Rio de Janeiro, Brazil

Massachusetts
*Antioquia, Colombia
Guangdong Prov., China
Hokkaido Pref., Japan

Michigan
*Belize
*Dominican Republic
Shiga Pref., Japan
Sichuan Prov., China

Minnesota
*Uruguay
Shaanxi Prov., China
Taiwan, China

Mississippi
*Guyana
Taiwan, China

Missouri
*Para, Brazil
Chollo Namdo, Korea
Cajamarca, Peru
Nagano Pref., Japan
Taiwan, China

Montana
Kumamato Pref., Japan
*Patagonia, Argentina
Taiwan, China

Nebraska
*Piaui, Brazil
Taiwan, China

Nevada
Taiwan, China

New Hampshire
*Ceara, Brazil

New Jersey
*Haiti
Zhejiang Prov., China

New Mexico
*Michoacan, Chiapas, Tabasco, Mexico
Taiwan, China

New York
Jiangsu Prov., China
*Grenada
*Barbados
*Trinidad & Tobago
*St. Kitts & Nevis
*Dominica
*St. Vincent
*Montserrat
*Antigua & Barbuda
*St. Lucia
*Jamaica

North Carolina
*Cochabamba, Bolivia
Liaoning Prov., China

North Dakota
Taiwan, China

Ohio
*Parana, Brazil
Hubei Prov., China
Anambra, Nigeria
Gyeongsang Budgo Prov., Korea
Taiwan, China

Oklahoma
*Chihuahua, Coahuila, Colima, Jalisco, Puebla, Sonora, Tlaxcala, Mexico
Gansu Prov., China
Kyoto Pref., Japan
Taiwan, China

Oregon
*Costa Rica
Fujian Prov., China
Taiwan, China
Toyama Pref., Japan

Pennsylvania
*Bahia, Brazil (E. Pa.)
*Maranhao, Brazil (W. Pa.)

Puerto Rico
Caguas (Hartford, CT)
San Juan (Honolulu County, HI)

Rhode Island
*Sergipe, Brazil

South Carolina
*South West Colombia
Taiwan, China

South Dakota
Taiwan, China

Tennessee
*Amazonas, Brazil
Shanxi Prov., China
Taiwan, China
*Venezuela

Texas
*Peru
*Nuevo Leon & Guerrero, Tamaulipas, Veracruz, Mexico
Taiwan, China
Gyeong Gi Prov., Korea

Utah
*La Paz, Altiplano, Bolivia
Gyeong Gi Prov., Korea
Taiwan, China
Jiangxi Prov., China

Vermont
*Honduras
Karelian Republic, Russia

Virginia
Santa Catarina, Brazil
Taiwan, China

Washington
*Chile
Sichuan Prov., China
Hyogo Pref., Japan

West Virginia
*Espirito Santo, Brazil
Taiwan, China

Wisconsin
Heilongjiang Prov., China
*Chiba, Japan
Jilisco, Mexico
Nicaragua
State of Hesse, Germany
State of Israel
Taiwan

Wyoming
*Goias, Brazil
Taiwan, China

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making many traditional political divisions irrelevant. However, citizens and constituents will continue to look to political leaders for social stability and economic opportunity. Providing those basics will become perhaps the most difficult challenge of the new century.

The situation is certain to present some difficult policy challenges for state decision-makers. As economies and public service structures go through the transition to 21st century systems, there will be corresponding adjustments in public attitudes and to public programs. Among the issues that state leaders are likely to face as a result are:

- periodic waves of xenophobia in response to disruptions in the traditional labor market,
- added stress on public education systems to prepare an internationally literate work force,
- increased state-to-state diversity, and, perhaps state-to-state friction as different jurisdictions seek alternative solutions,
- a growing gap between policy goals at the state and federal levels and a concommitant restructuring of communications between state and federal leaders, and
- the proliferation of a new generation of non-elective, bi- and multinational bodies to deal with cross-border problems in health care and environmental protection.

Tackling these issues effectively may mean the difference between prosperous stability and chaotic decline.

Future success also will depend on meaningful alliances that transcend jurisdictional divisions and a recognition of and support for intrinsic natural strengths. Those who can do something better are those who will get it done. Only if states recognize the new realities of culture and commerce will they be able to move into the 21st century as meaningful players on the global stage.

On the positive side, some state agencies are becoming increasingly sophisticated in how they manage international contacts and activities. Committees and task forces devoted exclusively to international issues are becoming commonplace as are regional cooperative efforts. (It has been almost a decade since the creation of the Pacific Northwest Economic Region, one of the first major examples of formal cross-border cooperation.) Many states now share foreign trade promotion offices, and several Northeastern states have recently joined in a Yankee Trader Initiative to promote regional exports.

These activities are not limited to border or coastal states. Kansas, for example, has entered into an agreement with Manitoba on trade development, tourism and resource conservation, even though the two jurisdictions don't share a border. And Iowa continues to draw economic and cultural benefits from its decade-old sister state relationship with the Russian region of Stavropol.

Across the nation, executive and legislative leaders recognize that, whether they want to or not, states are increasingly subject to global forces. To meet this challenge, states are forming partnerships with neighbors across national borders and around the world, not only to increase trade and promote economic development, but also to confront a host of public policy issues that transcend geopolitical boundaries. The new era of internationalization of public policy issues is here.

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Innovations in State Government

States employ their best ideas to improve services.

by Keon S. Chi

Several years ago, one researcher, based on an extensive survey on innovations, reported to the National Science Foundation (NSF) that innovation diffusion studies might be linked to the "six blind men and the elephant approach to knowing."[1] Indeed, there are varying perspectives on innovation diffusion among individuals and organizations. Innovation diffusion in the states is no exception.

Until recently, most innovation diffusion studies on the states focused on questions such as: How do innovations spread among the states? Why do some states adopt policy innovations earlier than others? And, how do we measure and rank the innovativeness of states? The debate on innovation diffusion still goes on. During the past decade or so, however, innovation researchers and practitioners appeared to have shifted their focus from the state level to individual and organizational levels. Typical questions raised in innovations research and workshops include: Who are innovators? How can we create innovative agencies? What are the roles of leaders, managers and front-line workers in making agencies more innovative? And, how can we sustain innovations?

This article first raises a few issues regarding the traditional concept of innovation and proposes a broader concept of innovation in state government based on practical experiences with innovative projects. Next, the article presents a profile of individual innovators in state government and offers a review of on-going research and discussions about "innovative organizations." Finally, the article highlights award-winning innovations selected by The Council of State Governments in 1994 and 1995.

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Traditional Definition of Innovation

For many years, innovation diffusion has been studied by practitioners and academic researchers — anthropologists, historians, geographers, sociologists and political scientists — and the literature on the subject matter is extensive. Yet, there are not many studies that deal directly with innovations in the public sector; only a few focused exclusively on state government innovations, including earlier studies by Walker (1969)[2], Gray (1973)[3], Eyestone (1977)[4], Savage (1978)[5] and Welch and Thompson (1980)[6].

These often-cited studies have one thing in common: the term innovation was defined from the adapter's perspective, not from the innovator's perspective. For example, Walker defined innovation as "a program or policy which is new to the states adopting it, no matter how old the program may be or how many other states may have adopted it (p.881)." According to Savage, "an innovation is a policy adopted by a state for the first time (p.17)." To Walker and others state innovation means "adoption of a new program, not their invention or creation (p.881)." As used by Walker and Gray, innovation is "a law which is new to the state adopting it (Gray, p.1174)."

All but one of the studies measured innovativeness of the state according to the date or speed of its adoption of innovations and a number of sample laws enacted during different periods. For example, Walker ranked states according to composite scores of innovations based on 88 state laws in 11 policy areas enacted by at least 20 states between 1870 and 1966. He found that the average elapsed time of innovation diffusion decreased from 52.3 years for all adoptions (or 22.9 years for the first 20 states) in 1870-1899 to 25.6 years for all adoptions (or 18.4 years for the first 20

states) in 1930-1966. Gray's innovativeness rankings are based on only 12 laws in three areas: education, welfare and civil rights. Savage used 181 laws from 15 policy areas to measure innovativeness of the states: 58 laws in the 19th century, 54 laws in the early 20th century and 69 laws in the late 20th century. And, Welch and Thompson, who studied diffusion of innovations, not innovativeness of the states, used 57 laws, including 52 from the Walker data. They found the average diffusion time to be nearly 30 years.

Findings of these studies on innovative states vary. According to the Walker study, "the larger, wealthier, more industrialized states adopt new programs somewhat more rapidly than their smaller, less well-developed neighbors (p.884)." But Gray's findings suggest states that are innovators in one law are not necessarily innovators in other laws. Unlike Walker, Gray looked at each law separately and concluded that "innovativeness is not a pervasive factor; rather, it is issue- and time-specific at best (p.1185)." On the other hand, Savage, like Walker, found "a general innovativeness trait" to be a characteristic of some states and concluded that "regional differences persist (p.218)." Eyestone discounted interaction effects in the innovation diffusion process and claimed that "only the policy itself can be assumed to be invariant over time (p.442)." Finally, Welch and Thompson found that federal financial incentives tended to speed up the rate of innovation diffusion somewhat.

Regarding the traditional definition of innovations, at least two questions can be raised from practitioners' — state policy-makers and administrators — perspectives. One concerns the traditional usage of the term innovation; the other concerns using state legislation to measure the innovativeness of the states.

First, to those pioneering scholars and others, the phrase "innovative states" means those adopting other states' policy practices, not necessarily starting brand new initiatives on their own. If this logic is acceptable, as a former NSF intergovernmental program coordinator once pointed out, "every state is an innovator" because all states borrow ideas from each other.[7]

The scholarly definition of innovation seems to be different from what is generally used among practitioners in the public sector. Unlike Walker and his students' definition, government officials tend to define innovation in terms of new initiatives, creativity and/or novelty across the states. To state officials, the phrase "innovative states" thus means those initiating policies or program that are new not only to them but also to the rest of the country. Innovative states are "pioneering" or "bellwether" states. We know not every state adopting another state's program is considered a pioneer or a bellwether state. The distinction seems to lie in two different ways of defining the "newness" of a policy or program. The question is, should we continue to use the traditional concept of innovation in government?

The other issue has to do with the use of legislation to determine the innovativeness of states. One question is, can we measure the innovativeness of the states based solely on their adoption of laws? Probably not. Laws are certainly a major source of information on how states are doing. Using laws might be a convenient but not necessarily the most comprehensive way of measuring a state's innovativeness. There appear to be several inherent problems when relying solely on laws in the study of innovation diffusion in state government.

First of all, the date of adoption of a law does not necessarily correspond with the timing of implementation of that policy. In some states, significant policy initiatives are implemented before relevant laws are enacted. The delay in policy implementation may be attributable to several factors such as the state's budgetary constraints, administrative rules and regulations and partisan and interest group politics. The issue here is the elapsed time between the date of adoption of legislation and the time when the policy or program is actually implemented. The gap might prove to be significant in the study of innovation diffusion. In addition, some laws are subsequently changed or repealed. So the question is, can we consider a state "innovative" even if it failed to implement a new law adopted earlier?

In addition, when measuring innovativeness

based on laws, the content of the legislative measure might need careful examination. The previous studies virtually disregarded the nature and extent of an innovation. Perhaps the researchers assumed the same or similar types or titles of laws would contain the same or similar provisions. What they needed was, it seems, a list of laws with years of adoption by the states. Although states tend to replicate laws adopted by others, more often they also tend to revise or sometimes improve such laws to fit their own situations. While the intent of laws might be the same, the procedures can be completely different. Should we pay attention only to the intent of laws and not to the methods of implementation? It is also possible to think about a situation where a laggard state can come up with more effective and efficient legislation that is more beneficial to the people as suggested by some observers.[8] The issue here is the variance in the same areas of laws.

More importantly, it should be pointed out, there are other types of state government innovations that have been virtually disregarded by the aforementioned innovation diffusion studies. New ideas can be diffused not only through the adoption of laws but also through executive actions. Examples of such measures include gubernatorial directives and other administrative actions. In fact, many innovative programs have been initiated by state executive branch without legislation. In regard to legislation adopted by the states, we need to be reminded that state legislative procedures vary greatly and some states have restrictions on the number of bills introduced during each legislative session. These states tend to rely more on executive initiatives in the absence of law.

Innovation Redefined

In view of these issues and related problems, it seems necessary to redefine the concept of innovation used in the debate on state government innovations. The concept proposed here is a clear departure from the traditional usage of the term innovation by most innovation diffusion researchers. The proposed definition of innovation contains three elements.

First, the term innovation should be used in the same way as the terms such as "creation" or "novelty." Thus, a state may be regarded as innovative only when that state has implemented a policy or program that is new not only to the initiating state but also to other states. According to this definition, therefore, replicating a program that was originated in another state would not make the adopting state truly innovative, and when so many states have adopted the same policy, these states should not be considered innovative. They are mere "adapters" or "borrowers."

Second, innovations should include not only legislative initiatives but also executive actions and administrative programs. It might not be as easy to collect information on such programs as it is to collect information on legislation. But we should not be preoccupied with the neatness of data or statistical analysis when measuring innovativeness of complex political organizations such as the states.

And, third, for researchers and practitioners alike, innovations may be divided into two types: policy and programmatic. As Stone suggested, "government innovations take many forms. They apply to objectives and policies, character of product or services, management style and systems, internal and external relationships."[9] All of these forms can be grouped under the two types of innovations. In his study of innovations in the federal government, Polsby defined political innovation as "a policy or a set of policies that seem to have altered (or promise to alter) the lives of persons affected by them in substantial and fairly permanent ways."[10] And Bingham, in his study of innovation in local government, defined political innovation as public policy. According to Bingham, "In local government this (public) policy may originate from the executive section (mayor or manager), the legislative (the city council), or through a combination of both."[11] Thus political or policy innovations (some call these macro innovations) in state government, as in the federal and local governments, may include those initiated by enabling legislation. Programmatic innovations include creative solutions implemented without

legislation and include technology improvement, cost control and productivity and management improvement.

Is anyone using the proposed definition of innovation? The answer is "Yes, at all levels of government." In fact, that definition has been use by The Council of State Governments' Innovations Transfer Program for more than 20 years and the Ford Foundation-Harvard University Innovations Program for the past 10 years.

Begun in 1975 with seed money from the National Science Foundation, The Council of State Governments' (CSG) Innovations Transfer Program has given state policy-makers opportunities to share information on their new and creative programs and policies with other state officials. Each year, CSG asks state officials to participate in the Innovations Transfer Program by identifying and submitting information on new state programs that have been successfully implemented and that have the potential to be adapted by other states. Four regional panels of state officials each select two programs from the hundreds of applications that are submitted each year. Ten years ago, the Innovations Awards Program was initiated to give more public visibility to the innovative programs.

At each stage of the CSG Innovations Awards selection process, the following questions are employed to determine whether the program or policy is eligible for an award:

(1) "Is it a state policy or program?"

(2) "Does it represent a new and creative approach to problem(s) or issue(s)?"

(3) "Does the program or policy address significant problems or issues that are regional or national in scope?"

(4) "Has the program been operational for at least one year?"

(5) "Is the program or policy relatively unknown across the states?"

(6) "Has the program or policy been effective in achieving its stated goals and purposes to this point?"

(7) "Could the program or policy be easily transferred to other states?"

In 1986, the Ford Foundation and the John F. Kennedy School of Government at Harvard University began an innovations awards program (initially called "Innovations in State and Local Government," now called "Innovations in American Government"). Since its inception, the Ford-Harvard innovations awards program has recognized more than 100 innovative programs with monetary awards. According to its 1995 application form, "These awards are intended to draw attention to exemplary achievements in government problem-solving, and to amplify the voices of public innovators in communicating their practices."

The Ford-Harvard innovations program's selection criteria are similar to CSG's. The four criteria are:

(1) "Its novelty, judged by the degree to which it demonstrates a leap of creativity. Many innovations combine novel with more familiar elements, and profound innovations often emerge from the novel way in which familiar elements are combined;"

(2) "Its effectiveness, demonstrated by evidence that the program has made substantial progress toward its intended aims;"

(3) "Its significance, particularly the degree to which it successfully address an important problem of public concern;" and

(4) "Its transferability, or the degree to which it shows promise of inspiring successful replication by other government units."

It seems clear that the two innovations awards programs recognize "creative governmental initiatives" that have proven to be effective in addressing significant or vital public needs. Thus, in both innovations awards programs the term innovation is defined as *a new, creative program to every jurisdiction rather than a new program for an adapter* whatever the jurisdiction might be. And, both awards programs recognize policy and programmatic innovations.

Individual Innovators

Recently, innovation researchers paid special attention to individual innovators. Pertinent questions about individual innovators are: How are individual innovations produced?

What are the characteristics of the processes that produce innovations? What are the conditions that can lead to the production of innovations? What motivations are mostly likely to inspire people to produce innovations? What skills or personal qualities are necessary for those who seek to be innovative? Are the conditions that are necessary for producing an individual innovation the same as the conditions necessary for creating an innovative organization? Are the motivations for producing an individual innovation the same as the motivations for creating an innovative organization?[12] To address these questions, a series of innovations conferences have been held and surveys have been conducted.

One such study was conducted several years ago by CSG to identify innovators in state government. Major findings of the study are highlighted here in hopes that the findings might be further tested and refined by researchers.[13] According to the 1989 CSG study, innovators surveyed were very well educated with virtually one-half of the innovators possessing an advanced degree and 90 percent possessing a bachelors degree from a four-year institution. Innovators had a diverse array of academic majors with concentrations in the social sciences, business, education and public administration as the dominant educational backgrounds. Individuals with degrees in business or public administration prepared themselves for managerial positions and many of the respondents with these degrees were mid-career employees who returned to school to advance to managerial opportunities.

One-half of the sample had prior experience in the private sector, mostly in non-profit organizations or in private consulting firms dealing with government programs. The average age of our sample was 44 years, and the average length of service within their state governments was 13 years. CSG's sample represents primarily mid-career state employees who were not afraid or hesitant to experiment with new ideas and approaches. Of the 117 respondents who indicated their gender, 39 (or 33 percent) were female. The female innovators generally were employed in the social service and education policy areas (63 percent of the female respondents), were concentrated in Eastern and Midwestern regions, and possessed advanced degrees.

A majority of the innovators were permanent civil service employees. Almost all of the private sector employees were employed by private non-profit organizations. The most common singular role pattern was for innovators to generate the innovations themselves as part of their day-to-day professional responsibilities. The primary groups involved in helping the innovator develop the innovation were those individuals working with the innovator on a day-to-day basis, such as his or her coworkers and supervisors. The innovators found their strongest support from those they worked with and from those groups most dependent upon their agencies' services. In more than 80 percent of the cases, the innovation had a potential effect on the organization.

The innovators in the sample were very active professionally. The majority belonged to at least one state and one national professional association. Close to a majority belonged to two or more associations at some level. Interestingly, national associations appeared to be more important to innovators than regional associations. The Eastern region had the highest level of professional activity with the Western region possessing the least.

The innovators relied primarily on their immediate coworkers for professional information and secondarily on the professional associations to which they belonged. Lateral communication across states was an important element in the innovator's professional environments. The innovators appeared to be aware of what other states were doing within their respective policy areas.

One-half of the respondents said that they used innovations originated in other states as a source of information and listed programs in Massachusetts, Minnesota, California, Maryland and Washington as their models. Forty of the 50 states were considered to be innovative in at least one policy area. More than 60 percent of the states mentioned as innovative were in regions other than the innovators. These results depart from the notion that innovators look

primarily to regional neighbors when contemplating a new venture for their agencies.

Creating Innovative Agencies

Moving from the individual innovators level to the organizational level, the next question is, How can we create innovative organizations? In order to address this question, the Terry Sanford Institute of Public Policy at the Governors Center, Duke University, held two national conferences in 1994 and 1995. Participants in these meetings included innovation researchers, journalists and state and local government officials. Prior to the 1994 conference, a series of questions were raised by some of the participants (steering committee members), such as: "How are public agencies redesigning themselves so as to encourage and foster innovation everywhere — from top management to line workers? How are public agencies changing their organizational and managerial structures to promote innovations? How are public agencies taking advantage of the growing diversity of the workforce to rethink how they conduct their business? How are public agencies creating alternatives to those 'stove-pipe' hierarchies that have dominated organizational thinking and practice throughout this century? Under what circumstances will new organizational structures prove successful? What efforts at creating innovative organizational arrangements have failed? Why? What are the ethical issues raised by the creation of innovative organizations? How can we create an organizational climate that encourages everyone — even people who would be afraid think of themselves as innovators — to experiment with new ways of achieving public purposes?"[14]

Obviously, the above questions warrant continuous research. But it seems clear that innovative agencies must have clearly defined agency goals and new roles for leaders, middle managers and front-line workers. A working definition is necessary to discuss such questions. "An innovative organization is one in which everyone — from those on the leadership team, to middle managers, to front-line supervisors, to front-line workers — acts on a sense of responsibility for inventing, developing and implementing new ways to achieve the organization's mission."[15]

Goals are important in creating innovative organizations because goals can: set (or decide on) directions organizations want to go; set certain (specific) targets to reach; and be measured by both quality and quantity. Goals are important because they can help define outcomes in meeting the public's expectations and demands. Innovations may not occur without the appropriate environment and opportunities created by leaders who can help articulate goals for managers and workers.

Leaders in innovative organizations must have personal qualities, including "serious" (not rhetorical) personal commitment and devotion; tolerance and openness to new initiatives, suggestions and proposals; and a willingness to share power with others, including middle managers and front-line workers. Leaders in innovative organizations need to use realistic strategies developed jointly by managers, workers, union members and others. Such strategies should be developed through TQM or similar management tools.

Why should middle managers be engaged in innovations? At least three reasons can be offered: through "buy-in" activities, middle managers can have a sense of ownership of innovations; middle managers can help continue and sustain innovations; and middle managers can create an environment and allocate the resources necessary to implement innovations. In sum, middle managers (however defined) can play a larger role in an organization.

The 1995 Duke innovation conference also dealt with front-line workers' roles in innovative organizations. Among the questions discussed were: "How can front-line workers be encouraged to think innovatively about the task they perform and the purposes they accomplish? How can an agency's top leaders send the right kind of signs to front-line workers? How can the organizational structures, systems or culture be redesigned to foster innovation by front-line workers? Under what circumstances do front-line workers think not only about the mechanics of their job but also their

mission? How can front-line workers be encouraged to take responsibility not only for their own performance but also for the performance of the entire agency?"[16] These questions tend to pose new challenges to researchers who are contemplating continuous studies on individual innovators in state government.

Sustaining Innovations

How can innovations be sustained and how can innovative organizations be sustained over time? While nothing can be sustained permanently in government, efforts need to be made to keep innovations alive for sometime so the benefits of innovations can be realized.

Essential elements needed to sustain innovations include: an ongoing external board to maintain strategic vision, key result areas, financial/in-kind support, accountability and media visibility; buy-in by career civil servants; infrastructure, such as a recognition/reward program, human resource management, and recruitment and selection of internal training capacity; and strategic experiments to test and refine the quality management process (volunteers in different areas to report results, recommend process improvements and select key results for "roll out").

Additional strategies may include: constituency support (client groups and unions); institutionalization of the quality process through statutes, rules and regulations; depoliticizing the process; selling the quality process, not the label; courting legislatures and oversight organizations; conducting continuous training programs reflecting new culture and long-term changes in the labor force; protecting and nurturing institutional memory; and grooming candidates for succession in elective state offices and emphasizing the quality process in transition documents.

It is important to keep in mind that there are numerous obstacles to sustaining innovations. One deeply-rooted barrier comes from the practice of democracy. The inherent characteristics of American democracy that hinder the creation and preservation of innovative public agencies are several. To mention just a few: election cycles that inevitably result in frequent leadership and management changes, thus "voiding" or "nullifying" sustainable policy and management initiatives; public ignorance may result in "emotional" and "prudent" policy-making as a result of leadership changes rather than innovative policies, programs or processes; and group politics (partisan and interest group) might make innovations in pubic organizations more difficult to implement due to conflicting interests and demands.

Endnotes

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[10] Nelson W. Polsby. *Political Innovation in America: The Politics of Policy Innovations*, New Haven: Yale University Press, 1984, p. 8.

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[12] These questions were discussed at "A Working Conference: Innovative Organizations in State and Local Government," The Governors Center at Duke University, Terry Sanford Institute of Public Policy, September 9-11, 1994.

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[14] These questions were discussed at the Duke Working Conference, "Creating Innovative Organizations," The Governor Center at Duke University, Terry Sanford Institute of Public Policy, October 13-14, 1995.

[15] Robert D. Behn, "Creating Innovative Public Agencies: A Challenge for State and Local Government," The Governor Center, Duke University, October 14, 1995.

[16] *Ibid*.

INNOVATIVE STATE PROGRAMS

This section highlights 16 innovative programs selected by regional panels of state officials during 1994 and 1995. The award-winning programs cover health care, welfare, economic development, the environment, criminal justice, and government operations, including tax and child support payment collection.

Health Care Reform Programs

Without national health care legislation, states continue to devise innovative health care programs. Among these are programs initiated in Arizona, California, Florida, Kansas and New York. The Arizona Health Care Cost Containment System (AHCCCS) has succeeded not only in containing health care costs but also in attracting providers, keeping recipients happy and "mainstreaming" them into the same medical facilities used by the general public. Arizona has kept health care cost increases for the poor to less than 5 percent annually in recent years. Under the revamped AHCCCS, the state negotiates contracts with managed care providers and prepays the plans based on the number of patients enrolled. About 80 percent of the state's doctors are participating in the program. Major features of the system for acute care include prior authorization, concurrent review and medical claims review. In addition, the system's medical director conducts medical reviews on specific claims for each long-term care eligibility category to verify whether the service is appropriate and effective. In cooperation with the state attorney general's office, AHCCCS also played a major role in minimizing fraud and abuse activities.

In 1992, California's Medi-Cal officials initiated the Medical Case Management Program (MCMP) that uses managed care concepts to reduce costs and increase access to health care for the state's chronically and catastrophically ill Medicaid population. Under the program, registered nurses, who act as case managers, review and approve treatment authorization and follow the progress of patients when they leave the hospital to ensure that they receive post-discharge care. By working closely with patients and health care providers, these case managers are able to substitute home care and alternative treatments for lengthy hospital stays for the chronically and catastrophically ill. Since its beginning, the program reduced patients' hospital stays by an average of 11.5 days, resulting in a savings of more than $17 million. MCMP is well established in California's urban areas and is being introduced in the rural parts of the state.

Since January 1993, Florida's Volunteer Health Care Provider Program has increased access to health care for Florida's indigent population through the increased use of health care volunteerism. Working with local county health units, medical societies and social services programs, the Volunteer Health Care Provider Program has provided free heath care worth more than $13 million to nearly 100,000 indigent Floridians. In the past, health care providers were reluctant to volunteer to provide health care to indigents because of the fear of malpractice suits. One major component of this program is the passage of state sovereign immunity legislation for volunteer health care professionals. Since the program's beginning, there have been no malpractice suits filed against professionals in the program. The program utilizes community volunteer services, which it relies on for such things as funding, case support and administration.

Through "Operation Immunize," Kansas immunized more than 35,000 children during several days in April 1993, October 1993 and April 1994. The first mass immunization in the nation since the 1960s, the program administered vaccinations in local health departments and retail stores. It is estimated that the program raised

the state's immunization rate from about 50 percent to between 61 percent and 65 percent. The success of the Kansas immunization program is credited to legislative authorization allowing the purchase of the vaccines by rerouting surplus funds that were normally used to match grants received by the state Department of Health and Environment and providing liability coverage for medical volunteers who staffed the immunization clinics. The legislature passed an act allowing medical volunteers to be treated as temporary state employees during Operation Immunize.

Launched with a grant from the Robert Wood Johnson Foundation, New York's Partnership for Long-Term Care Program encourages middle-income, elderly people to secure nursing-home insurance, rather than depleting or transferring their financial assets to qualify for Medicaid's long-term care. With the help from more than 10 private insurers, the state designed the Partnership to cut New York's Medicaid long-term care costs, which had reached $7 billion per year. Insurance policies cover either three years of nursing home care or six years of home care. The cost of a policy for a 65-year old is approximately $1,400 per year. New York's partnership insurance policies differ from other long-term care policies in that they must meet rigid state certification standards and be affordable for middle income seniors. The program also encourages participants to take responsibility for their long-term care needs.

Welfare Reform Programs

Several states have implemented welfare reform initiatives, including Illinois' Earnfare program and Maryland's Primary Prevention Initiative. Texas began using interpreters to expedite the cumbersome social service process. The Illinois Department of Public Aid initiated the Earnfare Program to help food stamp recipients make the transition from public aid to self-sufficiency. The program takes volunteers from the food stamp rolls and matches them with local employers. In its nearly three years of operation, more than 7,500 participants have completed six months in the program, and more than 6,000 have obtained permanent, unsubsidized employment. Unlike other workfare programs, Illinois' Earnfare tries to facilitate the transition from welfare to work by providing participants with initial employment expenses, including a clothing allowance and transportation expenses for job interviews or job search activities. The program establishes cooperative relationships between the public sector, private employers and community-based organizations to find temporary and permanent jobs for food stamp recipients.

Maryland's "Primary Prevention Initiative" was the first welfare-reform initiative in the nation to receive a federal waiver to alter Aid to Families with Dependent Children benefits. The Primary Prevention Initiative reduces AFDC grants by $25 a month for parents who do not ensure that their school age children attend classes regularly, receive proper immunization orobtain preventive health care checkups. The program also gives bonuses to mothers who obtain certain health care. Since the five-year demonstration project began in July 1992, more than 90 percent of families have complied with the program's requirements. The initiative focuses on influencing the behavior of welfare recipients over the long term. This is done through New Choices and Targeted Care Management programs. The initiative also helps welfare recipients meet its new requirements and learn better patenting skills.

The Texas Department of Human Services is providing its staff with an easy-access, computerized listing of volunteer interpreters speaking 33 different languages and dialects. Texas' Volunteer Interpreter Service program is fully implemented in 71 offices statewide. Using volunteers from the community, relatively simple telephone technology and a database that helps caseworkers match language needs with available translators within minutes, the service has helped thousands of non-English speaking DHS clients find their way through the social service maze. In 1994, for example, 200 volunteers in the service provided nearly 5,000 hours of telephone and office interpretations for approximately 2,000 different clients. Almost 90 percent of the department's staff surveyed said their ability to communicate effectively with non-English speaking clients has been greatly improved by access to the volunteer interpreters.

Cleaning Up the Environment

Innovations in Kansas and Massachusetts offer nontraditional ways of cleaning up the environment. As an innovative way of keeping many hazardous waste sites off the Superfund list, Kansas' State Deferral Program allows municipalities to assume responsibility for the investigation and cleanup of contaminated areas, protecting the local economy and property tax base as well as innocent property owners. Cities accept the responsibility for the cleanup but those initially responsible for contaminating the site pay most of the cleanup costs. Since its inception in 1991, the State Deferral Program has been successful in keeping 6,500 acres of contaminated land off EPA's Superfund list. This effort involves cooperation from all levels of government. Financial institutions assisted the program by ending the practice of redlining industrial areas. One of the main benefits of the program is that the economy of the area is not adversely affected by lengthy lawsuits related to contaminated sites.

When the Massachusetts Department of Environmental Protection ran short of funds to protect the state from hazardous waste, it searched for a solution. The solution turned out to be a unique public-private partnership, known as the Redesigned 21E Program. Under this program, Licensed Site Professionals (LSPs) are certified and trained by the state but operate independently. In the past, DEP had to oversee all clean-ups. This was physically demanding, with a ratio of one staff person per 280 hazardous waste sites. This created a backlog of more than 6,000 sites awaiting assessment and

cleanup. The Redesigned 21E Program avoids this type of gridlock by employing privatization techniques to obtain desired results. Since the program's beginning in October 1993, more than 450 LSPs have assisted the state in cleaning up more than 2,000 hazardous waste sites.

Dealing with Offenders

How can communities more effectively deal with drug traffickers and high-profile offenders? Ohio and Washington state have implemented creative and less expensive approaches to those problems. Ohio's "Operation Crackdown" program is responsible for the boarding up of about 100 houses in the Cleveland and 50 other areas across the state that were used for selling drugs. Operation Crackdown's legitimacy is based on a 77-year-old law that permits law enforcement officials to close up for one year houses creating a public nuisance. Operation Crackdown, based in the attorney general's office, assists local police departments in closing homes and apartment buildings used for selling drugs. The program has been a boon to local government, which has had difficulty kicking dealers out of neighborhoods for more than a few days. Twenty-four cities asked the attorney general's Office for its assistance in shutting down drug houses and prosecuting cases.

Providing intensive supervision to high-profile offenders who are released from prison into the community is the objective of the Mobile Intervention Supervision Team Program. Under this program, which began in 1994 by forming partnerships with local law enforcement agencies, mobile officers provide intensive supervision of offenders in their neighborhood. Using alternative work space, technology, self-directed teams and partnerships, MIST is able to create a more flexible environment that allows its members to respond more quickly to the needs of the community. The program has resulted in a lower recidivism rate and cost-savings. In addition, MIST has proven that it can provide alternative sanctions for offenders that help prevent further overcrowding of local jails and prisons.

Creating Jobs

What can states do to retain and create more jobs? Massachusetts and Washington state have been recognized for their new approaches. Massachusetts' Industry Specialist Program appoints an ombudsman to each major industry in the state to listen to its concerns, help companies comply with laws and regulations and ensure that the state is aware of policies to help them grow. Initially, ombudsmen were appointed to the fields of biotechnology, telecommunications and the environment. The ombudsmen have helped to keep companies from transferring out of the state and even to attract businesses from neighboring states. But the state is careful never to use the ombudsmen as lobbyists for a particular company, but rather to help the state promote policies that make it an attractive place to do business. The program was instrumental in creating a $15 million Emerging Technology Fund, created by the legislature in 1993.

Washington state's electronic trade information system, known as "Marketplace," is making a difference for businesses in the state. The system is credited with the creation of new businesses totaling $150 million. The backbone of Washington Marketplace is a data base containing 35,000 businesses that are assigned eight-digit codes to identify their products and services. As domestic and international trade opportunities surface, Marketplace staff code them according to the eight-digit system and channel them into the data base. Marketplace software electronically matches the codes of trade leads to those of companies in the data base. In addition to connecting businesses to domestic and international trade opportunities, Washington Marketplace has been used to recruit corporations to locate their factories, offices and stores within the state's borders. The sheer volume of trade leads — about 2,000 per week — makes the trade information system a valuable resource for companies of all sizes.

Improving Government Operations

State agencies are looking for creative methods to manage their tax collection and child support payments. To reduce costs and the time it takes to process state income tax returns, the Massachusetts Department of Revenue implemented a computerized system, called Telefile, that allows Massachusetts residents to file their state income tax returns using a touch-tone telephone. In its first year of operation, 170,000 taxpayers used the system. The department's evaluation of Telefile showed that the system decreased overall refund turnaround time, reduced the amount of paper coming into the department and allowed faster processing of returns than ever before. The system is easy to use and is available 24 hours a day, seven days a week. The Telefile worksheet takes only 10 minutes to complete and filers have only 12 items to enter over the phone. Telefile also offers superior security and fraud detection compared to paper filing. Another innovative aspect of the program is the marketing strategy employed to encourage taxpayers to use the system.

In 1988, South Carolina's Department of Social Services initiated the Electronic Parent Locator Network to assist case workers in finding absent parents who owe child support payments. Under the network, case workers can get a lead on a parent's location in seconds. The network links personal identification data from 10 southern states that child support workers can use to search for child-support scofflaws. The total cost of running the program for fiscal year 1994 was $1.2 million, which is spread among the 10 states that participate. Each state pays a fixed cost for running the network, plus a charge for storing the data it generates — between $105,000 and $140,000 a year. (The 10 states are Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee and Virginia.)