2003 FEDERAL AND STATE LEGISLATIVE REPORT

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
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I. INTRODUCTION

A. LEGISLATIVE ADVOCACY AND THE STRATEGIC PLAN

The Department's Strategic Plan identified increased local, State and federal advocacy as a key strategy to achieving partnerships with communities that assess, develop, implement and advocate for health funding, policies, programs and services. The Department's activities are coordinated in the Office of Policy and Planning, which, through legislative analysis, participation in statewide coalitions, and collaboration with community partners and colleagues from other counties, reviews and analyzes health-related legislation for the City. The Department works closely with the Mayor's Office of Legislative Affairs to impact those policies that will affect the health of San Franciscans. As set forth in the Strategic Plan, the Department's advocacy objectives are to:

- increase funding for core public health;
- support the costs of caring for the safety-net populations;
- address unnecessary eligibility disparities in categorical funding; and
- increase revenues and reimbursement rates consistent with the Department's other Strategic Planning goals and objectives.

B. THE CITY'S FEDERAL LEGISLATIVE PROCESS

The Department works with the Mayor's Office of Legislative Affairs and also directly with the City's federal lobbyist to impact federal legislation and appropriations. The Department relies heavily on the City's federal lobbyist to communicate the Department's positions in the most timely and effective manner. The Department also works in coalition with organizations such as the National Association of Public Hospitals and Health Systems, the Public Health Pharmacy Coalition, the Communities Advocating Emergency AIDS Relief Coalition and others to impact federal policy. By its participation in these coalitions, the Department ensures that the City's interests are represented at the federal level. Because responsibility for health care lies largely with states rather than with the federal government, the majority of the Department's advocacy activities are focused at the State level.

C. THE CITY'S STATE LEGISLATIVE PROCESS

Pursuant to City policy, the Department of Public Health, like all other City departments, does not take positions on State legislation; that is, the Department does not itself support or oppose State legislation. Rather, the Department makes recommendations to the Mayor's Office of Legislative Affairs and the Mayor's State Legislative Committee for City positions on health-related legislation. The Mayor's Office approves City positions on legislation in one of two ways: (1) by approving at the beginning of each legislative session the Department's State Legislative Plan, which outlines the Department's recommendations on issues likely to arise in the upcoming year; or (2) through a hearing before the State Legislative Committee for those issues that are not addressed in the State Legislative Plan.

Because the Mayor's Office responds to a large number of such requests coming from all City departments, the Department ensures that the bills it recommends for City positions are those where the impact of the City's position is maximized. For example, in many instances, worthy bills are supported by statewide coalitions of which the Department is a member. The

Department is an active member of the County Health Executives Association of California, the California Conference of Local Health Officers, the Health Officers Association of California, the California Association of Public Hospitals and Health Systems, the California State Association of Counties, and the California Healthcare Association, to name a few. By its participation in these coalitions, the Department ensures that the City is represented in coalition positions. As another example, the Department may not recommend a City position on legislation that is clearly not moving within the Legislature. Though the issues may be important, both positive and negative, the City's efforts would not be best spent on inactive legislation.

II. FEDERAL LEGISLATIVE SUMMARY

A. MEDICARE PRESCRIPTION DRUG LEGISLATION

Access to affordable prescriptions for individuals covered by Medicare has been one of the most noteworthy legislative issues in the last year. Both the House of Representatives and the Senate drafted bills to address this issue in FY 2002-2003, HR 1 and S 1. Each bill has passed out of its house of origin and both bills are, as of this writing, the subject of contentious negotiations in conference committee in an effort to craft one final bill that represents a compromise of the House and Senate versions. After a number of failed attempts at an acceptable bill, by mid-November a successful compromise is becoming a possible reality. The final bill (as of 11/19/03) would allocate $400 billion over the next 10 years, mostly for prescription drug coverage for 40 million people 65 and older or disabled. It would also give private health plans a much larger role in Medicare. In addition, of particular interest to the Department, is a provision in the current compromise that includes relief from scheduled reductions in the Medicaid disproportionate share hospital ("DSH") program as well as better access to lower priced inpatient prescription drugs for safety net health systems.

B. MEDICAID DSH

Medicaid DSH payments, a special type of Medicaid funding for hospitals with large populations of low-income patients, are an essential component of financing for safety net care. As the number of uninsured increases, Medicaid DSH becomes even more critical. Due to legislation passed long before the current economic crises, DSH allotments nationwide decreased by over $1.1 billion (over 11.5 percent of the program) from 2002 to 2003. This decrease is commonly referred to as the DSH "cliff" and, without remedy, will have a significant negative impact on the Department and other safety net providers in California. The DSH cliff will reduce Medicaid revenues to California's safety net providers by $184 million per year, including a $6.2 million reduction to revenues at San Francisco General Hospital.

In FY 2002-2003, the National Association of Public Hospitals (NAPH) has driven activity to create a legislative remedy that would "remove the cliff" in state DSH allotment reductions in 2003 and allow appropriate growth in DSH payments. Most recently the approach has been to include DSH relief in the Medicare prescription drug bills being discussed by Congress. There are DSH relief provisions in both the Senate and House bills. The House bill contains provisions more favorable to DSH cliff states, like California, and allocates a higher amount of funding. It is expected that this higher allocation ($3.8 billion) will be found in the final bill.

C. 340B, INPATIENT DRUG PRICING

Many public hospitals, including San Francisco General Hospital, receive a significant discount on outpatient pharmaceuticals through the Public Health Service Act's 340B drug discount program. Under 340B, certain hospitals and clinics that serve vulnerable populations may purchase outpatient drugs at the Medicaid "best price" from pharmaceutical companies that participate in the Medicaid program. In addition, these eligible providers – or "covered entities" – are free to negotiate discounts even lower than the maximum allowable price. However, for inpatient drugs these same public hospitals are forced to pay 20 to 25 percent more. Efforts to clarify the legislative intent to exempt inpatient drugs from the "best price" exemption and to remove this regulatory barrier preventing safety net hospitals from negotiating discounts on inpatient drugs were an important development for safety net hospital systems in FY 2002-2003. Like Medicaid DSH, 340B provisions have been added to both the House and Senate Medicare Prescription Drug bills.

D. COMMUNITY ACCESS PROGRAM

The innovative and much-needed Community Access Program (CAP) created a demonstration program to finance collaboration among safety net providers to share information and improve care. These networks help improve health care access, reduce emergency room use, and save money through shared resources and economies of scale. Congress appropriated more than $250 million for CAP grants in fiscal years 2000 through 2002 supporting demonstration projects in 158 communities. Legislation enacted in 2003 authorized this valuable program under a new name - the Healthy Communities Access Program (HCAP) - allowing continued funding for more communities. This funding will allow for new HCAP grants and continue existing CAP demonstration projects.

In San Francisco, the San Francisco Community Clinics Consortium (SFCCC) was awarded a CAP grant that allowed for the development, in collaboration with the Department, of the Lifetime Clinical Record (LCR). In September of this year SFCCC was awarded a new grant through HCAP for $441,000. This one-year grant will be used, again in collaboration with DPH, to create a chronic disease management registry tied to the LCR and support SFCCC and the Department's clinics in health disparities learning collaboratives for chronic disease (a federal program for exchanging information among provider regarding reducing health disparities).

E. FEDERAL BUDGET

Though the federal fiscal year started on October 1, 2003, Congress has yet to pass the 13 appropriations bills that fund government operations. Just six bills have passed as of this writing and appropriations for the seven remaining areas, including Health and Human Services, will likely be passed as one omnibus spending package. In past years, largely due to the strong advocacy of House Minority Whip Nancy Pelosi and Senators Boxer and Feinstein, San Francisco has been able to secure earmark funding in the Labor-Health and Human Services (HHS)-Education appropriations bill for special local programs. This funding has supported the Department's master leased housing, HIV/AIDS programs, and Treatment on Demand. This year, however, it is unclear whether San Francisco will be successful in securing earmarked funding through the appropriations bills as it has in the past. Though the City and its representatives have once again requested these earmarks this year there has been increased scrutiny of Democratic earmark proposals by the Republican-controlled Congress.

F. REMAINDER OF THE 2003 SESSION

Lawmakers had said publicly that the first session of the 108th Congress would end before the Thanksgiving holiday. However, it is clear now that this will not be the case. Before ending the session, the House and Senate must pass the government's appropriations measures as well as any outstanding bills they wish to see signed into law by the President, such as the Medicare Prescription Drug bill.

The House, having already passed the Medicare Prescription Drug Bill, has recessed for the Thanksgiving holiday. As of this writing, the Senate avoided a threatened fillibuster and is poised to pass the Medicare bill before it, too, adjourns for the holiday. The House has indicated its intent to act on the omnibus appropriations bill on December 8th and then adjourn until January 20, 2004.

III. STATE LEGISLATIVE SUMMARY

A. OVERVIEW OF THE LEGISLATIVE SESSION

This is the first year of the Legislature's two-year Legislative session. In this first year of the session, lawmakers introduced more than 3,000 bills in the regular session and sent 1,144 of those to the Governor's desk. Of these, 1,084 became law and 60 were vetoed. The Governor convened two special Legislative sessions in 2001 to address the State's energy crisis. The Department monitored 451 health-related bills in 2003. Of those, the Governor signed 132 and vetoed ten. Attached as Appendices A and B are two legislative matrices of California's enacted, failed and pending bills – one by bill number and the other by key phrase. Enacted bills are those that have been "chaptered" and failed bills are those that have been "vetoed." Bills with a status of "active" or "inactive" are still pending and may be taken up before the State Legislature when it reconvenes for the second year of its two-year session on January 5, 2004.

The 2003 Legislative year was unprecedented in many ways. The State had serious fiscal shortfalls and passed a budget that bridged a $38 billion budget deficit. The 2003-04 budget marked only the fourth time in 50 years that General Fund spending had been reduced compared to the previous year. This year also brought the first gubernatorial recall in the history of California. The recall election was held just a month after the end of the Legislative session and the significance of this momentous event can be seen in the legislative actions of both the Democratically-controlled Legislature and the Governor.

B. SUMMARY OF SELECTED HEALTH-RELATED BILLS ENACTED IN 2003

1. Children/Youth

SB 677 (Ortiz) Chapter 415 CCSF Support

California Childhood Obesity Prevention Act: Makes certain restrictions of the sale of food items in school operative if funding is appropriated for certain nutritional purposes. Prohibits the sale of certain beverages to pupils in elementary, middle or junior high schools. Exempts the sale of certain beverages at specified school events from those prohibits.

AB 1130 (Diaz) Chapter 687 CCSF Support

Health Care Coverage—Children's Health Fund: Appropriates, for the 2002-03 fiscal year, a specified sum to the Managed Risk Medical Insurance Board that would be available for encumbrance for the purposes of the Children's Health Initiative Matching Fund for health

insurance coverage to certain children in low-income households who do not qualify for health care benefits through the Healthy Families Program or Medi-Cal.

2. Emergency Medical Services

SB 476 (Florez) Chapter 707 CCSF Watch

Emergency Medical Services: Relates to county emergency medical services funds that reimburse physicians, surgeons and hospitals, for losses incurred. Authorizes each county agency administering the fund to maintain a reserve in specified portions of the fund. Revises the formula for distributions from the fund. Authorizes reimbursement of funds remaining at the end of the fiscal year in excess of the reserve in the portion of the fund reimbursable to physicians and surgeons.

3. Health Care Facilities

SB 139 (Brulte) Chapter 139 CCSF Watch

Abandoned Newborns—Safe-Surrender: Eliminates the requirement that parents surrendering custody of a child surrender to a designated employee on duty in the emergency room of a hospital and instead allows the surrender of the child to a safe-surrender site, at a hospital or location designated for this purpose by a county board of supervisors. Provides that information pertaining to the individual surrendering the child is confidential and requires the posting of safe-surrender signs.

4. Health Insurance Expansion

SB 2 (Burton-Speier) Chapter 393 CCSF Support

Health Care Coverage: Creates the State Health Purchasing Program administered by the Managed Risk Medical Insurance Board. Requires specified health benefits be provided directly by employers or through the program. Requires the board to arrange heath plan coverage for certain employers who would be required to pay a fee for employee health coverage. Authorizes the board to coordinate coverage under the program with coverage under Medi-Cal, Healthy Families and other programs.

5. Health Professionals

AB 1241 (Parra) Chapter 396 CCSF Watch

Nursing Education Scholarships: Requires the Office of Statewide Health Planning and Development to establish, by regulation, the statewide Associate Degree Nursing Scholarship Pilot Program and to allocate a portion of the funds contained the Registered Nurse Education Fund to provide scholarships to associate degree nursing students in counties determined to have the most need based on designated criteria. Provides recipients to meet other criteria.

6. Healthy Families/ Medi-Cal for Children

AB 373 (Chu) Chapter 139 CCSF Watch

Healthy Families Program: Provides a subscriber in the Healthy Families Program who selects or is assigned to a federally qualified health center, rural health clinic or primary care clinic shall be deemed to have been assigned directly to those entities and not to any individual provider on behalf of these entities. States the assignment of a subscriber to a physician employee of those entities means an assignment to those entities. Limits a subscriber's rights of physician choice.

AB 1524 (Richman) Chapter 866 CCSF Support

County Health Initiative Matching Fund: Expands the scope of the County Health Initiative March Fund's health insurance coverage to include adults who are parents of or responsible for

children eligible for the Healthy Families or Medi-Cal programs and who meet specified criteria. Authorizes funding for adults in a fiscal year if the funds are not needed for the children's expansion program.

7. HIV/AIDS

AB 879 (Koretz) Chapter 746 CCSF Watch

Human Immunodeficiency Virus: Requires the Department of Health Services, through the Office of AIDS, to appoint and convene a task force to develop recommendations for the use of post-exposure prophylaxis in the general population for the prevention of HIV infection.

AB 1676 (Dutra) Chapter 749 CCSF Watch

HIV: Maternal and Newborn Health: Requires the blood specimen taken from a pregnant woman before or at the time of delivery be tested for the presence of HIV. Provides testing would not be required if the woman has been determined to be chronically infected. Requires certain health providers to report a positive result to local health officer. Requires the woman be informed of the purpose of the testing and her refusal rights. Requires the results and the health implications be explained.

SB 71 (Kuehl) Chapter 650 CCSF Watch

Education— Sexual Health and HIV/AIDS Prevention: Establishes the Comprehensive Sexual Health and HIV/AIDS Prevention Education Act. Authorizes school districts to provide comprehensive sexual health education in any kindergarten to grade 12, inclusive, to ensure that all pupils in grades 7 to 12, inclusive, receive HIV/AIDS prevention education.

8. Homelessness/Housing

AB 1475 (Steinberg) Chapter 578 CCSF Watch

Housing— Homeless: Requires that the Department of Housing and Community Development's selection criteria for funds from the Multifamily Housing Program for supportive housing projects that house persons with disabilities who would otherwise be at high risk of homelessness where the application for funding collaborates with programs that meet the needs of the residents' disabilities. Requires certain counties to enter into contracts for supportive housing projects.

9. Injury Prevention

AB 1697 (Pavley) Chapter 1697 CCSF Watch

Vehicles—Child Passenger Restraint System: Requires a child or ward who is less than 6 years of age or weighs less than 60 pounds to be secured in a rear seat in a child passenger restraint system. Allows a child under the age of 6 years who weighs less than 60 pounds to ride in the front seat if properly secured in a child passenger restraint system under certain conditions. Provides conditions under which a child or ward may not ride in the front seat of a vehicle with an active passenger air bag.

10. Long-Term Care

AB 464 (Levine) Chapter 105 CCSF Watch

Adult Day Health Care Centers: Prohibits adult day health care centers from requiring family members to assist the participant with activities of daily living while at the center and discriminating because of race, color, creed, national origin, sex, sexual orientation or physical or mental disabilities. Provides the program may not admit any participants to the program that, in

the clinical judgment of those administering the program, cannot be appropriately cared for by the program.

11. Managed Care

SB 853 (Escutia) Chapter 713 CCSF Watch

Health Care Language Assistance: Requires the Department of Managed Health Care to adopt regulations establishing standards and requirements to provide health care service plan enrollees with access to language assistance in obtaining health care services. Requires health care service plans to implement programs to meet subscriber enrollee needs and to provide translation and interpretation for medical services and vital documents to enrollees. Provides requirements for health insurers.

12. Medical Marijuana

SB 420 (Vasconcellos) Chapter 875 CCSF Support

Medical Marijuana: Requires the Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients for use of medical marijuana. Specifies the department's duties in this regard, including developing related protocols and forms. Establishes application and renewal fees for the program. Imposes various duties upon county health departments.

13. Mental Health

AB 938 (Yee) Chapter 437 CCSF Support

Mental Health Professions—Educational Loans: Establishes the Licensed Mental Health Provider Education Program to provide grants to mental health service providers who provide direct patient care in a publicly funded facility or mental health professional shortage area. Requires certain mental health provider licensing boards to charge a fee at the time of licensure or renewal for deposit in the Mental Health Practitioner Education Fund.

AB 1370 (Yee) Chapter 575 CCSF Watch

Mental Health—Community Treatment Facilities: Prohibits the State Department of Mental Health from requiring 24-hour onsite nursing staff at community treatment facilities. Requires these facilities to retain at least 1 full-time or full-time equivalent, registered nurse onsite to maintain other nursing staff to be available on call and to have all direct care staff trained in providing first aid and other emergency services.

SB 577 (Kuehl) Chapter 878 CCSF Watch

Protection and Advocacy Agencies: Expands authority of the Protection and Advocacy Agency, a private nonprofit corporation, to protect and advocate for the rights of persons with developmental disabilities or mental illness. Expands the agency's right to access to public or private facilities and to programs and recipients, and the agency's right of access to records. Provides for informational programs and referrals and investigation of incidents of abuse or neglect.

14. Pharmacies/Pharmaceuticals

SB 490 (Alpert) Chapter 651 CCSF Watch

Pharmacy—Prescriptions: Authorizes a pharmacist to furnish emergency contraception drug therapy in accordance with a standardized procedure or protocol developed and approved by both the State Board of Pharmacy and the Medical Board of California, in consultation with specified entities.

SB 545 (Speier) Chapter 652 CCSF Watch

Emergency Contraception Drug Therapy: Relates to existing law, which requires a pharmacist to initiate emergency contraceptive drug therapy if the pharmacist has completed a training program on emergency contraception. Revises this training requirement. Prohibits a pharmacist from requiring a patient to provide individually identifiable medical information, with exceptions. Authorizes an administrative fee for such service. Requires, upon request, disclosure of such drug therapy cost.

15. Substance Abuse

SB 599 (Perata) Chapter 792 CCSF Watch

Drug Diversion—Sealed Records: Provides whenever a person is diverted pursuant to a drug diversion program of the superior court or is admitted to a deferred entry of judgment program for specified drug offenders, the person successfully completes the program and it appears to the judge presiding at the hearing where the diverted charges are dismissed that justice would be served, may order the records of the arresting agency and related court files and records sealed.

16. Workers' Compensation

AB 149 (Cohn) Chapter 831 CCSF Watch

Workers' Compensation: Asbestosis: Relates to existing law that provides that in the case of death of an asbestos worker from asbestosis, the period for commencing proceedings for the collection of specified workers' compensation benefits is one year from the date of death. Applies this period to the death of a firefighter from asbestosis.

AB 227 (Vargas) Chapter 635 CCSF Watch

Workers' Compensation: Relates to the financing of insolvent workers' compensation insurers by the California Insurance Guarantee Association (CIGA) and financing of same by the State Infrastructure and Economic Development Bank, payment of claims of insolvent insurers resulting from a natural disaster, levying an assessment on workers' compensation insurers to cover certain bonds, and the maximum fine for workers' compensation insurance fraud.

AB 1099 (Negrete McLeod) Chapter 636 CCSF Watch

Insurance Fraud—Information: Includes the Employment Development Department among the agencies authorized to request and receive information regarding workers' compensation fraud. Provides that licensed rating organizations are authorized to release information regarding workers' compensation fraud.

AB 1262 (Matthews) Chapter 637 CCSF Watch

Workers' Compensation Insurance—Claims Adjusters: Requires the Insurance Commissioner to adopt regulations setting forth the minimum standards of training, experience and skill that workers' compensation claims adjusters must possess. Requires every workers' compensation insurer to certify to the commissioner that the personnel employed by the insurer to adjust workers' compensation claims or employed for the purpose by a medical billing entity meet those minimum standards.

SB 228 (Alarcon) Chapter 638 CCSF Watch

Workers' Compensation: Relates to workers' compensation insurance rates, a care standards survey by the Commission on Health and Safety and Workers' Compensation, workers' compensation claim fraud, improper referral of injured workers to medical facilities, the providing of generic drug equivalents to injured workers, the vocational rehabilitation services

program, eliminating the Industrial Medical Council, workers' compensation employer assessments and prohibited surgeries.

SB 1007 (Speier) Chapter 641 CCSF Watch

Workers' Compensation—Insurance Policies: Relates to existing law authorizing an issuer to issue a workers' compensation policy insuring an organization or association of employers subject to specified conditions including the organization or association file documents relating to the percentage of its membership engaged in a common trade or business. Expands the definition of common trade or business to include specified types of manufacturing facilities.

C. SUMMARY OF SELECTED HEALTH-RELATED BILLS THAT FAILED IN 2001

1. Long-Term Care

SB 428 (Perata) Vetoed CCSF Watch

Adult Day Health Care: Establishes a license application fee for adult day health centers and a prescribed license and Medi-Cal certification renewal fee. Requires the Department of Aging to establish an adult day health care preapplication process, to include specific components. Revises the Adult Day Health Medi-Cal Law to revise Medi-Cal certification standards. Deletes the requirement that such center only provide services to persons in their service area.

2. Substance Abuse

AB 946 (Berg) Vetoed CCSF Support

AIDS—Clean Needle and Syringe Exchange: Authorizes cities, counties or cities and counties to develop clean needle and syringe exchange projects. Makes related changes.

SB 774 (Vasconcellos) Vetoed CCSF Support

Hypodermic Needles and Syringes: Authorizes a licensed pharmacist to sell or furnish 30 or fewer hypodermic needles or syringes to a person without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project that would be created by this bill to evaluate the long-term desirability of allowing such pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens.

AB 1308 (Goldberg) Vetoed CCSF Support

Drug Treatment—Local Correctional Facilities: Authorizes the Department of Alcohol and Drug Programs to specify one or more fee system for alcohol and other drug abuse services funded directly or indirectly, in whole or in part, by the department. Requires the department to publish a model protocol for treatment of in-custody addiction withdrawal to alcohol and controlled substances. Specifies the qualifications for narcotic treatment programs licensed by the State.

D. REMAINDER OF THE 2003 SESSION

Though the Legislature adjourned its 2003 session on September 13th, the work of the 2003 Legislature is not yet over. On November 17, 2003, Arnold Schwarzenegger was sworn in as the 38th governor of California. On November 18th, Governor Schwarzenegger called the Legislature back into three concurrent special sessions to address workers' compensation reforms, drivers' licenses for undocumented immigrants, and the State budget deficit. During

these special sessions, the Legislature is limited to considering only the matters specified in the governor's proclamation calling for the session.

As pledged in his campaign, Governor Schwarzenegger's first act in office was the issuance of an Executive Order rescinding the recently increased vehicle license fee. As you know, the vehicle license fee funds local government as well as the health, mental health and social service programs contained in Realignment. A rescission of the discounted fee requires an equal contribution from the State General Fund to keep county budgets whole. The Executive Order orders reinstatement of the General Fund offset for local government and refunds to taxpayers who have already paid the higher fee. However, these funds must first be appropriated by the Legislature, which will be taken up by the Legislature in its special session on the State budget deficit. The Governor is seeking the Legislature's approval to put a ballot measure before the voters to approve a $15 billion bond to restructure existing debt and approve a state spending limit. The Governor needs the Legislature to pass this measure by December 5th in order for it to qualify for the March 2004 ballot.

IV. STATE LEGISLATIVE PLAN FOR 2004

As discussed above, the Department relies heavily on its State Legislative Plan to guide the City's positions on health-related legislation. The State Legislative Plan is submitted to the Mayor's Office for approval at the beginning of each Legislative Session. Attached as Appendix C is the Department's State Legislative Plan for 2004.

APPENDIX A

MATRIX OF 2003 HEALTH-RELATED LEGISLATION BY BILL NUMBER

APPENDIX B

MATRIX OF 2003 HEALTH-RELATED LEGISLATION BY KEY PHRASE

APPENDIX C

2004 STATE LEGISLATIVE PLAN