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OLC 78-1152/12
29 August 1978

MEMORANDUM FOR THE RECORD

SUBJECT: 18 August Meeting Concerning Section 3 of S. 990, the "Physician's Pay" Bill

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1. On 18 August, the undersigned accompanied by [redacted] Jr., Chief Legislation Staff, OLC, met with [redacted] Assistant General Counsel and Chief, General Law Division, OGC, and [redacted] Assistant General Counsel, to discuss the operative effect of Section 3 of S. 990, the "Physician's Pay" bill.

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2. Interest in the "Physician's Pay" bill was recently renewed when on 14 August 1978 the House Post Office and Civil Service Subcommittee on Compensation and Employee Benefits held a mark-up session on S. 990 and H.R. 12210, the latter bill being a House version of the Physician's Pay bill sponsored by the Subcommittee Chairperson, Mrs. Spellman.

3. S. 990 was reported out of the Senate Governmental Affairs Committee (H. Rept. 95-864) and passed the Senate on 25 May; on 31 May the bill was referred to the House Post Office and Civil Service Committee. H.R. 12210 is a "clean bill" introduced 18 April, and represents a Subcommittee rework of H.R. 4620 and H.R. 1519.

4. The only substantive difference between the two bills is embodied in the reporting, investigation, and evaluation requirements found in Section 3 of the Senate version. Section 3, subsection (a), instructs the Chairman of the Civil Service Commission to submit to the Congress an annual report regarding the operation of the special pay program. Subsection (b) instructs the Director of the Office of Management and Budget (OMB) to conduct an investigation of the short-term and long-term problems facing the departments and agencies of the Federal Government in recruiting and retaining qualified physicians; an evaluation of the extent to which the implementation of a uniformed

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system of pay, allowances, and benefits for all physicians would alleviate or solve such recruitment and retention problems; and an investigation and evaluation of other solutions to such recruitment and detention problems. Subsection (c) requires the Director of OMB to submit to Congress before September 30, 1980, a report which identifies suggested sources of legislation or Administrative action to solve recruitment and retention problems.

5. OLC and OGC focused on the Section 3 provisions of S. 990 as potentially representating a problem for the CIA in that the bill is not specific about the orgins of the data to be included in the reports, investigation and evaluation or the degree of detail to be included therein. Since CIA is addressed by the bill it is assumed that data would be expected from this Agency. The question was raised of the potential difficulty for the CIA in responding to this requirement while at the same time providing the necessary protection for classified information or information pertaining to intelligence sources and methods. The issue considered at subject meeting was whether in view of these concerns, it is necessary for the CIA to move for a specific amendment to the bill to cover sources and methods or classified information that might fall within the scope of the Section 3 reports, investgation and evaluation.

6. It was decided at subject meeting that since the language of Section 3 does not contain language that would make it mandatory for the DCI to turn over information that is classified or otherwise protected from unauthorized disclosures by statue (§102(d)(3) of the National Security Act of 1947, as amended) neither the current Executive Order on Classification (#12065) nor the DCI's sources and methods authority are impaired or superseded by Section 3, S. 990. Accordingly, it is unnecssary to specifically reaffirm such protection by means of proposing a new amendatory provision to S. 990.

7. OLC will continue to monitor the progress of the "Physician's Pay" legislation as it moves through the House Post Office and Civil Service Committee in the remaining days of the 95th Congress.

Assistant Legislative Counsel

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