

NLWJC - Kagan

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**Budget Materials - Appropriations
Riders 1999: Abortion & Family
Planning**

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Phone No. (Partial) (1 page)	10/16/1998	P6/b(6)
002. draft	Phone No. (Partial) (1 page)	ca. 10/14/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
 Domestic Policy Council
 Elena Kagan
 OA/Box Number: 14356

FOLDER TITLE:

Budget Materials - Appropriations Riders 1999: Abortion & Family Planning

2009-1006-F

kh553

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

New file

Budget - appropriations riders 1999 -
Abortion and family planning

Withdrawal/Redaction Marker

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Budget-approps ideas 1999 -
abortion + family planning

Maureen T. Shea

10/16/98 06:04:40 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Christopher C. Jennings/OPD/EOP
cc: Sarah A. Bianchi/OPD/EOP
Subject: USCatholic Conference



I have received calls from them worried about the drafting of the conscience language in the Lowey amendment. I have consulted with Martha Foley, who also spoke with them, and explained that this was policy/OMB issue. I know you are overwhelmed and I apologize for bugging you on this, but it does seem to be a real concern to them. Martha has explained some of the politics to me, but I simply told them it was policy/OMB and I would try to get you to call them.

The two issues, as you might have guessed, are:

language says religious plans not religious beliefs

and concerns that doctors don't always prescribe contraceptive devices - IUDs etc. and they also give out pills in their office

The person is Richard Doerflinger

Office is 202-541-3171

Home is P6/(b)(6)

[OOI]

As you know, I have dueling constituencies on this and therefore whatever you do, I'll end up with unhappy people - perfect!

(a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with any of the following religious plans:

- (1) SelectCare
- (2) Personal CaresHMO
- (3) Care Choices
- (4) OSF Health Plans, Inc.
- (5) Yellowstone Community Health Plan

(6) And any existing or future plan, ~~if the carrier or a sponsoring organization of the~~ plan objects to such coverage on the basis of religious beliefs.

In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual ~~health care provider~~ to discrimination on the basis that the individual refuses to prescribe, ~~distribute or dispense~~ contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions. Plans must notify enrollees of this benefit and ensure that all enrollees have access to this benefit.

Nothing in this section shall be construed to require coverage of abortion or abortion-related services.

Administration

OTM

Says it's impossible - too many reg plans would pull out or sue

no legal auth to survey drs alt prescribing habits.

→ legally req'd that they ensure all patients have access to these drugs.

find a process by which ben. has access to this.

all ben reg's - it part of ban ply -
end of partic to provide ben to all people.

|| Ben'l stat provisi -
plan has to provide ban level of ben to all participants

commitment - way to do:

Plans are req'd to inform every participant that ban ply includes contraceptive

↓

Reg plans to advise benefits that ben has to access this ben if dr is unwilling to prescribe.

e.g. give # to call.

~~gen'l law - want~~
gen'l OPM practice
unlikely to change
historic practice -
Reagan + Bush

Withdrawal/Redaction Marker

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Maury -

Jenny

[Redacted]

P6/(b)(6)

[Redacted]

P6/(b)(6)

[002]

House

Sec. _____ (a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with any of the following religious plans:

- (1) SelectCare
- (2) PersonalCaresHMO
- (3) Care Choices
- (4) OSF Health Plans, Inc.
- (5) Yellowstone Community Health Plan.

Senate

(6) And any other existing or future religious-based plan whose religious tenets are in conflict with the requirements of this Act.

New

In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual health care ~~care~~ provider to discrimination on the basis that the individual refuses to prescribe contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions. Patients whose providers wish to exercise this right of refusal must be informed by the plan of this objection and referred by the plan to a provider from whom such services may be obtained. The plan must cover such services prescribed by such providers, notwithstanding any rules limiting coverage to designated providers.

Senate

(c) Nothing in this section shall be construed to require coverage of abortion or abortion-related services.

practitioner

Plans must ^{notify} w. pat
 of this ban and ensure that all patients ~~with~~ have access to ~~these services~~

Plans must notify patients of this non-discriminatory policy

must be referred by the plan...

Plan

~~This services~~
 [These services this benefit]

Plans must notify ^{all} enrollees of this benefit and ensure that all enrollees have access to this benefit.

Providers

Have to find out from every physician

~~Normal~~

Too much admin complexity.

- Have to incur benefits of those partic ds (sometimes multiple ds)

- Have to write letter - here's the one that does (but there change)

of the carrier as the primary

When people your provider may bear object - procedures for getting contraceptives

Better opt

legal auth to do 1st one - wh of lawyer's office to implement in the most feasible way possible

FINAL VERSION 10/6/98

(a) Nothing in this section shall be construed to prohibit entering into or renewing a contract with a plan that does not provide contraceptive coverage, if the carrier or a sponsoring organization of the plan objects to such coverage on the basis of religious beliefs or moral convictions.

(b) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual refuses to [prescribe,]
[distribute, dispense, or make arrangements for] contraceptives based on the individual's religious beliefs or moral convictions.

? per se

Add sentence

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: family planning issues

As I am sure you know, the Treas-Postal appropriators dropped the FEHBP contraceptive coverage provision from the bill. The pro-choice groups are pleading that we insist on reinserting the language in the omnibus bill. (FYI.)

On the Title X front -- Just in case you don't know, the Rules committee is meeting later today and is likely to approve a rule that will allow Labor H to go to the House floor just for a vote on parental consent (the CATs are insisting on it, even though their language is already in the bill). Greenwood will offer his substitute amendment (emphasizing abstinence and encouraging parental involvement in teens' decisions re family planning), but then Istook will offer his second degree amendment which adds back in his parental consent language. The groups are begging us to insist that this language be dropped in omnibus negotiations as well.

Message Sent To:

Elena Kagan/OPD/EOP
Laura Emmett/WHO/EOP
Daniel N. Mendelson/OMB/EOP
Jennifer L. Klein/OPD/EOP
Neera Tanden/WHO/EOP
Ann F. Lewis/WHO/EOP

International
~~International~~
anti-choice
language. (House lang.)

17

AMENDMENT BY MR. WICKER
TO H.R. ____:

1) On page 52, line 14, insert the following new section:

1 FOREIGN ORGANIZATIONS THAT PERFORM OR
2 PROMOTE ABORTION OVERSEAS; FORCED ABORTION
3 IN THE PEOPLE'S REPUBLIC OF CHINA
4 SEC. 518A. (a) Section 104 of the Foreign Assistance Act of
5 1961 is amended by adding at the end the following new
6 subsection:
7 (h) RESTRICTION ON ASSISTANCE TO FOREIGN
8 ORGANIZATIONS THAT PERFORM OR ACTIVELY
9 PROMOTE ABORTIONS-
10 (1) PERFORMANCE OF ABORTIONS-
11 (A) Notwithstanding section 614 of this Act or any
12 other provision of law, no funds appropriated for population
13 planning activities or other population assistance may be made
14 available for any foreign private, nongovernmental, or
15 multilateral organization until the organization certifies that it
16 will not, during the period for which the funds are made available,
17 perform abortions in any foreign country, except where the life of
18 the mother would be endangered if the pregnancy were carried to
19 term or in cases of forcible rape or incest.
20 (B) Subparagraph (A) may not be construed to apply to
21 the treatment of injuries or illnesses caused by legal or illegal

Accepted
#5

1 abortions or to assistance provided directly to the government of
2 a country.

3 (2) LOBBYING ACTIVITIES-

4 (A) Notwithstanding section 614 of this Act or any other
5 provision of law, no funds appropriated for population planning
6 activities or other population assistance may be made available
7 for any foreign private, nongovernmental, or multilateral
8 organization until the organization certifies that it will not, during
9 the period for which the funds are made available, violate the
10 laws of any foreign country concerning the circumstances under
11 which abortion is permitted, regulated, or prohibited, or engage
12 in any activity or effort to alter the laws or governmental policies
13 of any foreign country concerning the circumstances under which
14 abortion is permitted, regulated, or prohibited.

15 (B) Subparagraph (A) shall not apply to activities in
16 opposition to coercive abortion or involuntary sterilization.

17 (3) APPLICATION TO FOREIGN ORGANIZATIONS-

18 The prohibitions of this subsection apply to funds made available
19 to a foreign organization either directly or as a subcontractor or
20 subgrantee, and the certifications required by paragraphs (1) and
21 (2) apply to activities in which the organization engages either
22 directly or through a subcontractor or subgrantee.

23 (4) DEFINITION.-As used in this section, the term
24 "activity or effort to alter the laws or governmental policies of
25 any foreign country concerning the circumstances under which

gag provision →

1 abortion is permitted, regulated, or prohibited" includes not only
2 overt lobbying for such changes, but also such other activities as
3 sponsoring, rather than merely attending, conferences and
4 workshops on the alleged defects in the abortion laws, as well
5 the drafting and distribution of materials or public statements
6 calling attention to such alleged defects.' .

7 (b) Section 301 of the Foreign Assistance Act of 1961 is
8 amended by adding at the end the following new subsection:

9 '(i) LIMITATION RELATING TO FORCED ABORTIONS
10 IN THE PEOPLE'S REPUBLIC OF CHINA- Notwithstanding
11 section 614 of this Act or any other provision of law, no funds
12 may be made available for the United Nations Population Fund
13 (UNFPA) in any fiscal year unless the President certifies that—

14 '(1) UNFPA has terminated all activities in the People's
15 Republic of China, and the United States has received assurances
16 that UNFPA will conduct no such activities during the fiscal year
17 for which the funds are to be made available; or

18 '(2) during the 12 months preceding such certification there
19 have been no abortions as the result of coercion associated with
20 the family planning policies of the national government or other
21 governmental entities within the People's Republic of China. As
22 used in this section, the term 'coercion' includes physical duress
23 or abuse, destruction or confiscation of property, loss of means of
24 livelihood, or severe psychological pressure.'

1 (c) The President may waive the provisions of section
2 104(h)(1) of the Foreign Assistance Act of 1961, as amended,
3 pertaining to population assistance to foreign organizations that
4 perform abortions in foreign countries, for any fiscal year;
5 Provided, that if the President exercises the waiver provided by
6 this subsection for any fiscal year, not to exceed \$356 million
7 may be made available for population planning activities or other
8 population assistance for such fiscal year; Provided further, that
9 the limitation in the previous proviso includes all funds for
10 programs and activities designed to control fertility or to reduce
11 or delay childbirths or pregnancies, irrespective of the heading
12 under which such funds are made available.

but
cannot
waive
"agg"
provision

13

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Senate
alternative

S.2334

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (Engrossed in Senate)

PROHIBITION ON FUNDING FOR ABORTIONS AND INVOLUNTARY STERILIZATION

SEC. 518. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for any biomedical research which relates in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be obligated or expended for any country or organization if the President certifies that the use of these funds by any such country or organization would violate any of the above provisions related to abortions and involuntary sterilizations: *Provided*, That none of the funds made available under this Act may be used to lobby for or against abortion.

existing law - restrictions what can be done with US population assistance but not what NGOs can do with their own funds.

FUNDING FOR FAMILY PLANNING

SEC. 519. In determining eligibility for assistance from funds appropriated to carry out section 104 of the Foreign Assistance Act of 1961, non-governmental and multilateral organizations shall not be subjected to requirements more restrictive than the requirements applicable to foreign governments for such assistance.

NORTH KOREAN NARCOTICS REPORT

SEC. 520. Reporting Requirements Regarding North Korean Narcotics Activity. (a) IN GENERAL - Not later than 3 months after the date of enactment of this Act, the President shall transmit to the appropriate committees a report on the cultivation, production, and transshipment of opium by North Korea. The report shall be based on all available information.

Title X -- Parental Consent

The Istook parental consent provision was inserted in the House Approps Committee (attachment 1). While the bill was originally pulled from the floor, the CATs are now insisting on a vote on parental consent and the bill is likely to go to the floor sometime this week -- even if it is only to vote on this one amendment. A Greenwood substitute amendment is in order which would require Title X clinics to discuss abstinence and encourage teen to involve their parents in reproductive decision-making (attachment 2). However, a second-degree amendment is also in order which would allow Istook to reoffer his original parental consent language and include the abstinence language from Castle-Greenwood (attachment 3). The vote on Istook's second degree will come first, putting us in a more vulnerable position. The vote will be extremely tight and we need to let Dems know that this is a party line vote and ask them to stick with us on this.

passed
32-24 on 7/14/98

AMENDMENT TO COMMITTEE PRINT

(Labor, HHS, Educ, Rel Agencies Appropriations Act, 1999)



OFFERED BY MR. ISTOOK

At the end of title II, insert after the last section
(preceding the short title) the following section:

1 SEC. ____ (a) Notwithstanding any other provision
2 of law, no provider of services under title X of the Public
3 Health Service Act shall be exempt from any State law
4 requiring notification or the reporting of child abuse, child
5 molestation, sexual abuse, rape, or incest.

6 (b) None of the funds appropriated in this or any
7 other Act for any fiscal year for carrying out title X of
8 the Public Health Service Act may be made available to
9 any family planning project under section 1001 of such
10 title if any provider of services in the project knowingly
11 provides contraceptive drugs or devices to a minor, un-
12 less—

13 (1) the minor is emancipated under applicable
14 State law;

15 (2) the minor has the written consent of a cus-
16 todial parent or custodial legal guardian to receive
17 the drugs or devices;

1 (3) a court of competent jurisdiction has di-
2 rected that the minor may receive the drugs or de-
3 vices; or

4 (4) such provider of services has given actual
5 written notice to a custodial parent or custodial legal
6 guardian of the minor, notifying the parent or legal
7 guardian of the intent to provide the drugs or de-
8 vices, at least five business days before providing the
9 drugs or devices.

10 (c) Each provider of services under title X of the Pub-
11 lic Health Service Act shall each year certify to the Sec-
12 retary of Health and Human Services compliance with this
13 section. Such Secretary shall prescribe such regulations as
14 may be necessary to effectuate this section.

2

AMENDMENT TO H.R. 4274, AS REPORTED**OFFERED BY MR. GREENWOOD OF PENNSYLVANIA
OR BY MR. CASTLE OF DELAWARE**

Page 52, strike line 8 and all that follows through page 53, line 8, and insert the following:

(b)(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall require that each family planning project under section 1001 of title X of the Public Health Service Act—

- (A) expressly inform all minors who seek the services of the project that abstinence is the only certain way to avoid pregnancy, sexually transmitted diseases, and infection with the human immuno-deficiency virus; and
 - (B) ensure that all individuals who provide counseling services to minors through the project are trained to provide to minors counseling that encourages the minors—
 - (i) to abstain from sexual activity;
 - (ii) to avoid being coerced into engaging in sexual activities; and
 - (iii) to involve their parents in the decision to seek family planning services.
- (2) The Secretary, acting through the Deputy Assistant Secretary for Population Affairs, shall carry out the following with respect to family planning projects referred to in paragraph (1):
- (A) The Secretary shall develop and disseminate to the projects protocols for providing the counseling described in paragraph (1)(B), including protocols for training individuals to provide the counseling.
 - (B) The Secretary shall ensure that such protocols include protocols specific to younger adolescents.
 - (C) In developing protocols under subparagraphs (A) and (B), the Secretary shall consider the results of research under title XX of the Public Health Service Act.

SUBSTITUTE OFFERED BY MR. ISTOOK OF OKLAHOMA FOR THE AMENDMENT OFFERED BY MR. GREENWOOD OF PENNSYLVANIA

Strike section 220 (page 52, line 3 and all that follows through page 53, line 8) and insert the following:

SEC. 220. (a) Notwithstanding any other provision of law, no provider of services under title X of the Public Health Services Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.

(b) None of the funds appropriated in this or any other Act for any fiscal year for carrying out title X of the Public Health Service Act may be made available to any family planning project under section 1001 of such title if any provider of services in the project knowingly provides contraceptive drugs or devices to a minor, unless—

- (1) such provider of services has given actual written notice to a custodial parent or custodial legal guardian of the minor, notifying the parent or legal guardian of the intent to provide the drugs or devices, at least five business days before providing the drugs or devices; or
- (2) the minor has the written consent of a custodial parent or custodial legal guardian to receive the drugs or devices; or
- (3) the minor is emancipated under applicable State laws; or
- (4) a court of competent jurisdiction has directed that the minor may receive the drugs or devices

(c)(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall require that each family planning project under section 1001 of title X of the Public Health Service Act—

- (A) expressly inform all minors who seek the services of the project that abstinence is the only certain way to avoid pregnancy, sexually transmitted diseases, and infection with the human immuno-deficiency virus; and
- (B) ensure that all individuals who provide counseling services to minors through the project are trained to provide to minors counseling that encourages the minors
 - (i) to abstain from sexual activity;
 - (ii) to avoid being coerced into engaging in sexual activities; and
 - (iii) to involve their parents in the decision to seek family planning services.

(2) The Secretary, acting through the Deputy Assistant Secretary for Population Affairs, shall carry out the following with respect to family planning projects referred to in paragraph (1):

- (A) The Secretary shall develop and disseminate to the projects protocols for providing the counseling described in paragraph (1)(B), including protocols for training individuals to provide the counseling.
- (B) The Secretary shall ensure that such protocols include protocols specific to younger adolescents.
- (C) In developing protocols under subparagraphs (A) and (B), the Secretary shall consider the results of research under title XX of the Public Health Service Act.

(d) Each provider of services under section 1001 of title X of the Public Health Services Act shall each year certify to the Secretary of Health and Human Services compliance with this section. Such Secretary shall prescribe such regulations as may be necessary to effectuate this section.

Istook

Greenwood

Contraceptive Coverage -- FEHBP

From what I understand, the conferees are interested in accepting the House language, along with the additional conscience clause language from the Senate language (see *). However, Chris Smith is insisting on adding the word "moral" to the Senate conscience clause.

Note: With regard to the overall language, the Senate version would be preferable, because the House version is extremely vague -- it doesn't define the scope of coverage at all (what does it mean to include "a provision for contraceptive coverage"?). However, the House language would be fine, even with the Senate conscience clause, but inserting the word "moral" makes it virtually meaningless because any plan could opt out for any reason.

Contraceptive

Coverage - FEHBP

Senate
language

of prescription contraceptive drugs and device

At the appropriate place in the bill, insert the following:

SEC. ____ (a) None of the funds appropriated by this Act may be expended by the Office of Personnel Management to enter into or renew any contract under section 8902 of title 5, United States Code, for a health benefits plan—

(1) which provides coverage for prescription drugs, unless such plan also provides equivalent coverage for prescription contraceptive drugs or devices approved by the Food and Drug Administration, or generic equivalents approved as substitutable by the Food and Drug Administration; or

(2) which provides benefits for outpatient services provided by a health care professional, unless such plan also provides equivalent benefits for outpatient contraceptive services.

(b) Nothing in this section shall apply to a contract with any of the following religious plans:

- (1) SelectCare.
- (2) PersonalCare's HMO.
- (3) Care Choices.
- (4) OSF Health Plans, Inc.
- (5) Yellowstone Community Health Plan.

(6) and any other existing or future religious based plan whose religious tenets are in conflict with the requirements in this Act.

(c) For purposes of this section—

(1) the term "contraceptive drug or device" means a drug or device intended for preventing pregnancy; and

(2) the term "outpatient contraceptive services" means consultations, examinations, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods (including natural family planning) to prevent pregnancy.

F:\MS\LOWEY\LOWEY.116

HLC

**AMENDMENT TO H.R. 4104, AS REPORTED
OFFERED BY MRS. LOWEY OF NEW YORK**

House
language

Page 109, after line 24, add the following:

1 SEC. 648. (a) None of the funds appropriated by this
2 Act may be used to enter into or renew a contract which
3 includes a provision providing prescription drug coverage,
4 except where the contract also includes a provision for con-
5 ceptive coverage.

6 (b) Nothing in this section shall apply to a contract
7 with any of the following religious plans:

- 8 (1) SelectCare.
9 (2) PersonalCaresEMO.
10 (3) Care Choices.
11 (4) OSF Health Plans, Inc.
12 (5) Yellowstone Community Health Plan.

Cynthia Dillard

10/06/98 06:40:59

PIV

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: for Elena re conscience clauses

I looked through my files to see if any existing conscience clauses ever mention the word "moral". I found that for over 20 years no conscience clause ever did until the BBA last year. That allowed Medicare Choice and Medicaid managed care plans to deny services based on moral or religious grounds. From what I understand, this language was snuck in at the 11th hour and staff had so much else going on with the enormity of the BBA that they didn't catch it until it was too late. Also, until the BBA, conscience clauses only applied to abortion and sterilization (the BBA applies to any service). While I still think it is **terrible** policy to allow such a huge loophole (how can an institution have a conscience?), and I would **strongly** urge the Administration to oppose it, I wanted you to know that there is an unfortunate precedent. Just so you have all the facts.....

FAMILY PLANNING

Subcommittee: Labor/HHS/Education

Ranking: High X Medium Low

1999 Budget Policy: The FY 1999 Budget repeated FY98 enacted L/HHS language that said that: "None of the funds appropriated in the Act may be made available to any entity under Title X (Family Planning) of the Public Health Services Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities."

Latest House Action: Section 220 of the House-Committee-passed bill would require family planning grantees either to receive written parental consent or provide advance notification to parents before giving contraceptives to minors. There is a **Castle/Greenwood** amendment that would strike this provision and insert substitute language requiring abstinence counseling and abstinence counseling training based on research from "abstinence only" education programs. There is a second degree amendment that would strike this amendment. **Rep. Bradley has proposed an amendment that would prohibit the dispensing of any prescription drugs or devices to minors without first receiving the consent of a parent or guardian.** **Representative Tiahrt has proposed an amendment that would mandate the physical separation of all Title activities from all non-Title X funded activities related to abortion.**

Latest Senate Action: The Senate committee bill removes the FY 98 enacted language and does not replace it with anything.

Latest Conference Action: Preliminary findings from Conference Committee action indicates that the conferees have dropped the Istook amendment that would require parental consent or notification to parents before giving contraception to minors.

Solution/Options: Adopt the proposed Castle/Greenwood amendment.

Justification: As outlined in the House Floor SAP, mandating parental consent could discourage sexually active minors from seeking health care and reproductive counseling services and thus lead to more unintended pregnancies, more abortions and more sexually transmitted diseases, including HIV.

Counseling young adolescents to postpone sexual activity and providing contraceptive services and counseling to adolescents when they do become sexually active can help prevent unintended pregnancies and sexually transmitted diseases (STDs). Taking actions that will withdraw or decrease the demand for these services could halt or reverse the decline in adolescent pregnancy -- as well as the decline in abortions -- this country has been experiencing in recent years.

Adolescent pregnancy is still alarmingly high in the U.S. and much higher than in other developed countries. There is substantial improvement to be made and it would be unwise to disrupt those programs that have contributed to the progress achieved thus far.

FY 1998 Appropriations Action: The Senate repeated the FY98 President's budget language, but the House passed two amendments. One amendment reduced funding by \$9 million. The other was the Castle-Porter amendment, which placed two requirements on Title X family planning clinics, the first of which is already required under current appropriations language and regulations:

1. Requires clinics to encourage family participation in the decision of minors to seek family planning services
2. Requires clinics to counsel minors on how to resist attempts to coerce minors into engaging in sexual activities

The Senate agreed to adopt this language in conference, and it was enacted.

A parental notification and consent amendment was introduced in the committee by Rep. Istook, but the amendment was not adopted.

Prepared By/Date: Jen Forshey (5-7788), 10/6/98

Chronology of Recent Family Planning Appropriations Language

FY 1997

Rep. Istook offered an amendment that would have required parental consent for the distribution of contraceptives to minors. This amendment was not adopted. Instead, Rep. Obey offered language that required that family planning clinics certify that they encourage minors to seek family participation when making a decision to seek family planning services. This language was consistent with regulations and authorizations enacted in 1981, and was enacted in FY 1997 and is shown below:

"None of the funds appropriated in this Act may be made available to any entity under Title X of the Public Health Service Act unless it is made known to the Federal official having authority to obligate or expend such funds that the applicant for the award certifies to the Secretary that it encourages family participation in the decision of the minor to seek family planning services.

FY 1998

The FY98 Budget repeated the FY 1997 language.

During the FY 98 appropriations process, the Senate adopted the language in the Budget. In the House, two amendments were offered. An Istook amendment required parental notification or consent and a Porter amendment repeated the FY97 language and added additional text. Only the Porter amendment was adopted and enacted. The language of both amendments is as follows:

The Istook Amendment

"None of the funds appropriated in this Act or any other Act for any fiscal year may be made available to any provider of services under Title X of the Public Health Service Act if such provider knowingly provides contraceptive drugs or devices to a minor, unless --

- 1) the minor is emancipated under applicable state law;*
- 2) the minor has the written consent of a custodial parent or custodial legal guardian to receive the drugs or devices;*
- 3) a court of competent jurisdiction has directed that the minor may receive the drugs or devices;*
or
- 4) such provider of services has given actual written notice to a custodial parent or custodial legal guardian of the minor, notifying the parent or legal guardian of the intent to provide the drugs or devices, at least five business days before providing the drugs or devices."*

The Porter Amendment

"None of the funds appropriated in the Act may be made available to any entity under Title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities."

FY 1999

The Administration's FY99 budget repeats the FY 1998 Porter language.

The Senate committee bill removes the FY98 enacted language and does not replace it with

anything.

The House committee bill contains a provision (Sec 220 b and c) that would require family planning grantees either to receive written parental consent or provide advance notification to parents before giving contraceptives to minors. The provision reads as follows:

(b) None of the funds appropriated in this or any other Act for any fiscal year for carrying out title X of the Public Health Service Act may be made available to any family planning project under section 1001 of such title if any provider of services in the project knowingly provides contraceptive drugs or devices to a minor, unless--

(1) the minor is emancipated under applicable State law;

(2) the minor has the written consent of a custodial parent or custodial legal guardian to receive the drugs or devices;

(3) a court of competent jurisdiction has directed that the minor may receive the drugs or devices; or

(4) such provider of services has given actual written notice to a custodial parent or custodial legal guardian of the minor, notifying the parent or legal guardian of the intent to provide the drugs or devices, at least five business days before providing the drugs or devices.

© Each provider of services under title X of the Public Health Service Act shall each year certify to the Secretary of Health and Human Services compliance with this section. Such Secretary shall prescribe such regulations as may be necessary to effectuate this section.

Two amendments were expected to be offered during the House Floor debate. The first was a Greenwood/Castle amendment that would strike Sections 220 (b) and (c). The amendment would insert substitute language requiring abstinence counseling and abstinence counseling training based on research from "abstinence only" education programs.

The second amendment was offered by Istock. It would have been a second degree amendment to the Greenwood/Castle amendment to restore Sections 220 (b) and (c).

ABORTION

Subcommittee: Labor/HHS/Education

Ranking: High ___ Medium X Low ___

1999 Budget Policy: The FY 1999 Budget proposed to delete the "Hyde Amendment" that was included in the FY 1998 L/HHS/General Provisions. As with the FY 1998 Budget, the FY 1999 Budget stated that the Administration would work with the Congress to address this issue.

Latest House Action: Sections 508 and 509 of the House Committee-passed bill would retain and expand the abortion prohibition from the FY 1998 appropriations barring use of money in trust funds into which Labor/HHS/Ed funding flows (i.e., the Medicare Trust Funds) for abortion. In a Rules SAP, dated August 4th and the House Full Committee letter of July 14th, the Administration continues to object to the language as currently drafted and proposes to work with the Congress on this issue.

Latest Senate Action: The Senate Committee repeated the FY 1998 enacted language.

Solution/Options:

Option #1. Continue to oppose this prohibition in letters and SAPs, but in the end accept the language in that was in the House bill.

Option #2. Accept language with modification to eliminate the requirement for a physician to certify that certain specific conditions exist that endanger the life of the mother. This was a new requirement in the FY 1998 bill/act, which the Administration opposed last year, but it remained in the final language.

Justification

Option #1. Despite the expansion of the Hyde prohibition specifically to trust funds (i.e., Medicare), in effect, this language is the same as the language the Administration accepted for FY 1998. The HHS General Counsel has determined that the current Hyde language already applies to the Medicare Trust Funds, and Secretary Shalala sent a letter to Senator Nickles on 6/22/98 to that effect.

Option #2. Previously "Hyde" allowed an abortion to be performed if there was a risk to the life of the mother. Beginning in FY 1998, this language was refined to require certification by a physician. The Administration opposes this attempt to constrain further the availability of abortion services.

FY 1998 Appropriations Action: Congress expanded the "Hyde Amendment" to limit the use of Federal funds to provide abortion services under Medicaid managed care plans, and further limited the range of conditions under which abortions could be funded. The FY 1998 language would require a physician to make a legal determination that certain conditions have been met (i.e., the life of the mother is at risk). The final language was modified to clarify that the expanded limitations did not affect in any way the ability of States to provide such coverage using their own funds, nor the ability of managed care providers to participate in

Federally-funded programs while also offering abortion services coverage paid for by state or private funds.

Prepared By/Date: Ann Kendall (5-7833), 9/9/98, L_ABOR.WPD

FDA DRUG REVIEWS/RU-486 - - Resolved

Subcommittee: Agriculture/Rural Development

Ranking: High X Medium ___ Low ___

1999 Budget Policy: The FDA's findings regarding safety and effectiveness of drugs are based on science and whether it has been established through scientific research that a drug is safe and works for the particular purpose for which it is intended to be marketed.

Latest House Action: ~~The Section 742 of the~~ House-passed bill would prohibit the use of FDA funds for the testing, development, or approval (including approval of production, manufacturing, or distribution) of any drug for the chemical inducement of abortion. The Administration has not yet communicated its position, since the RU-486 language was introduced and adopted on the House floor after the Administration had sent its House floor SAP. This provision would be binding.

Latest Senate Action: The Senate passed-bill does **not** include a similar provision prohibiting the use of FDA funds for the testing, development, or approval of any drug for the chemical inducement of abortion.

Conference Action: ~~Conferees have completed action on all but the RU-486 provision and two other items. Preliminary reports indicate that RU-486 provision remains unresolved.~~ The House passed the Conference report, 333-53, on October 2. The RU-486 provision is not included in the report. The RU-486 provision may, however, be included in some other appropriations bill.

Solution/Options: Remove the language during conference. Administration officials must determine if the conference letter should include a veto threat. If not, then alternative language could be conceivably be proposed that would weaken the provision and make it less intrusive of the FDA drug review process. However, just weakening the language might not be enough to satisfy concerns regarding the preservation of a "woman's right to choose." (HHS/ASL, HHS/ASMB, and FDA staff are consulting to determine whether alternative language could be developed to make the provision less objectionable. They will advise us shortly if such language can be developed, although they believe it is unlikely.) The language could also be made part of report language, where it would not have the force of law, instead of the actual bill. However, this option would probably not satisfy the original sponsors of the provision.

Justification: Congress has never previously legislated the approval or disapproval of a particular drug. The review of drugs is based on the scientific evidence of safety and effectiveness which is essential to the credibility of the drug approval process. Legislating a drug approval or disapproval would undermine the drug review system and provide a dangerous precedent; namely, allowing legislative prohibitions on drugs to treat particular illnesses or conditions and thus freezing the state of science for that particular illness or condition. Also, this prohibition as currently drafted would preclude the approval or disapproval of more than just RU-486 but also some forms of birth control as well. The provision could put women at risk because FDA would not be able to assess and provide public guidance on risks and proper usage of drugs that may be used for abortion but were approved for other medical conditions.

The Agriculture appropriations bill is not the appropriate vehicle for a provision with such important scientific and public issues. The President's long-standing position is that abortions should be safe, legal, and rare. Since they remain legal, FDA should be allowed to approve the safest means possible for a woman to exercise her rights.

FY 1998 Appropriations Action: FY 1998 appropriations bills did not contain language prohibiting the use of funds in reviewing RU-486.

Prepared By/Date: Jim Esquea (5-7841),10/6/98, L_FDARU.WPD

**Attachment to FDA Drug Reviews/RU-486 Language One Pager
FY 1999 Agriculture Appropriations Bill**

I. Intrudes into Executive Branch Decision making. The Food Drug & Cosmetic Act requires that before a drug can be marketed in this country it must be found by the Food and Drug Administration to be safe and effective. This has been the standard since 1962.

- the Agency's findings regarding safety and effectiveness are based on science: whether it has been established through scientific research that a drug is safe and works for the particular purpose for which it is intended to be marketed.
- Congress has never previously legislated the approval or disapproval of a particular drug. Those decisions have been vested in the Agency to be made based on the scientific evidence available to the Agency.

II. Undermines Current Drug Review System. The fact that drugs are approved or disapproved based on the scientific evidence of safety and effectiveness is essential to the credibility of the drug approval process. The US drug approval process is the gold standard for drug review systems.

- Health care practitioners, patients, third party payors, other countries, rely on the assurance that decisions about the drugs marketed in the US are based on the scientific evidence.
- Legislating a drug approval or disapproval would undermine the credibility of the system. Stakeholders in the health care system would no longer be able to rely on the assurance that drug approval decisions were based on the science.

III. Freezes Science. A legislative prohibition on drugs to treat a particular illness or condition freezes the state of the science for that particular illness or condition. It essentially forecloses the development of drugs that might represent an improvement over existing therapies (fewer adverse side effects, less expensive, etc.).

- Many drugs are tested for the treatment of more than one indication or illness. Prohibiting the development of drugs for particular uses could have a chilling effect on drug development more broadly. (It has been publicly reported that RU-486 is being tested for at least one other use in addition to termination of pregnancy.)

IV. Could Endanger Women. The provision could put women at risk because FDA

would not be able to assess and provide public guidance on risks and proper usage of drugs that may be used for this purpose but were approved for other medical conditions.

- FDA would not be able to use any money to determine if a drug was being used for an off-label use involving the chemical inducement of abortion, and if so, to work with the manufacturer to determine and make public some information on the safe usage of the product (e.g., involving dosage, usage, population risk).

V. Used Wrong Process. Agriculture appropriations bill is not the appropriate vehicle for a provision with such important scientific and public issues. Such provisions should be discussed in public hearings by the appropriate authorizing committee, to which this provision has not been subject. In such settings, the provision's use of terms that are not defined in the Food Drug and Cosmetic Act could be properly debated and better defined.

VI. Restricts Something that is Legal. President's long-standing position is that abortions should be safe, legal, and rare. Since they remain legal, FDA should be allowed to approve the safest means possible for a woman to exercise her rights.

ABORTION COVERAGE / FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Subcommittee: Treasury/General Government.

Ranking: High X Medium Low

1999 Budget Policy: The FY 1999 Budget proposes to delete the following provisions from the FY 1998 bill:

- (Section 513) Prohibits the use of funds appropriated under this act for abortions or for the administrative expenses in connection with any health plan under the Federal Employee Health Benefit Plan that provides coverage of abortions.
- (Section 514) Creates an exception in cases where the life of the mother is in danger, or in cases of rape or incest

Latest House Action: The House-passed bill (section 508) continues the current law restriction on FEHBP coverage of abortions, but the current law exceptions, i.e., danger to the mother's life, rape or incest were deleted on the House Floor on a point of order due to lack of authorization. House SAP (sent 06/24/98) strongly opposed any restriction on FEHBP coverage of abortions.

Latest Senate Action: The Senate-passed bill includes provisions added on the Senate Floor reinstating current law restrictions (section 649) and the exceptions (section 650). This section was added on the Senate Floor by Senate Amendment No. 3354 (sponsored by DeWine and passed by voice vote). Senate SAP (sent 07/28/98) strongly opposed any restriction on FEHBP coverage.

Latest Conference Action: The pending conference report (sections 509 and 510) includes the Senate-passed language, continuing both the current law restrictions on FEHB abortion coverage and the exceptions. The provisions are identical to current law.

Solution/Options: While the conference language is the less objectionable Senate version (and identical to current law), the Administration should ~~Express preference for Senate version (as least objectionable of the two bills)~~ but continue to oppose the provisions in letters and SAP's and urge deletion.

Justification:

- The decision to cover abortion should be left to each health plan participating in the FEHBP.
- FEHB enrollees who wish to purchase coverage that does not include abortion services should have that choice.
- Similarly, FEHB enrollees and their families who want such coverage should not be precluded from choosing a health plan that includes broader (abortion) coverage.
- Neither the House-passed bill nor Senate-passed bill would give enrollees a choice.

FY 1998 Appropriations Action: Sections 513 and 514 of the FY 1998 Treasury and General Government Appropriations Act prohibit the use of funds appropriated under the act for abortions, except in the cases where the life of the mother is in danger, or in cases of rape or incest.

Prepared By/Date: Daniel LaPlaca (5-1484), 8/24/98. Revised 9/18/98. Revised 10/6/98.

CONTRACEPTIVES COVERAGE / FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Subcommittee: Treasury/General Government.

Ranking: High X Medium Low

1999 Budget Policy: The FY 1999 Budget is silent on this matter.

Latest House Action: The House-passed bill (section 624) would require FEHBP insurers, except for five specifically-named religious plans, to cover prescription contraceptive drugs and devices. This section was added on the House Floor by House Amendment 728 (sponsored by Rep. Lowey and passed 224-198). House SAP (sent 06/24/98) supported this language and urged the House to give authority to the Office of Personnel Management to waive the requirement for plans that are sponsored by organizations whose religious beliefs do not support artificial methods of contraception. The House SAP also opposed any language that would restrict the definition of contraceptives to exclude any drug, device or procedure "which has as one of its known effects the interference with the implantation of a fertilized human ovum or embryo."

Latest Senate Action: The Senate-passed (section 651) bill includes language added on the Senate Floor similar to the House-passed bill, except that in addition to the five plans identified by name, it contains general language exempting any "existing or future religious-based plan." This section was added on the Senate Floor by Senate Amendment No. 3370 (sponsored by Snowe and passed by voice vote). Senate SAP (sent 7/28/98) supported adoption of an amendment requiring coverage of prescription contraceptives by health plans participating in the FEHBP.

Latest Conference Action: The pending conference report (section 656) would require a) all FEHB insurers with prescription drug coverage to include contraceptive coverage, and b) except by name five religious-based plans. On 10/1, the House failed to adopt the rule for floor consideration of the conference report, in part due to Republican opposition to this language. On 10/5, the House voted to return the conference report to the conference committee, although House Republican Leadership have also threatened to put the conference report into the omnibus bill without the FEHB contraceptives language.

Solution/Options: Support adoption of Senate version. The Senate version requires coverage of a broader range of contraceptives, and contains broader language exempting plans sponsored by organizations whose religious or conscientious beliefs do not support artificial methods of contraception from the coverage requirements.

Justification:

- The administration supports improvements in basic health care coverage for women and the goal of the amendment -- to reduce unwanted pregnancies and the need for abortions.
- The administration supports any amendment that gives authority to the Office of

Personnel Management to waive the requirement for plans that are sponsored by organizations whose religious or conscientious beliefs do not support artificial methods of contraception.

FY 1998 Appropriations Action: None

Prepared By/Date: Daniel LaPlaca (5-1484), 8/24/98. Revised 9/18/98. Revised 10/6/98.