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**Abortion - Budget Provisions**

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Phone No. (Partial) (1 page)	07/23/1997	P6/b(6)

### COLLECTION:

Clinton Presidential Records  
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### FOLDER TITLE:

Abortion - Budget Provisions

2009-1006-F

ke652

### 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]

“Side-by-Side” Comparison for Abortion Provisions

Appropriations Bill/Provision	FY 98 Enacted	FY 99 President's Budget	FY 99 Enacted	Recommended FY 2000 Language
<p><b>DC</b> <b>Ban on Use of Funds for Abortion</b></p>	<p>Sec. 132. No funds appropriated under this Act shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.</p>	<p>Repeat the FY 1998 Budget, i.e., the Administration proposes to delete this provision and add the footnote that the Administration will work with Congress on this issue.</p>	<p>Sec. 131. Same as FY 1998 enacted.</p>	<p>Repeat FY 1999 President's Budget, i.e., delete the provision and add the footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>
<p><b>C/J/S</b> <b>Ban on Use of Justice Funds for Abortion</b></p>	<p>Sec. 103. Repeated FY 1997 Enacted language. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape: Provided, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.</p>	<p>Repeat the FY 1998 Budget i.e., the Administration proposes to delete this provision and add a footnote that the Administration will work with Congress on this issue.</p>	<p>Sec. 103. Same as FY 1998 enacted.</p>	<p>Repeat FY 1999 President's Budget, i.e., delete the provision and add the footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>
<p><b>C/J/S</b> <b>Ban on the Use of Justice Funds for Performing Abortion</b></p>	<p>Sec. 104. Repeated FY 1997 Enacted language. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of any abortion.</p>	<p><u>Repeat FY 1998 Enacted Language.</u></p>	<p>Sec. 104. Same as FY 1998 enacted.</p>	<p>Repeat FY 1999 Enacted Language.</p>
<p><b>C/J/S</b> <b>Bureau of Prisons duty to provide escort services for female inmates seeking a privately funded abortion.</b></p>	<p>Sec. 105. Repeated FY 1997 Enacted language. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: Provided, That nothing in this section in any way diminishes the effect of section 104 intended to address the philosophical beliefs of individuals employees of the Bureau of Prisons.</p>	<p><u>Repeat FY 1998 Enacted Language.</u></p>	<p>Sec. 105. Same as FY 1998 enacted.</p>	<p>Repeat FY 1999 Enacted Language.</p>
<p><b>L/HHS/Ed</b> <b>Hyde Amendment</b></p>	<p>Sec. 509. (a) None of the funds appropriated under this Act shall be expended for any abortion. (b) None of the funds appropriated under this Act shall be expended for health benefits coverage that includes coverage of abortion. (c) The term "health benefits coverage" means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.</p>	<p>Repeat FY 1998 Budget, i.e., propose deletion and add footnote: "The Administration proposes to delete this footnote and will work with Congress to address this issue."</p>	<p>Sec. 508. Same as FY 1998 enacted except it added: ". . . and none of the funds in any trust fund to which funds are appropriated under this Act, . . ."</p>	<p>Repeat FY 1999 President's Budget, i.e., delete the provision and add the footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>

Appropriations Bill/Provision	FY 98 Enacted	FY 99 President's Budget	FY 99 Enacted	Recommended FY 2000 Language
<p><b>L/HHS/Ed</b></p> <p><b>Hyde Amendment</b></p>	<p>Sec. 510. (a) The limitations established in the preceding section shall not apply to an abortion-(1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. (b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds). (c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).</p>	<p>Delete provision and add footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>	<p>Sec. 509. Same as FY 1998 enacted.</p>	<p>Repeat FY 1999 President's Budget, i.e., delete the provision and add the footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>
<p><b>L/HHS/Ed</b></p> <p><b>Medicare+Choice</b></p>			<p>Sec. 216. None of the funds appropriated by this Act (including funds appropriated to any trust fund) may be used to carry out the Medicare+Choice program if the Secretary denies participation in such program to an otherwise eligible entity (including a Provider Sponsored Organization) because the entity informs the Secretary that it will not provide, pay for, provide coverage of, or provide referrals for abortions: Provided, That the Secretary shall make appropriate prospective adjustments to the capitation payment to such an entity (based on an actuarially sound estimate of the expected costs of providing the service to such entity's enrollees): Provided further, That nothing in this section shall be construed to change the Medicare program's coverage for such services and a Medicare+Choice organization described in this section shall be responsible for informing enrollees where to obtain information about all Medicare covered services.</p>	<p>Repeat FY 1999 President's Budget, i.e., delete the provision and add the footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>

Appropriations Bill/Provision	FY 98 Enacted	FY 99 President's Budget	FY 99 Enacted	Recommended FY 2000 Language
Foreign Ops	<p>Sec. 518. Same as FY 1997 Enacted language. 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.</p>	<p>Repeat FY 1998 Enacted language.</p>	<p>Sec. 518. Same as FY 1998 enacted.</p>	<p>Repeat FY 1999 enacted.</p>
Foreign Ops	<p>Sec. 592. (a) Not to exceed \$385,000,000 of the funds appropriated in title II of this Act may be available for population planning activities or other population assistance. (b) Such funds may be apportioned only on a monthly basis, and such monthly apportionments may not exceed 8.34 percent of the total available for such activities.</p>	<p>The Administration proposed to delete this provision.</p>	<p>Deleted.</p>	

Appropriations Bill/Provision	FY 98 Enacted	FY 99 President's Budget	FY 99 Enacted	Recommended FY 2000 Language
Foreign Ops	<p>Sec. 543. (a) Assistance Through Nongovernmental Organizations. --Restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance in support of programs of nongovernmental organizations from funds appropriated by this Act to carry out the provisions of chapters 1, 10, and 11 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, and from funds appropriated under the heading "Assistance for Eastern Europe and the Baltic States": Provided, That the President shall take into consideration, in any case in which a restriction on assistance would be applicable but for this subsection, whether assistance in support of programs of nongovernmental organizations is in the national interest of the United States: Provided further, That before using the authority of this subsection to furnish assistance in support of programs of nongovernmental organizations, the President shall notify the Committees on Appropriations under the regular notification procedures of those committees, including a description of the program to be assisted, the assistance to be provided, and the reasons for furnishing such assistance: Provided further, That nothing in this subsection shall be construed to alter any existing statutory prohibitions against abortion or involuntary sterilizations contained in this or any other Act. (b) Public Law 480 . . .</p>	Same as FY 1998 enacted.	Same as FY 1998 enacted	Repeat FY 1999 enacted.

Appropriations Bill/Provision	FY 98 Enacted	FY 99 President's Budget	FY 99 Enacted	Recommended FY 2000 Language
Foreign Ops	<p>“For necessary expenses to carry out ...Provided further, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: Provided further, That none of the funds made available under this heading may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions; and that in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services; Provided further, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and additionally, all such applicants shall comply with the requirements of the previous proviso: Provided further, That for purposes of this or any other Act authorizing or appropriations funds for foreign operations, export financing, and related programs, the term “motivate”, as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options: Provided further, That nothing in this paragraph shall be construed to alter any existing statutory prohibitions against abortion under section 104 of the Foreign Assistance Act of 1961; Provided further ...”</p>	Repeat FY 1998 enacted language.	<p><i>FY 1999 Enacted Language expanded family planning provision and the new language is bolded below.</i>  For necessary expenses to carry out. . . Provided further, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: Provided further, That none of the funds made available under this heading may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions; and that in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services, <b>and that any such voluntary family planning project shall meet the following requirements: (1) service providers or referral agents in the project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (this provision shall not be construed to include the use of quantitative estimates or indicators for budgeting and planning purposes), (2) the project shall not include payment of incentives, bribes, gratuities, or financial reward to (A) an individual in exchange for becoming a family planning acceptor, or (B) program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning services,</b></p>	Repeat FY 1999 abortion and family planning provisions.

Appropriations Bill/Provision	FY 98 Enacted	FY 99 President's Budget	FY 99 Enacted	Recommended FY 2000 Language
			<p>(3) the project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual's decision not to accept family planning services, (4) the project shall provide family planning acceptors comprehensible information on the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method, (5) the project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits; and, not less than 60 days</p> <p>after the date on which the Administrator of the United States Agency for International Development determines that there has been a violation of the requirements contained in paragraph (1), (2), (3), or (5) of this proviso, or a pattern or practice of violations of the requirements contained in paragraph (4) of this proviso, the Administrator shall submit to the Committee on International Relations and the Committee on Appropriations of the House of</p>	



Appropriations Bill/Provision	FY 98 Enacted	FY 99 President's Budget	FY 99 Enacted	Recommended FY 2000 Language
Foreign Ops Continued			<p><b>Representatives and to the Committee on Foreign Relations and the Committee on Appropriations of the Senate, a report containing a description of such violation and the corrective action taken by the Agency:</b> Provided further, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso: Provided further, That for purposes of this or any other Act authorizing or appropriating funds for foreign operations, export financing, and related programs, the term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options: Provided further, That nothing in this paragraph shall be construed to alter any existing statutory prohibitions against abortion under section 104 of the Foreign Assistance Act of 1961: Provided further, . . .</p>	
Foreign Ops Peace Corps	<p>For expenses necessary to carry out the provisions of the Peace Corps Act (75 Stat. 612), \$222,000,000, including the purchase of not to exceed five passenger motor vehicles for administrative purposes for use outside of the United States, Provided, That none of the funds appropriated under this heading shall be used to pay for abortions: Provided further, That funds appropriated under this heading shall remain available until September 30, 1999</p>	<p>Delete the sentence, "Provided, That none of the funds appropriated under this heading shall be used to pay for abortions" and add footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>	<p>Same as FY 1998 enacted.</p>	<p>Repeat FY 1999 President's Budget, i.e., delete the provision and add the footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>
Treasury/ General Government FEHB Prohibition	<p>Sec. 513. Same as FY 1997 Enacted language. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverage for abortion.</p>	<p>The Administration proposed deleting this provision.</p>	<p>Sec. 509. Same as FY 1998 enacted.</p>	<p>Repeat FY 1999 President's Budget, i.e., delete the provision and add the footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>

Appropriations Bill/Provision	FY 98 Enacted	FY 99 President's Budget	FY 99 Enacted	Recommended FY 2000 Language
<b>Treasury/ General Government</b>  <b>FEHB Prohibition</b>	Sec. 514. Same as FY 1997 Enacted language. The provision of section 518 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.	The Administration proposed deleting this provision.	Sec. 510. Same as FY 1998 enacted.	Repeat FY 1999 President's Budget, i.e., delete the provision and add the footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."
<b>Treasury/General Government</b>			Sec. 656. (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: (1) any of the following religious plans: <ul style="list-style-type: none"> <li>(a) SelectCare</li> <li>(b) Personal CaresHMO</li> <li>(c) Care Choices</li> <li>(d) OSF Health Plans, Inc.</li> <li>(e) Yellowstone Community Health Plan</li> </ul> (2) any existing or future plan, if the plan objects to such coverage on the basis of religious beliefs. (c) 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 contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions. (d) Nothing in this section shall be construed to require coverage of abortion or abortion-related services	Repeat FY 1999 enacted language.

Abortion - budget provisions

ABORTION

cc: El

Status as of: August 5, 1998

**ABORTION-RELATED PROVISIONS IN FY 1999 APPROPRIATIONS BILLS**

**AGRICULTURE/RURAL DEVELOPMENT**

**Status:**

- o Passed the Senate on 7/16/98, 97-2. Passed the House 6/24/98, 373-48.

**Provisions:**

- o FDA Drug Research Restrictions:
  - House. Section 739 prohibits the FDA from using funds for the testing, development, or approval of any drug for the chemical inducement of abortion (the Coburn (R-OK) amendment). This provision would intervene in the drug safety practices of the FDA and place restrictions on scientific research that can protect women's health and offer safe medical choices. (This is a new provision in the FY 1999 bill.)
  - Senate. The Senate bill contains no similar provision.

**COMMERCE/JUSTICE/STATE**

**Status:**

- o Passed the Senate 7/23/98, 99-0. House Full Committee reported the bill 7/15/98.

**Provisions:**

- o Abortions for Federal Prisoners:
  - House. Section 103 of the House bill would prohibit the Department of Justice (DOJ) from funding abortions except in the case of rape or where the life of the mother is endangered. (This provision is current law contained in the FY 1998 Act.) A DeGette (D-CO) amendment to strike the provision was defeated on the House Floor, 148-271.

- Senate. Section 102 of the Senate bill contains the same prohibition as the House bill on the use of DOJ funds regarding abortions.
- o U.N. Arrears/Mexico City:
  - House. The House bill includes the requested arrears payment of \$475 million, but the funds remain unavailable subject to authorization. The authorization conference report contains Mexico City family planning language that prohibits international family planning organizations that receive Federal funding from performing or lobbying for abortions even if these organizations use their own funds. (Arrearage payments contained in the FY 1998 Act were also subject to authorization.)
  - Senate. The Senate bill contains similar language.

## DEFENSE

### Status:

- o Passed the Senate 7/30/98, 97-2. Passed the House 6/24/98, 358-61.

### Provisions:

- o Forced Abortion:
  - House. The House bill does not address this issue.
  - Senate. An amendment to prohibit visas to Chinese officials involved in forced abortions, forced sterilizations, or religious persecution was adopted on the Floor. (This is a new provision.)

## DISTRICT OF COLUMBIA

### Status:

- o The bill was reported by the House Committee on July 30th. The bill was reported by the Senate Committee on July 21st.

**Provisions:**

- o Use of Federal and District Funds:
  - House. Section 132 of the House bill prohibits any of the funds under the Act (Federal or District) from being used for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest. (This is current law contained in the FY 1998 Act.)
  - Senate. Section 129 of the Senate Committee bill contains language identical to the provision of the House bill.

NOTE: The language of the FY 1999 bill is the same language used since FY 1996. In FY 1994 and FY 1995, the restriction on funding for abortions only applied to Federal funds, not local funds.

**FOREIGN OPERATIONS**

**Status:**

- o Senate Full Committee reported the bill 7/21/98. House Subcommittee marked up the bill on 7/15/98.

**Provisions:**

- o "Mexico City" Language:
  - House. As in previous years, it is anticipated that Rep. Chris Smith (R-NJ) will offer an amendment on the House Floor that would prohibit Federal funding to organizations that perform or lobby for or against abortions, even if these organizations use their own funds.

Last year, the President threatened to veto the FY 1998 Foreign Operations bill if it included the "Mexico City" provision. The enacted bill did not include the provision but had a limitation of \$385 million on total population spending from foreign aid accounts and "metering" of obligation of the funds at one-twelfth of the total available per month.

- Senate. The Senate Committee bill has no comparable provision.
- o Other Family Planning:
    - House. In section 518 of the General Provisions, the House bill contains language that bars the use of funds appropriated in the bill for performance of abortion or involuntary sterilization as a method of family planning, or for lobbying for or against abortion. (This is current law contained in the FY 1998 Act.) The Administration supports this language. There is, however, a limitation of \$385 million on family planing funding.
 

In Subcommittee, a Pelosi (R-CA) amendment was adopted, 8-7, restoring language to the bill that has been included for many years, concerning "natural family planning." The amendment restores language that requires family planning organizations that do not offer certain types of family planning services to provide referrals for or information on access to such services to any client seeking such information.
    - Senate. Section 518 of the Senate Committee bill contains language identical to that of section 518 of the House bill. The Senate bill also contains appropriations language (under the "Development Assistance" heading) requiring that not less than \$435 million of Development Assistance funds be spent on family planning.
  - o Peace Corps:
    - House. The Subcommittee bill would bar any Peace Corps funds from being used to pay for abortions. (This provision is current law contained in the FY 1998 Act.)
    - Senate. The Senate Committee bill includes the same language.

## LABOR/HHS/EDUCATION

### Status:

- o House Full Committee reported the bill on July 14th. Senate action expected in September.

### Provisions:

- o Medicare + Choice program:
  - House. A manager's amendment offered by Rep. Porter (R-IL) was adopted in Committee that would prohibit funding for the Medicare + Choice program if HHS excludes health care providers that do not offer abortion services from participating in the Medicare + Choice program. The provision would require the plan to inform enrollees where to obtain information about all Medicare-covered services and would reduce payments to Medicare + Choice program plans not providing these services. (This is a new provision in the FY 1999 bill.)
  - Senate. No action to date.
- o Use of Federal Funds for Embryo Research:
  - House. Funds are prohibited for creation of embryos for research purposes, i.e., research in which a human embryo is destroyed, discarded, or knowingly subjected to risk or injury. (This provision is current law contained in the FY 1998 Act.)
  - Senate. No action to date.
- o Family Planning:
  - House. The House Committee bill requires family planning grantees either to receive written parental consent or provide advance notification to parents before giving contraceptives to minors. Participating clinics are required to certify compliance to HHS. The House bill also requires clinics to follow State laws regarding notification or reporting of child abuse, incest, rape, or other sexual abuse. (The FY

1998 Act did not include provisions regarding parental consent or advance notification. Other provisions regarding compliance certification, and adherence to State laws are current law included in the FY 1998 Act).

- Senate. No action to date.
- o Hyde-Amendment Language:
  - House. Both sections 508 and 509 of the bill include provisions maintaining current law "Hyde" language barring the use of funds in the Act for abortions. New language extends this ban to all trust fund appropriation accounts in the Act. The bill contains language that prohibits the use of Medicaid funding for abortions except in cases of rape, incest, or when the life of the mother is endangered.
  - Senate. No action to date.

## TREASURY/GENERAL GOVERNMENT

### Status:


- o Senate Floor debate on the bill began 7/28/98 but was postponed on 7/30/98 until after the August recess. Passed the House 7/16/98, 218-203.

### Provisions:


- o Federal Employees Health Benefits Program (abortion):
  - House. The House-passed bill includes language (section 508) that prohibits Federal Employees Health Benefits Program (FEHBP) coverage of abortions, with no exceptions. DeLauro (D-CT) amendments to strike the restrictive language were defeated during Committee and Floor consideration. Section 515, the provision of the Committee bill that included exceptions to the restriction (rape, incest, life of the mother), was struck on the House Floor on a point of order for lack of authorization.



- Senate. The Senate bill includes an amendment adopted on the Senate Floor that would reinstate objectionable current law restrictions on FEHBP coverage for abortion services. This amendment also includes a provision allowing for rape, incest, life-of-the-mother exceptions.
- o Federal Employees Health Benefits Program (contraceptives):
  - House. A Lowey (D-NY) amendment (section 624 -- similar to section 516 language of the Committee bill but written only as a funding issue) to require FEHBP insurers to cover prescription contraceptives (with exceptions for certain religiously oriented plans) was adopted on the House Floor, 224-198. A Smith amendment to exclude abortion-inducing chemical contraceptive prescriptions from the Lowey amendment was defeated 198-222.
  - Senate. A Snowe (R-ME)/Reid (D-NV) amendment requiring FEHBP coverage of prescription contraceptives was adopted during Senate Floor consideration, including a second-degree amendment to clarify that nothing in the amendment is to be construed to apply to abortion or abortion-related services.

 Martha Foley  
07/17/98 02:11:27 PM

Record Type: Record

To: Tracey E. Thornton/WHO/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Re: Latest Abortion letter- Please Review ASAP 

I share Tracey's reluctance and have two specific points. First, there is NO amendment pending on international family planning. It will, in all likelihood, be offered when For Ops goes to the floor in about two weeks, but there is currently no such amendment. I think it is odd to criticize something that does not exist. There are also technical problems with the description if what is being referenced is language in the State Dept Conference Rept. and not an amendment. Second, we have the odd situation that the Treasury Postal bill, while it contains Lowey, also bans all abortions - - EVEN those to save the life or in rape and incest cases, due to a point of order made by Obey. (He made the point of order for other political purposes but it struck the exceptions.) Right now, there is a great deal of stirring and crankiness within the House Dem Caucus over whether Dems should have voted yes or no on final passage, in light of the Lowey and Obey issues.

Message Copied To:

- Laura Emmett/WHO/EOP
- Jennifer L. Klein/OPD/EOP
- Cynthia Dailard/OPD/EOP
- Sylvia M. Mathews/OMB/EOP
- Maria Echaveste/WHO/EOP
- Ann F. Lewis/WHO/EOP
- Peter G. Jacoby/WHO/EOP
- audrey t. haynes/ovp @ ovp
- Sean P. Maloney/WHO/EOP
- Phillip Caplan/WHO/EOP
- William P. Marshall/WHO/EOP
- Linda Ricci/OMB/EOP
- Janet Murguia/WHO/EOP
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~~Tel~~  
Abortion - budget provisions

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
LEGISLATIVE AFFAIRS

PHONE: 395-4790 / FAX: 395-3729

TO:

*E. Ann Kagan*

DATE:

FROM:

CHUCK KIEFFER

CHUCK KONIGSBERG

LISA KOUNTOUPES

KATE DONOVAN

NANCY BRANDEL

Comments: Please call Danny Mendelson (55778)  
about the attached language which  
may be added to Treasury posted in  
the House. The language is a bit counter  
intuitive but it is the author's intent to  
prohibit OPM from ~~amend~~ promulgating a FEHBP  
regulation that would have the effect of requiring  
a doctor to describe abortion options to a patient

FAX #:

PAGES:

PHONE NUMBER:

(includes cover page)

*if, in good conscience, the doctor, opposes  
the abortion option.*

*even*

**AMENDMENT TO TREASURY AND GENERAL  
GOVERNMENT APPROPRIATIONS BILL, 1999**

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

1        SEC. \_\_\_\_ No funds appropriated for the Office of  
2 Personnel Management under this Act may be expended  
3 by such Office to promulgate or carry out, in connection  
4 with the health benefits program under chapter 89 of title  
5 5, United States Code, any regulations prohibiting prac-  
6 tices that restrict physician-patient communications about  
7 medically necessary treatment options.

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Daniel N. Mendelson

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06/10/98 10:23:12 AM

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Record Type: Record

To: Sylvia M. Mathews/WHO/EOP

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

Subject:

As we discussed, there is a draft amendment to the treasury/postal bill, which would prohibit OPM from using FY 99 funds for **promulgating and carrying out** regulations prohibiting practices restricting doctors from counseling patients about "medically necessary treatment." Although the language is convoluted, this would basically prevent OPM from requiring that physicians counsel patients about abortion options. It would probably also restrict our ability to direct physicians in HMOs to inform their patients about treatment options in other areas.

The background on this is that on May 21, 1998 OPM published an NPRM prohibiting "gag clauses" in the FEHBP, in order to comply with the presidential directive in the Patient Bill of Rights. The notice and comment period extends to July 20, 1998. This could mean that OPM could promulgate the final rule in FY 1998. However, since the draft amendment also appears to prohibit the use of appropriated funds from enforcing the regulation, it could render the rule without effect in FY 1999.

OPM is aware of the draft amendment, and has been working with Colby's (R-AZ) staff to get their concerns on the table. OPM will also be contacting Hoyer's staff. OPM suspects that Ishtook will be pushing the amendment.

Please call to discuss.

Message Copied To:

---

Bruce D. Long/OMB/EOP  
Chris Fairhall/OMB/EOP  
Christopher C. Jennings/OPD/EOP  
Elena Kagan/OPD/EOP  
Charles E. Kieffer/OMB/EOP  
Gina C. Moers/OMB/EOP

F:\M5\ISTOOK\ISTOOK.037

ED FLYNN

Abulia - budget provisions

H.L.C.

H.P.P.P.

Danny Mendelson  
wanted you to  
review ASAP -  
call him @ 55178

**AMENDMENT TO TREASURY AND GENERAL  
GOVERNMENT APPROPRIATIONS BILL, 1999  
OFFERED BY MR. ISTOOK**

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

- 1       SEC. \_\_\_\_\_. No funds appropriated for the Office of
- 2 Personnel Management under this Act may be expended
- 3 by such Office to promulgate or carry out, in connection
- 4 with the health benefits program under chapter 89 of title
- 5 5, United States Code, any regulations requiring physi-
- 6 cian-patient communications about medically necessary
- 7 treatment options that the provider would not ordinarily
- 8 discuss in their normal course of practice because such
- 9 options are against their professional judgment or ethical,
- 10 moral, or religious beliefs.

ELENA KAGAN  
224-0291

[Federal Register: May 21, 1998 (Volume 63, Number 98)]  
[Proposed Rules]  
[Page 27902-27903]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr2lmy98-39]

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OFFICE OF PERSONNEL MANAGEMENT

48 CFR Part 1609

RIN 3206-AI27

Prohibition of "Gag Clauses" in the Federal Employees Health  
Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rule making.

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SUMMARY: The Office of Personnel Management (OPM) is proposing to amend  
the regulations to prohibit health benefit carriers participating in  
the Federal Employees Health Benefits (FEHB) Program from entering into  
contractual provisions with health care providers or health care  
workers that would include a provision for incentive payments as an  
inducement to reduce or limit communication with, or the delivery of  
health care services to, FEHB enrollees. The rule is intended to ensure  
providers' and health care workers' ability to communicate with, and  
advise patients of, any medically necessary treatment options.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments should be directed to Abby L. Block, Chief,  
Insurance Policy and Information Division, OPM, Room 3425, 1900 E  
Street, NW., Washington, DC 20415-0001.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, (202) 606-0004.

SUPPLEMENTARY INFORMATION: You may submit comments and data by sending  
electronic mail (E-mail) to: MWKASZYN@OPM.Gov.

On February 20, 1998, the President signed an Executive Memorandum  
directing the Office of Personnel Management (OPM) to take the  
necessary steps to bring the FEHB Program into contractual compliance  
with the Consumer (Patient) Bill of Rights and Responsibilities by no  
later than year end 1999. The Memorandum specifically directed OPM to  
propose regulations within 90 days to prohibit practices that restrict  
physician-patient communications about medically necessary treatment  
options. This action will prohibit FEHB participating carriers

[[Page 27903]]

from placing incentives in contracts with health care providers or  
health care workers that would limit providers' or health care workers'  
ability to discuss medically necessary treatment options with federal  
enrollees. We are aware that a proposal to enact a "gag clause"  
regulation raises three broad areas of concern regarding: (1) potential  
impairment of a health plan's ability to review utilization against  
appropriate treatment protocols, (2) potential conflict with providers'  
(including carriers') ethical or moral beliefs, and (3) impact on  
providers' or workers' ability to discuss non-covered or high cost

treatment options. This regulation is not intended to limit a health plan's ability to perform utilization review nor is it intended to cause providers or health care workers to discuss treatment options that they would not ordinarily discuss in their normal course of practice because such options are against their professional judgement and/or ethical, moral or religious beliefs. The regulation will ensure that providers or health care workers have the ability to communicate fully and openly with patients regarding medically necessary treatment options regardless of cost or whether the benefits are covered by their health plan. Simply stated, the amended regulation is intended to remove any contractual impediment to a candid and open physician-patient relationship.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health insurance carriers under the Federal Employees Health Benefits Program.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### List of Subjects in 48 CFR Part 1609

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

Office of Personnel Management,  
Janice R. Lachance,  
Director.

For the reasons set forth in the preamble OPM proposes to amend 48 CFR Part 1609 as follows:

#### Subpart 1609.70--Minimum Standards for Health Benefit Carriers

1. The authority citation for 48 CFR Part 1609 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In Sec. 1609.7001 new paragraph (c) (7) is added to read as follows:

#### Sec. 1609.7001 Minimum Standards for Health Benefits Carriers

\* \* \* \* \*


(c) \* \* \*

(7) Entering into contracts with providers or health care workers that include incentive plans that directly or indirectly create an inducement to limit communication of, or reduce, medically necessary services to any individual covered under the FEHB Program.

[FR Doc. 98-13792 Filed 5-19-98; 2:20 pm]  
BILLING CODE 6325-01-P



Abortion - budget provisions

 Elena Kagan  
01/07/98 04:21:02 PM

Record Type: Record

To: Laura Emmett/WHO/EOP  
cc:  
Subject: Treatment of Abortion Provisions in the President's Budget

please print

----- Forwarded by Elena Kagan/OPD/EOP on 01/07/98 04:21 PM -----

**JOSHUA  
GOTBAUM**  
01/07/98 08:38:00 AM



Record Type: Non-Record

To: Elena Kagan/OPD/EOP, Jennifer L. Klein/OPD/EOP, FOLEY\_M @ A1@CD@LNGTWY, Christopher C. Jennings/OPD/EOP  
cc: Ann Kendall/OMB/EOP, Barry T. Clendenin/OMB/EOP, Thomas Reilly/OMB/EOP, Jill M. Pizzuto/OMB/EOP  
Subject: Treatment of Abortion Provisions in the President's Budget

Attached is a comprehensive table on abortion provisions in appropriations language that will require policy decisions in order to print the FY 1999 Budget Appendix. Traditionally, the Budget shows the prior year's (i.e., FY 1998 enacted) appropriations language, brackets language proposed for deletion, and italicizes any new or revised language.

**One issue we need to consider is whether, in light of recent history, again to propose deletion of the AID abortion language in the Foreign Ops bill (see page 4 of the file below). AID is now suggesting we not do so. We would appreciate your views, either directly to me or to Ann Kendall of the Health Division staff (who prepared the table).**

Due to the FY 1999 Budget print schedule, we are requesting your views/comments on these provisions **by noon, Friday, January 9th**. Please let me know by then whether or not you agree with the recommendations in the attached file or if you think we need to meet on any of these provisions.

Thanks.

[Please note: the file labeled "abortion.wpd" is Corel WordPerfect 7, legal size. In case you have problems with your Corel7, I have attached the file (abort6.wpd) as a WordPerfect6.1, also legal size.]

**“Side-by-Side” Comparison for Abortion Provisions**

Appropriations Bill/Provision.	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
DC  Ban on Use of Funds for Abortion	Sec. 129. No funds appropriated under this Act shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.	The Administration proposed deleting this provision and added a footnote that the Administration would work with Congress on this issue.	Sec. 132. Repeated FY 1997 Enacted language.	Repeat the FY 1998 Budget, i.e., the Administration proposes to delete this provision and add the footnote that the Administration will work with Congress on this issue.
C/J/S  Ban on Use of Justice Funds for Abortion	Sec. 103. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape: Provided, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.	The Administration proposed deleting this provision and added a footnote that the Administration would work with Congress to address this issue.	Sec. 103. Repeated FY 1997 Enacted language	Repeat the FY 1998 Budget i.e., the Administration proposes to delete this provision and add a footnote that the Administration will work with Congress on this issue.
C/J/S  Ban on the Use of Justice Funds for Performing Abortion	Sec. 104. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of any abortion.	Repeat same provision as enacted in FY 1997.	Sec. 104. Repeated FY 1997 Enacted language	Repeat FY 1998 Enacted Language.
C/J/S  Bureau of Prisons duty to provide escort services for female inmates seeking a privately funded abortion.	Sec. 105. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: Provided, That nothing in this section in any way diminishes the effect of section 104 intended to address the philosophical beliefs of individuals employees of the Bureau of Prisons.	Repeat same provision as enacted in FY 1997.	Sec. 105. Repeated FY 1997 Enacted language	Repeat FY 1998 Enacted Language.

<b>Appropriations Bill/Provision</b>	<b>FY 97 Enacted</b>	<b>FY 98 President's Budget</b>	<b>FY 98 Enacted</b>	<b>Recommended FY 99 Language</b>
<b>L/HHS/Ed Hyde Amendment</b>	Sec. 508. None of the funds appropriated under this Act shall be expended for any abortion except when it is made known to the Federal entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest.	Proposed deletion with a footnote that the Administration will work with Congress to address this issue.	Sec. 509. (a) None of the funds appropriated under this Act shall be expended for any abortion. (b) None of the funds appropriated under this Act shall be expended for health benefits coverage that includes coverage of abortion. (c) The term "health benefits coverage" means the package of services, covered by a managed care provider or organization pursuant to a contract or other arrangement.	Repeat FY 1998 Budget, i.e., propose deletion and add footnote: "The Administration proposes to delete this footnote and will work with Congress to address this issue."

<b>Appropriations Bill/Provision</b>	<b>FY 97 Enacted</b>	<b>FY 98 President's Budget</b>	<b>FY 98 Enacted</b>	<b>Recommended FY 99 Language</b>
<b>L/HHS/Ed  Hyde Amendment</b>			<p>(New Provision) Sec. 510. (a) The limitations established in the preceding section shall not apply to an abortion-(1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. (b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds). (c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).</p>	<p>Delete provision and add footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
Foreign Ops	<p>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.</p>	Repeat FY 1997 Enacted.	Sec. 518. Same as FY 1997 Enacted language.	Repeat FY 1998 Enacted language.
Foreign Ops	<p>Sec. 518A. Authorization for Population Planning. This section (too lengthy to print here) limited population and family planning funding to \$385 million, required monthly apportioning for this funding, did not allow obligations to begin until July 1997, authorized a Presidential certification and a Congressional vote in February to allow obligations to begin in March rather than July (the Administration, narrowly won the vote).</p>	The Administration proposed to delete this provision.	Sec. 592. (a) Not to exceed \$385,000,000 of the funds appropriated in title II of this Act may be available for population planning activities or other population assistance. (b) Such funds may be apportioned only on a monthly basis, and such monthly apportionments may not exceed 8.34 percent of the total available for such activities.	The Administration proposes to delete this provision.

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
Foreign Ops	<p>Agency for International Development Appropriation Language:            For necessary expenses to carry out ... Provided further, That of the funds appropriated under title II of this Act that are administered by the Agency for International Development and made available for family planning assistance, not less than 65 percent shall be made available directly to the agency's central Office of Population and shall be programmed by that office for family planning activities: Provided further, ... Provided further, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: Provided further, That none of the funds made available under this heading may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions; and that in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services: Provided further, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso: Provided further, That for purposes of this or any other Act authorizing or appropriating funds for foreign operations, export financing, and related programs, the term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy</p>	<p>The Administration proposed to delete this language.</p>	<p>"For necessary expenses to carry out ... Provided further, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: Provided further, That none of the funds made available under this heading may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions; and that in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services; Provided further, That in awarding grants for natural family planning under section '04 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and additionally, all such applicants shall comply with the requirements of the previous proviso: Provided further, That for purposes of this or any other Act authorizing or appropriations funds for foreign operations, export financing, and</p>	<p>The Administration does not propose to delete this language in the FY 1999 Budget.</p>

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
Foreign Ops	Assistance for the New Independent States of the Former Soviet Union: (r) Of the funds appropriated under this heading, not less than \$15,000,000 should be available only for a family planning program for the New Independent States of the former Soviet Union comparable to the family planning program currently administered by the Agency for International Development in the Central Asian Republics and focusing on population assistance which provides an alternative to abortion.	The Administration proposed to delete this language.	Deleted.	
Treasury/ General Government  FEHB Prohibition	Sec.518. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverage for abortion.	The Administration proposed deleting this provision.	Sec. 513. Same as FY 1997 Enacted language.	The Administration proposes deleting this provision.
Treasury/ General Government  FEHB Prohibition	Sec. 519. The provision of section 518 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.	The Administration proposed deleting this provision.	Sec. 514. Same as FY 1997 Enacted language.	The Administration proposes deleting this provision.
DoD	None		None	

**JOSHUA  
GOTBAUM**  
01/12/98 11:11:05 PM



Record Type: Non-Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Jennifer L. Klein/OPD/EOP  
cc: See the distribution list at the bottom of this message  
Subject: URGENT: PROPOSED ADMINISTRATION POSITION ON DOMESTIC/INTERNATIONAL  
ABORTION/FAMILY PLANNING FOR FY99 BUDGET

The FY99 Budget will include Administration legislative language on several sensitive issues. One is abortion and family planning.

- **In domestic programs, the Administration continues to oppose restrictions on abortion, even where the Congress has legislated them.**
- **In international programs, US AID now proposes to accept the limitations enacted last year, arguing that opposing them is not worth the reaction it will generate.**

Martha Foley reports that she is comfortable with this approach for international programs. **If you are uncomfortable with this approach, please contact Josh Gotbaum at 5-9188 no later than 2:00 pm Tuesday.** Unless we hear from you otherwise, we will include both in the appropriations language of the FY99 President's Budget.



abortion.wp This is the comprehensive abortion side by side table. It is a legal size, Corel 7 document.

Message Copied To:

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Christopher C. Jennings/OPD/EOP  
Richard J. Turman/OMB/EOP  
Thomas Reilly/OMB/EOP  
Ann Kendrall/OMB/EOP  
Barbara Chow/OMB/EOP



**“Side-by-Side” Comparison for Abortion Provisions**

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
<b>DC Ban on Use of Funds for Abortion</b>	Sec. 129. No funds appropriated under this Act shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.	The Administration proposed deleting this provision and added a footnote that the Administration would work with Congress on this issue.	Sec. 132. Repeated FY 1997 Enacted language.	Repeat the FY 1998 Budget, i.e., the Administration proposes to delete this provision and add the footnote that the Administration will work with Congress on this issue.
<b>C/J/S Ban on Use of Justice Funds for Abortion</b>	Sec. 103. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape: Provided, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.	The Administration proposed deleting this provision and added a footnote that the Administration would work with Congress to address this issue.	Sec. 103. Repeated FY 1997 Enacted language	Repeat the FY 1998 Budget i.e., the Administration proposes to delete this provision and add a footnote that the Administration will work with Congress on this issue.
<b>C/J/S Ban on the Use of Justice Funds for Performing Abortion</b>	Sec. 104. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of any abortion.	Repeat same provision as enacted in FY 1997.	Sec. 104. Repeated FY 1997 Enacted language	Repeat FY 1998 Enacted Language.
<b>C/J/S Bureau of Prisons duty to provide escort services for female inmates seeking a privately funded abortion.</b>	Sec. 105. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: Provided, That nothing in this section in any way diminishes the effect of section 104 intended to address the philosophical beliefs of individuals employees of the Bureau of Prisons.	Repeat same provision as enacted in FY 1997.	Sec. 105. Repeated FY 1997 Enacted language	Repeat FY 1998 Enacted Language.

Abortion -  
budget

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
L/HHS/Ed Hyde Amendment	Sec. 508. None of the funds appropriated under this Act shall be expended for any abortion except when it is made known to the Federal entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest.	Proposed deletion with a footnote that the Administration will work with Congress to address this issue.	Sec. 509. (a) None of the funds appropriated under this Act shall be expended for any abortion. (b) None of the funds appropriated under this Act shall be expended for health benefits coverage that includes coverage of abortion. (c) The term "health benefits coverage" means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.	Repeat FY 1998 Budget, i.e., propose deletion and add footnote: "The Administration proposes to delete this footnote and will work with Congress to address this issue."

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
L/HHS/Ed Hyde Amendment			<p>(New Provision)            Sec. 510. (a) The limitations established in the preceding section shall not apply to an abortion-(1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. (b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds). (c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).</p>	Delete provision and add footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
Foreign Ops	<p>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.</p>	Repeat FY 1997 Enacted.	Sec. 518. Same as FY 1997 Enacted language.	Repeat FY 1998 Enacted language.
Foreign Ops	<p>Sec. 518A. Authorization for Population Planning. This section (too lengthy to print here) limited population and family planning funding to \$385 million, required monthly apportioning for this funding, did not allow obligations to begin until July 1997, authorized a Presidential certification and a Congressional vote in February to allow obligations to begin in March rather than July (the Administration, narrowly won the vote).</p>	The Administration proposed to delete this provision.	Sec. 592. (a) Not to exceed \$385,000,000 of the funds appropriated in title II of this Act may be available for population planning activities or other population assistance. (b) Such funds may be apportioned only on a monthly basis, and such monthly apportionments may not exceed 8.34 percent of the total available for such activities.	The Administration proposes to delete this provision.

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
Foreign Ops	<p>Agency for International Development Appropriation Language:            For necessary expenses to carry out ... Provided further, That of the funds appropriated under title II of this Act that are administered by the Agency for International Development and made available for family planning assistance, not less than 65 percent shall be made available directly to the agency's central Office of Population and shall be programmed by that office for family planning activities: Provided further, ... Provided further, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: Provided further, That none of the funds made available under this heading may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions; and that in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services: Provided further, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso: Provided further, That for purposes of this or any other Act authorizing or appropriating funds for foreign operations, export financing, and related programs, the term "motivate", as it relates to family planning</p>	The Administration proposed to delete this language.	<p>"For necessary expenses to carry out ... Provided further, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: Provided further, That none of the funds made available under this heading may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions; and that in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services; Provided further, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and</p>	The Administration does not propose to delete this language in the FY 1999 Budget.

Appropriations Bill/Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
<b>Foreign Ops</b>	Assistance for the New Independent States of the Former Soviet Union: (r) Of the funds appropriated under this heading, not less than \$15,000,000 should be available only for a family planning program for the New Independent States of the former Soviet Union comparable to the family planning program currently administered by the Agency for International Development in the Central Asian Republics and focusing on population assistance which provides an alternative to abortion.	The Administration proposed to delete this language.	Deleted.	
<b>Treasury/ General Government</b> <b>FEHB Prohibition</b>	Sec.518. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverage for abortion.	The Administration proposed deleting this provision.	Sec. 513. Same as FY 1997 Enacted language.	The Administration proposes deleting this provision.
<b>Treasury/ General Government</b> <b>FEHB Prohibition</b>	Sec. 519. The provision of section 518 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.	The Administration proposed deleting this provision.	Sec. 514. Same as FY 1997 Enacted language.	The Administration proposes deleting this provision.
<b>DoD</b>	None		None	

Drugs - Needle exchange  
and  
Monk - budget  
and  
Cloning

CLICK ON THE SECTIONS BELOW FOR BACKGROUND ON NEEDLES AND CLONING

## NEEDLE EXCHANGE

### Statutory Restrictions on the Use of Federal Funds for NEPs:

Since 1988, US Appropriations or Authorization law has placed a conditional prohibition on the use of Federal funds for the operation of needle exchange programs.

Currently, there are three statutory restrictions on the use of Federal funds for the operation of needle exchange programs:

**The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act of 1992**, prohibits the use of Substance Abuse and Mental Health Services Administration Block grant funds for needle exchange programs unless the Surgeon General determines that they are effective in reducing the spread of HIV and the use of illegal drugs. The statute does, however, allow Federal research and evaluation of existing needle exchange programs.

**Section 422 of the 1996 Ryan White CARE Act** reauthorization places a flat prohibition on the use of Ryan White funds for needle exchange.

**Sections 505 & 506 of the FY 1998 L/HHS / Ed Appropriations bill** read:

*505: Notwithstanding any other provision of this Act, no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.*

*506: Section 505 is subject to the condition that after March 31, 1998, a program for exchanging such needles and syringes (referred to in this section as an "exchange project") may be carried out in a community if (1) the Secretary of Health and Human Services determines that exchange projects are effective in preventing the spread of HIV and do not encourage the use of illegal drugs; and (2) the project is operated in accordance with criteria established by such Secretary for preventing the spread of HIV and for ensuring that the project does not encourage the use of illegal drugs.*

This limitation has been in Labor/ H appropriations language in some form since 1990. In the FY 1998 Appropriations bill, the Appropriators split the provision into two provisions and added the six-month moratorium on certification and the language requiring that the exchange programs must be operated in accordance with criteria established by the Secretary.

In the past, the Administration has worked to avoid an outright ban on the use of Federal funds for NEPs (like the current Section 505) and maintain the authority of the Secretary to certify that Federal funds can be used for such programs.

### RECOMMENDATION:

There have been several studies done on the efficacy of NEPs in recent years, and there is current data available to meet the first requirement in this language (e.g. that NEPs are successful in preventing the spread of HIV), but HHS maintains that the data on the second provision (that NEPs do not encourage the use of illegal drugs) is still inconclusive. HHS is expecting the results of additional studies on NEPs in the coming year and wants to maintain the Secretary's authority to continue to evaluate the evolving scientific data on this issue and to certify that Federal funds can

be used for NEPs.

To maintain maximum flexibility for the Secretary, we recommend bracketing (deleting) Section 506 and modifying Section 505 by re-proposing the language that was proposed in the FY 1998 Budget on this issue:

*505: Notwithstanding any other provision of this Act, no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug unless the Surgeon General determines that such programs are effective in preventing the spread of HIV and do not encourage the use of illegal drugs.*

[Note: The words "or syringes" were added in FY 1998 enacted language -- they were not proposed in the 98 Budget. Our recommendation would repeat "or syringes" in the FY 1999 Budget.]

**ALTERNATE RECOMMENDATION:**

In addition to bracketing section 506, we could add a footnote similar to that placed on the Hyde language deletions: *The Administration proposes to delete this provision and will work with Congress to address this issue.*

Also, rather than repeat the language in the FY 1998 Budget that gave the authority to certify NEPs to the Surgeon General to the Secretary of Health and Human Services, we could maintain the language that was made by Congress in the FY 1997 Labor/HHS/Ed Appropriations bill that gave such authority to the Secretary of Health and Human Services. This may be something the Administration wants to consider given the upcoming confirmation hearings for Surgeon General nominee David Satcher.

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**Background on Human Embryos/Cloning**

Both the House and Senate L/HHS bills for FY 1998 extended the FY 1996 and FY 1997 appropriations Act ban on using Federal funds on human embryo research, and modified it to include research involving "human diploid cells." NIH staff advise that in practice, this extension does not differ from the original ban on human embryo research and would have no effect on NIH's present research efforts. The words "human diploid cells" were apparently added in an attempt to address cloning.

A diploid cell is produced after fertilization occurs in humans -- it is one stage of a developing embryo. Diploid cells could theoretically be produced via somatic cell nuclear transfer, which is more commonly referred to as "cloning." The FY 1996 and FY 1997 L/HHS Acts barred Federal funding for the creation of human embryos for research purposes or performing research on human embryos that subjects them to significant risk. The prohibition on creating embryos for research purposes would, de facto, prohibit creating a human embryo through cloning technology. This is why including diploid cells in the embryo research ban does not differ practically from banning the creation of human embryos.

The FY 1998 Budget proposed to delete the embryo research ban, stating that the Administration "does not support addressing this issue in legislation." In December 1994, the President had issued a statement barring the use of Federal funds for creating human embryos for research purposes. On June 9, 1997, the President announced that he was sending proposed legislation to the Congress, the "Cloning Prohibition Act of 1997," which would prohibit any attempt to create a



human being using somatic cell nuclear transfer. The Administration did not oppose the language in the FY 1998 bill in its letters or SAP's.

**Observations:** Last year's budget's proposal to delete this provision came before the cloning debate of last spring (e.g., Dolly).

Given the President's proposed legislation on prohibiting cloning, and the fact that SAP's did not oppose the language during the FY 1998 appropriations process, the Administration may not want to bracket the language again, even with the footnote that says the Administration does not support addressing this issue in legislation.

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**L/HHS/Ed. General Provisions for FY 1999 Budget  
"Side-by-Side" Comparison for Selected Provisions  
Titles II and V of L/HHS Bill**

<b>FY 1998 Enacted Section No./ Provision</b>	<b>FY 97 Enacted</b>	<b>FY 98 President's Budget</b>	<b>FY 98 Enacted</b>	<b>Recommended FY 99 Language</b>
Sec. 505. Needle Exchange	SEC. 505. Notwithstanding any other provision of this Act, no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug unless the Secretary of Health and Human Services determines that such programs are effective in preventing the spread of HIV and do not encourage the use of illegal drugs.	SEC. 505. Proposed <sup>1</sup> transfer of authority from the "Secretary of Health and Human Services" to the "Surgeon General". ▼	Sec. 505. Notwithstanding any other provision of this Act, no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.	<p><b>OMB Staff:</b> Repeat FY 98 Budget language.</p> <p><b>HHS:</b> No position yet.</p> <p>Alternatives: (1) Give authority to Secretary as opposed to Surgeon General; (2) use footnote approach, i.e., delete provision and say the Administration will work with Congress to resolve.</p>
Sec. 506. Condition on Needle Exchange			Sec. 506. Section 505 is subject to the condition that after March 31, 1998, a program for exchanging such needles and syringes for used hypodermic needles and syringes (referred to in this section as an "exchange project") may be carried out in a community if - (1) the Secretary of Health and Human Services determines that exchange projects are effective in preventing the spread of HIV and do not encourage the use of illegal drugs; and (2) the project is operated in accordance with criteria established by such Secretary for preventing the spread of HIV and for ensuring that the project does not encourage the use of illegal drugs.	<p><b>OMB Staff:</b> Delete.</p> <p>Alternative: Footnote saying we will work with Congress.</p> <p><b>HHS:</b> No position yet.</p>

FY 1998 Enacted Section No./ Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
Sec. 513. Use of funds for embryo research--limitations	SEC. 512. (a) None of the funds made available in this Act may be used for— (1) the creation of a human embryo or embryos for research purposes; or (2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)). (b) For purposes of this section, the term “human embryo or embryos” include any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes.	Proposed deletion with a footnote that states that the Administration does not support addressing this issue in legislation.	Sec. 513. Same as FY 97 enacted except end of last sentence changed to “...or more human gametes or human diploid cells.”	<b>OMB Staff and HHS:</b> Repeat FY 98 Budget, i.e., propose deletion with the same footnote: “The Administration proposes to delete this provision and does not support addressing this issue in legislation.”
Sec. 509. Appropriation limitations for abortion procedures (Hyde language)	SEC. 508. None of the funds appropriated under this Act shall be expended for any abortion except when it is made known to the Federal entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest.	Proposed deletion with footnote that the Administration will work with Congress to address this issue.	Sec. 509. (a) None of the funds appropriated under this Act shall be expended for any abortion. (b) None of the funds appropriated under this Act shall be expended for health benefits coverage that includes coverage of abortion. (c) The term “health benefits coverage” means the package of services covered by managed care provider or organization pursuant to a contract or other arrangement.	<b>OMB Staff and HHS:</b> Repeat FY 98 Budget, i.e., propose deletion, and add footnote: “The Administration proposes to delete this provision and will work with Congress to address this issue.”

FY 1998 Enacted Section No./ Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
Sec. 510. Appropriation limitations for abortion procedures (Hyde language)			<p>(New provision)</p> <p>Sec. 510. (a) The limitations established in the preceding section shall not apply to an abortion - (1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. (b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds). Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).</p>	<p><b>OMB Staff and HHS:</b> Delete provision and add footnote: "The Administration proposes to delete this provision and will work with Congress to address this issue."</p>

FY 1998 Enacted Section No./ Provision	FY 97 Enacted	FY 98 President's Budget	FY 98 Enacted	Recommended FY 99 Language
Sec. 212. Appropriation of funds for entities under title X of the Public Health Service Act	Sec. 518. 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.	SEC. 513 . Same as FY 97 Enacted.	Sec. 212. 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.	OMB Staff: Repeat FY 98 enacted.  HHS: No position yet.
Sec. 514. Use of funds for promotions of controlled substances-- limitations	SEC. 513. (a) LIMITATION ON USE OF FUNDS FOR PROMOTION OF LEGALIZATION OF CONTROLLED SUBSTANCES.—None of the funds made available in this Act may be used for any activity when it is made known to the Federal official having authority to obligate or expend such funds that the activity promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established by section 202 of the Controlled Substances Act (21 U.S.C. 812). (b) EXCEPTIONS.—The limitation in subsection (a) shall not apply when it is made known to the Federal official having authority to obligate or expend such funds that there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that Federally-sponsored clinical trials are being conducted to determine therapeutic advantage.	SEC. 511. Same as FY 97 enacted.	Sec. 514. Same as FY 97 enacted and FY 98 President's Budget.	OMB Staff: Repeat FY 98 Budget language. Same as enacted.

Abortion - budget provisions

Barbara E. Washington

08/08/97 05:00:53 PM

Record Type: Record

To: Jennifer L. Klein/OPD/EOP

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

Subject: Revised Abortion Language for the L/HHS SAP - Clearance Requested

The language below is draft language that could be included in the Labor/HHS Appropriations Bill SAP in response to the Lowey/Hyde compromise abortion language. The compromise amendment was published in the July 31 Congressional Record.

The draft language states that we are pleased that the amendment includes clarification that the limits on managed care do not affect the ability of states or private people from using their own funds for abortion services. The draft language still includes the Administration's opposition to limiting the range of conditions under which a woman's health would permit access to abortion.

If you have any problems with the draft language or suggested edits, please call Josh Gotbaum.

Thanks

**Language Proposed for inclusion in the L/HHS SAP:**

**"An amendment has been made in order that would include a prohibition on the purchase of health benefit coverage that includes abortion. The President believes that abortion should be safe, legal, and rare. However, the amendment would not only maintain, but further limit the range of conditions under which a woman's health would permit access to abortion. Furthermore, it would require a physician to make a legal determination that these conditions have been met. The Administration opposes this attempt to constrain further the availability of abortion services and strongly urges the House not to adopt the amendment. The Administration believes that it is important that any legislation in this area be clear that limitations on the use of Federal funds to provide abortion services under managed care plans do 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 other coverage paid for by state or private funds. We are pleased that the amendment includes this clarification."**

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## RECONCILIATION PROVISIONS RELATING TO ABORTION

### Child Health

- ◆ House: [Section 2104(b)(9)] Payment shall not be made to States to pay for any abortion or to assist in the purchase, (in whole or in part,) of health benefit coverage that includes abortion. Exceptions are provided for pregnancy that is result of an act of rape or incest or in the case of a woman who suffers from a physical disorder, illness or injury that would place the woman in danger of death. (Note: Same language as Istook rider to appropriations bill)
- ◆ Senate: [Section 2106(d)] Health insurance coverage provided with child health funds may include coverage of abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

### Medicaid Managed Care

- ◆ Senate: [Section 1949(a)(2)] States can impose intermediate sanctions against a managed care entity if the entity fails to provide medically necessary services that are required to be provided to an enrollee. The term "medically necessary" cannot be construed as requiring an abortion be performed for any individual, except if necessary to save the life of the mother or if a pregnancy is the result of an act of rape or incest.

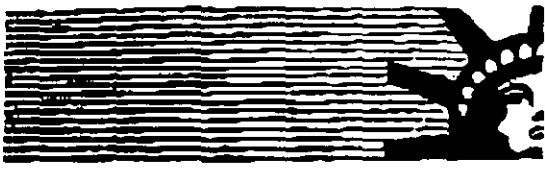
### Medicaid - Conscience clause

- ◆ House: [Section 3463] HMOs cannot prohibit or otherwise restrict a health care professional from advising patients on treatment regardless of whether benefits are covered under the plan. An exception is provided for an HMO that (1) objects to the provision of such service on moral or religious grounds; and (2) makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to the enrollees within 90 days after the date that the plan's benefit package is modified or changed.

### Medicare - Conscience clause

- ◆ House: [Ways and Means - Section 10001; Commerce - Section 4001] HMOs cannot prohibit or otherwise restrict a health care professional from advising patients on treatment regardless of whether benefits are covered under the plan. An exception is provided for an HMO that (1) objects to the provision of such service on moral or religious grounds; and (2) makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to the enrollees within 90 days after the date that the plan's benefit package is modified or changed.

**NARAL Promoting Reproductive Choices**



**BUDGET RECONCILIATION  
CONSCIENCE CLAUSE TALKING POINTS**

- It is often appropriate for legislation to include a conscience clause to allow individuals to decline to provide health services because of personal religious beliefs or moral convictions.
- If an individual opts-out of providing a service to which he or she is religiously or morally opposed, then health care personnel must make an appropriate referral for the requested care. A conscience clause must not operate to deny access to abortion, family planning, sterilization, or information about these services.
- A health plan does not have a "conscience." Extending a conscience clause to health plans would be a major departure from current law and a major step backward for women. Current federal conscience clause language applies to individuals and institutions with religious or moral objections to performing certain reproductive health services, not health plans or health insurers.
- The conscience clause provisions included in the House-passed FY 98 Budget Reconciliation package – in the Commerce Committee-passed bill and in the Ways and Means-passed bill – are the most far-reaching conscience clauses ever considered by Congress, surpassing current law.

In 1973, Congress enacted an amendment proposed by then-Senator Frank Church (D-ID), that was added to the Health Programs Extension Act covering programs under the Public Health Services Act, Community Mental Health Centers Act and the Development Disabilities Services and Facilities Construction Act. The Church Amendment states that no individual or entity has to perform or assist in the performance of an abortion or sterilization procedure or make facilities available for an abortion or sterilization if it is contrary to the religious beliefs or moral convictions of an individual or entity. An amendment was added a year later that allows individuals involved in any program funded by the Department of Health, Education and Welfare (DHEW), now the Department of Health and Human Services (DHHS), to opt out of providing medical services to which he or she is religiously or morally opposed.

- No "gag rule" on counseling or referral for abortion, family planning, or other reproductive health services is acceptable. It was not acceptable during the Reagan and Bush years when there was an effort to put a "gag rule" in the Title X family planning program, and is not acceptable now.

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- Medicaid guarantees that patients have coverage for a basic benefits package, including coverage for reproductive health services. If, for example, an HMO does not want to provide family planning information or services because of religious beliefs, at a minimum the state has a responsibility to make sure that the patient has access to the requested information or services.

NARAL 7/11/97

**NARAL Promoting Reproductive Choices**



**CONSCIENCE CLAUSES IN CURRENT LAW**

Recently the House adopted two "conscience clauses" that allow individuals and managed care plans to opt out of providing certain medical information and services. These provisions were added to the Budget Reconciliation bill and the Department of Defense authorization bill (see attached fact sheets). There was virtually no debate to reach the appropriate balance that would protect both the needs of the individual who is morally opposed to providing certain medical services and the right of patients to receive the medical services they need.

It is often appropriate to allow individual providers to decline to provide certain medical services because of their personal religious beliefs or moral convictions. However, if an individual opts out of providing a service to which he or she is religiously or morally opposed, then health care personnel must make an appropriate referral for the requested care. A conscience clause must not operate to deny access to health care services.

Attached is the language of conscience clauses that are in current federal law. The first conscience clause, now known as the Church Amendment, was enacted in 1973 and has been the model for subsequent provisions in federal law. The Church Amendment states that no individual or entity (such as a religious hospital) has to perform or assist in the performance of a sterilization procedure or abortion or make facilities available for these procedures if doing so is contrary to the religious beliefs or moral convictions of an individual. It also protects against discrimination in employment against any individual who has assisted or refused to assist in an abortion. This language originally applied to programs funded under the Public Health Service Act. A year later an amendment was added to include individuals involved in any program funded by DHEW (now DHHS).

Existing conscience clauses in current law apply to individuals and in the case of the Church Amendment and in the Civil Rights Restoration Act also apply to entities. But nowhere in current law are conscience clauses extended to plans or institutions acting as insurers.

Additionally, the scope of the conscience clauses is limited to abortion services except in the case of the Church amendment, which also covers sterilization.

**CURRENT LAW**

**Church (D-ID) Amendment to the Health Programs Extension Act of 1973, Pub. L. No. 93-45. (Enacted June 18, 1973)**

**SEC. 401 (b).** The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act by any individual or entity does not authorize any court or any public official or other

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public authority to require

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

(2) such entity to -

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

(c)(1) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act after the date of enactment of this Act may -

(A) discriminate in the employment, promotion, or termination of the employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortion.

**The Church Amendment was amended by the National Research Act of 1974, Pub. L. No. 93-348. (Enacted July 12, 1974)**

**SEC. 214 (a)(2).** Section 401 of such Act is amended by adding the following new subsection: (c)(2) No entity which receives after the date of enactment of this paragraph a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health, Education, and Welfare may -

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance or assistance in the performance of such service or activity on the grounds that his performance or assistance in the performance of such activity would be contrary to his religious beliefs or moral convictions respecting to any such service or activity.

(b) Section 401 of such Act is amended by adding at the end of the following new subsection: (d) No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health, Education, and Welfare if his performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.

**Danforth (R-MO) Amendment to the Civil Rights Restoration Act, Pub. L. No. 100-259. (Enacted March 22, 1988)**

**SEC. 909.** Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to any abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

**Commerce, Justice, State Appropriations from FY 97 Omnibus Appropriations, Pub. L. No. 104-208. (First Enacted, October 1, 1988 - Current Language Enacted September 30, 1996)**

**SEC. 103.** None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term or in the case of rape: Provided, That should

this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

SEC. 104. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion.

SEC. 105. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: Provided, That nothing in this section in any way diminishes the effect of section 104 intended to address the philosophical beliefs of individual employees of the Bureau of Prisons.

**ACGME (Accreditation Council on Graduate Medical Education), Pub. L. No. 104-134. (Amendment to the permanent authorizing statute Enacted April 25, 1996)**

SEC. 245 (a) In general — The Federal Government and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that

- (1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions or to provide referrals for such training or such abortions;
- (2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or
- (3) the entity attends (or attended) a post-graduate physician training program or any other program of training in the health professions that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

(b) Accreditation of Postgraduate Physician Training Programs.--

(1) In General — In determining whether to grant a legal status to a health care entity (including a license or certificate), or to provide such entity with financial assistance, services or other benefits, the Federal Government or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standards that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortion or make arrangements for such training regardless of whether such standard provides exceptions or exemptions. The government involved shall formulate such regulation or other mechanisms or enter into such agreements with accrediting agencies, as are necessary to comply with this subsection.

(2) Rules of Construction --

(A) In General - With respect to subclauses (I) and (II) of section 705 (a) (2) (B) (I) (relating to a program of insured loans for training in the health professions), the requirements in such subclauses regarding accredited internship or residency programs are subject to paragraph (1) of this subsection.

(B) Exceptions—This section shall not--

- (i) prevent any health care entity from voluntarily electing to be trained, to train or to arrange for training in the performance of, to perform or to make referrals for induced abortions or
- (ii) prevent an accrediting agency or Federal, State or local government from establishing standards of medical competency applicable only to those individuals who have voluntarily elected to perform abortions.

(c) Definitions—for the purposes of this section:

- (1) The term 'financial assistance', with respect to government program, includes government payments provided as reimbursement for carrying out health-related activities.
- (2) The term 'health care entity' includes an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions.
- (3) The term postgraduate physician training program includes a residency training program.

**NARAL 7/13/97**

## U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

## OFFICE OF THE GENERAL COUNSEL

FAX

DATE: *July 24, 1997*TO: *Elena Kasan*FAX: *456 - 2878*FROM: *Renée M. Landers*  
Deputy General Counsel

PHONE: 202/690-6318

FAX: 202/690-7998

## REMARKS:

*Elena -*

*Attached is the draft language that Howard Wolfson, staff to Rep. Lowey, has accepted for the Hyde Amendment issue. I am sending it so you have a chance to review it before the 1p.m. meeting today.*

NUMBER OF PAGES: 2 (including cover sheet)*Renée*

Compromise Language

Sec. \_\_\_\_\_ None of the funds appropriated under this Act shall be expended for any abortion, except when such a procedure is necessary to save the life of the woman or when the pregnancy is the result of rape or incest.

None of the funds appropriated under this Act may be used to purchase health benefit coverage for abortions unless the financial basis of the federal contribution and the state funds eligible for matching under Title XIX are limited to those abortion services necessary to save the life of the woman or when the pregnancy is the result of rape or incest.

Abortion - budget provisions

JOSHUA  
GOTBAUM  
07/30/97 12:21:27 PM



Record Type: Non-Record

To: Jennifer L. Klein/OPD/EOP, Elena Kagan/OPD/EOP, Barbara Chow/WHO/EOP, FOLEY\_M @ A1@CD@LNGTWY

cc: Charles E. Kieffer/OMB/EOP, Richard J. Turman/OMB/EOP, Wm G. White/OMB/EOP

Subject: Revised Hyde Amendment Language for Labor HHS SAP -- Any comments needed by 2:00 pm

Below is language revised to take into account (a) the negotiations between Nita Lowey and Henry Hyde and (b) the fact that we've agreed to different language on Medicaid managed care to deal with the "conmingling of funds" issue. If you have any difficulties with the language below, please page me. Thanks.

An amendment is made in order that would include a prohibition on the purchase of health benefit coverage that includes abortion. The President believes that abortion should be safe, legal, and rare. However, the amendment would not only maintain, but further limit the range of conditions under which a woman's health would permit access to abortion. Furthermore, it ~~and~~ would require a physician to make a legal determination that ~~the woman met~~ these conditions have been met. ~~The Hyde amendment might also be construed to curtail the availability of State only and privately funded abortion services. Most States purchase health coverage for Medicaid beneficiaries from managed care organizations (MCOs). This amendment might be construed as prohibiting States from contracting with MCOs that offer abortion services to any woman, even using private or State funds.~~ The Administration opposes this attempt to constrain further the availability of abortion services and strongly urges the House not to adopt the Hyde amendment. For this and other ~~these~~ reasons, the Administration prefers the Lowey substitute. We understand that there may be negotiations to develop an alternative to both proposals. The Administration believes that it is important that any legislation in this area be clear that limitations on the use of Federal funds to provide abortion services under managed care plans do 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 other coverage paid for by state or private funds.



*Thanks!  
This only take  
stage*

*Current law - with to like a health  
This - particular threats to like a  
"physical" health  
"catholic" specific -*

## U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

## OFFICE OF THE GENERAL COUNSEL

*Article - budget provisions*

FAX

DATE: *July 23, 1997*TO: *Elena Kagan*FAX: *456-2878*FROM: Renée M. Landers  
Deputy General Counsel

PHONE: 202/690-6318

FAX: 202/690-7998

## REMARKS:

*Elena -*

*Barbara Chow in the White House legislative affairs office asked HHS to get your approval of this language that HHS would submit to help the Hill in its desire to clarify that the Hyde Amendment covers Medicaid managed care. Of course, "time is*

NUMBER OF PAGES: 2 (including cover sheet) *of the essence!*

*Thanks. Renée*



Compromise Language

Sec. \_\_\_\_ None of the funds appropriated under this Act shall be expended for any abortion, except when such a procedure is necessary to save the life of the woman or when the pregnancy is the result of rape or incest.

None of the funds appropriated under this Act may be used to purchase health benefit coverage that includes coverage for abortions except those abortion services necessary to save the life of the woman or when the pregnancy is the result of rape or incest.

  
Wm G. White

07/23/97 08:34:25 PM

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Draft HHS Language on Hyde Restrictions to Medicaid Payments to HMOs

As a follow-up to my earlier e-mail, here is the Wolf Amendment language that was rejected by the House Appropriations Committee. HHS expects Sen. Craig to offer something similar in the Senate Appropriations Committee tomorrow. The draft HHS language would serve as a substitute to it.

"None of the funds appropriated under this Act shall be expended to pay for any abortion or to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion.

The Limitation established in the preceding section shall not apply to an abortion ---

- (1) if the pregnancy is the result of an act of rape or incest; or
- (2) in the case where a woman suffers from a physical disorder; physical illness, or physical injury that would, as certified by a physician, place the woman in danger of death unless an abortion is performed."

----- Forwarded by Wm G. White/OMB/EOP on 07/23/97 08:27 PM -----

  
Wm G. White

07/23/97 07:49:37 PM

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Draft HHS Language on Hyde Restrictions to Medicaid Payments to HMOs

Barbara Chow asked us to share the draft HHS language below with you on the Hyde Amendment in the L/HHS Appropriations bill for your clearance. HHS would like to give this language to Senator Harkin's staff so that he may offer it during tomorrow's Senate Appropriations Committee markup of the L/HHS bill. It would serve as a counter-proposal to an expected Amendment to be offered by Sen. Craig, which HHS believes will be similar to one offered by Rep. Wolf in the House. In the House L/HHS SAP, the Administration opposed the Wolf Amendment because we thought it could "curtail the availability of State-only and privately funded abortion services."

HHS believes that the language below is an acceptable alternative that would clarify the Hyde Amendment prohibition so that it would only apply to Federal funds appropriated in the L/HHS bill.

Rich Tarplin's staff would like to get this language to Harkin's staff tonight in time for tomorrow morning's (7/24) 10:00 a.m. mark-up of the bill. They are seeking OMB and your clearance

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Phone No. (Partial) (1 page)	07/23/1997	P6/b(6)

### COLLECTION:

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

### FOLDER TITLE:

Abortion - Budget Provisions

2009-1006-F  
ke652

### 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]

Harkin - budget provisions

  
Wm G. White

07/23/97 07:49:37 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

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

Subject: Draft HHS Language on Hyde Restrictions to Medicaid Payments to HMOs

Barbara Chow asked us to share the draft HHS language below with you on the Hyde Amendment in the L/HHS Appropriations bill for your clearance. HHS would like to give this language to Senator Harkin's staff so that he may offer it during tomorrow's Senate Appropriations Committee markup of the L/HHS bill. It would serve as a counter-proposal to an expected Amendment to be offered by Sen. Craig, which HHS believes will be similar to one offered by Rep. Wolf in the House. In the House L/HHS SAP, the Administration opposed the Wolf Amendment because we thought it could "curtail the availability of State-only and privately funded abortion services."

HHS believes that the language below is an acceptable alternative that would clarify the Hyde Amendment prohibition so that it would only apply to Federal funds appropriated in the L/HHS bill.

Rich Tarplin's staff would like to get this language to Harkin's staff tonight in time for tomorrow morning's (7/24) 10:00 a.m. mark-up of the bill. They are seeking OMB and your clearance before they give it to Harkin's staff.

Please call Holly Bode on Rich Tarplin's staff at 690-7485 or at home [redacted] with [001] clearance or questions. My office number is 5-7791 and I can be reached at home at 202-667-4786.

**DRAFT HHS LANGUAGE:**

"None of the funds appropriated under this Act shall be expended for any abortion, except when such a procedure is necessary to save the life of the woman or when the pregnancy is the result of rape or incest.

None of the funds appropriated under this Act may be used to purchase health benefit coverage that includes coverage for abortions unless the Federal contribution and the state funds eligible for matching under Title XIX are limited to those abortion services necessary to save the life of the woman or when the pregnancy is the result of rape or incest."

**Message Copied To:**

Nani A. Coloretti/OMB/EOP  
Joshua Gotbaum/OMB/EOP  
Barry T. Clendenin/OMB/EOP  
Richard J. Turman/OMB/EOP  
Mark E. Miller/OMB/EOP  
Barbara E. Washington/OMB/EOP  
Barbara Chow/WHO/EOP

Atlantic -  
budget provisions

IV-H-24

1 tracts with such organizations or to the default enrollment  
2 process described in subsection (a)(4)(C)(ii) that are at  
3 least as effective as the Federal safeguards provided under  
4 section 27 of the Office of Federal Procurement Policy Act  
5 (41 U.S.C. 429), against conflicts of interest that apply  
6 with respect to Federal procurement officials with com-  
7 parable responsibilities with respect to such contracts.

Medicaid  
managed  
care.

8 "(4) USE OF UNIQUE PHYSICIAN IDENTIFIER FOR  
9 PARTICIPATING PHYSICIANS.—Each medicaid managed care  
10 organization shall require each physician providing services  
11 to enrollees eligible for medical assistance under the State  
12 plan under this title to have a unique identifier in accord-  
13 ance with the system established under section 1173(b).

As proposed &  
as agreed.

14 "(e) SANCTIONS FOR NONCOMPLIANCE.—

15 "(1) USE OF INTERMEDIATE SANCTIONS BY THE  
16 STATE TO ENFORCE REQUIREMENTS.—

17 "(A) IN GENERAL.—A State may not enter into or  
18 renew a contract under section 1903(m) unless the  
19 State has established intermediate sanctions, which  
20 may include any of the types described in paragraph  
21 (2), other than the termination of a contract with a  
22 medicaid managed care organization, which the State  
23 may impose against a medicaid managed care organiza-  
24 tion with such a contract, if the organization—

25 "(i) fails substantially to provide medically  
26 necessary items and services that are required  
27 (under law or under such organization's contract  
28 with the State) to be provided to an enrollee cov-  
29 ered under the contract;

30 "(ii) imposes premiums or charges on enrollees  
31 in excess of the premiums or charges permitted  
32 under this title;

33 "(iii) acts to discriminate among enrollees on  
34 the basis of their health status or requirements for  
35 health care services, including expulsion or refusal  
36 to reenroll an individual, except as permitted by  
37 this title, or engaging in any practice that would

IV-H-25

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reasonably be expected to have the effect of deny-  
ing or discouraging enrollment with the organiza-  
tion by eligible individuals whose medical condition  
or history indicates a need for substantial future  
medical services;

“(iv) misrepresents or falsifies information  
that is furnished—

“(I) to the Secretary or the State under  
this title; or

“(II) to an enrollee, potential enrollee, or  
a health care provider under such title; or

“(v) fails to comply with the applicable re-  
quirements of section 1903(m)(2)(A)(x).

The State may also impose such intermediate sanction  
against a managed care entity if the State determines  
that the entity distributed directly or through any  
agent or independent contractor marketing materials in  
violation of subsection (d)(2)(A)(i)(II)..

“(B) RULE OF CONSTRUCTION.—Clause (i) of sub-  
paragraph (A) shall not apply to the provision of abor-  
tion services.

“(2) INTERMEDIATE SANCTIONS.—The sanctions de-  
scribed in this paragraph are as follows:

“(A) Civil money penalties as follows:

“(i) Except as provided in clause (ii), (iii), or  
(iv), not more than \$25,000 for each determination  
under paragraph (1)(A).

“(ii) With respect to a determination under  
clause (iii) or (iv)(I) of paragraph (1)(A), not more  
than \$100,000 for each such determination.

“(iii) With respect to a determination under  
paragraph (1)(A)(ii), double the excess amount  
charged in violation of such subsection (and the ex-  
cess amount charged shall be deducted from the  
penalty and returned to the individual concerned).

“(iv) Subject to clause (ii), with respect to a  
determination under paragraph (1)(A)(iii), \$15,000

*This was  
changed  
see next page.*

F:\P5\HCONF\ABORTMED

1                   “(B) RULE OF CONSTRUCTION.—Clause (i) of sub-  
2                   paragraph (A) shall not apply to the provision of abor-  
3                   tion services, except that a State may impose a sanc-  
4                   tion on any medicaid managed care organization that  
5                   has a contract to provide abortion services if the orga-  
6                   nization does not provide such services as provided for  
7                   under the contract.

*As agreed*

July 29, 1997 (9:42 p.m.)

F:\P5\HCONF\CHILD.007

[Title IV-J-KidCare]

S.L.C./H.L.C.

IV-J-18

Child Health

Abortion -  
budget  
provisions

1 Act of 1974), a service benefit plan, and a health main-  
2 tenance organization) would have been obligated to pro-  
3 vide such assistance but for a provision of its insurance  
4 contract which has the effect of limiting or excluding  
5 such obligation because the individual is eligible for or  
6 is provided child health assistance under the plan.

7 "(B) OTHER FEDERAL GOVERNMENTAL PRO-  
8 GRAMS.—Except as otherwise provided by law, no pay-  
9 ment shall be made to a State under this section for  
10 expenditures for child health assistance provided for a  
11 targeted low-income child under its plan to the extent  
12 that payment has been made or can reasonably be ex-  
13 pected to be made promptly (as determined in accord-  
14 ance with regulations) under any other federally oper-  
15 ated or financed health care insurance program, other  
16 than an insurance program operated or financed by the  
17 Indian Health Service, as identified by the Secretary.  
18 For purposes of this paragraph, rules similar to the  
19 rules for overpayments under section 1903(d)(2) shall  
20 apply.

21 "(7) LIMITATION ON PAYMENT FOR ABORTIONS.—  
22 "(A) IN GENERAL.—Payment shall not be made to  
23 a State under this section for any amount expended  
24 under the State plan to pay for any abortion or to as-  
25 ist in the purchase, in whole or in part, of health bene-  
26 fit coverage that includes coverage of abortion.

27 "(B) EXCEPTION.—Subparagraph (A) shall not  
28 apply to an abortion only if necessary to save the life  
29 of the mother or if the pregnancy is the result of an  
30 act of rape or incest.

31 "(C) RULE OF CONSTRUCTION.—Nothing in this  
32 section shall be construed as affecting the expenditure  
33 by a State, locality, or private person or entity of State,  
34 local, or private funds (other than funds expended  
35 under the State plan) for any abortion or for health  
36 benefits coverage that includes coverage of abortion.

37 "(d) MAINTENANCE OF EFFORT.—



It is the Conferees' intention that Section 2105(c)(7) not restrict the ability of any provider from offering abortion coverage or the ability of a state to contract with such a provider for such coverage except, as prohibited under this section, where federal funds are used in whole or in part to obtain such coverage under this title.

Abortion - budget provisions

Potential Hyde / Lewey  
compromise 7/29/97  
Labor / HHS

**Sec. 508 (a) None of the funds appropriated under this Act shall be expended for any abortion.**

**(b) None of the funds appropriated under this Act shall be expended for health benefits coverage that includes coverage of abortion.**

**(c) The term "health benefits coverage" means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.**

**Sec. 509 (a) The limitations established in the preceding section shall not apply to an abortion --**

**(1) if the pregnancy is the result of an act of rape or incest; or**

**(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.**

**(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State or private person of State or private funds (other than a State's contribution of Medicaid matching funds) for abortion services or coverage of abortion by contract or other arrangement.**

F:\EGG\MEDHLTH\HYDE.003  
(Labor, IIR FY98)

*Atlantic - budget  
provisions*

H.L.C.

*2*

**Amendment to H.R. 2264, As Reported  
Labor, HHS, and Education  
Appropriations Bill, 1998  
Offered by Mr. Hyde of Illinois**

Page 94, strike lines 16 through 21 and insert the following (and redesignate the succeeding sections accordingly):

1 SEC. 508. (a) None of the funds appropriated under  
2 this Act shall be expended for any abortion.

3 (b) None of the funds appropriated under this Act  
4 shall be expended for health benefits coverage that in-  
5 cludes coverage of abortion.

6 SEC. 509. (a) The limitations established in the pre-  
7 ceding section shall not apply to an abortion—

8 (1) if the pregnancy is the result of an act of  
9 rape or incest; or

10 (2) in the case where a woman suffers from a  
11 physical disorder, physical injury, or physical illness,  
12 including a life-endangering physical condition  
13 caused by or arising from the pregnancy itself, that  
14 would, as certified by a physician, place the woman  
15 in danger of death unless an abortion is performed.

F:\REG\MSL\MLTH\HYDE.003  
(Labor. HHS FY97)

H.H.S.

2

1 (b) Nothing in the preceding section shall be con-  
2 strued as affecting the expenditure by a State or private  
3 person of State or private funds (other than a State's con-  
4 tribution of Medicaid matching funds).

## Labor/HHS SAP - Abortion

An amendment is made in order that would include a prohibition on the purchase of health benefit coverage that includes abortion. The President believes that abortion should be safe, legal, and rare. However, the amendment would **not only maintain, but further** limit the range of conditions under which a woman's health would permit access to abortion. **Furthermore, it and** would require a physician to make a legal determination that ~~the woman met~~ these conditions **have been met**. ~~The Hyde amendment might also be construed to curtail the availability of State-only and privately funded abortion services. Most States purchase health coverage for Medicaid beneficiaries from managed care organizations (MCOs). This amendment might be construed as prohibiting States from contracting with MCOs that offer abortion services to any woman, even using private or State funds.~~ The Administration opposes this attempt to constrain further the availability of abortion services and strongly urges the House not to adopt the Hyde amendment. For **this and other** ~~these~~ reasons, the Administration prefers the Lowey substitute. **We understand that there may be negotiations to develop an alternative to both proposals. The Administration believes that it is important that any legislation in this area be clear that limitations on the use of Federal funds to provide abortion services under managed care plans do 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 other coverage paid for by state or private funds.**

## U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

## OFFICE OF THE GENERAL COUNSEL

*Abortion - budget provisions*

FAX

DATE: *July 23, 1997*TO: *Elena Kazan \ Greg White*FAX: *456-2878 \ 395-3910*FROM: *Renée M. Landers*  
Deputy General CounselPHONE: *202/690-6318 \ (202) 393-3108 (home)*FAX: *202/690-7998*

## REMARKS:

*This language supersedes the earlier language and has the approval of Cong. Lowey's staff.*

*Renée*NUMBER OF PAGES: *2* (including cover sheet)

Compromise Language

Sec. \_\_\_\_ None of the funds appropriated under this Act shall be expended for any abortion, except when such a procedure is necessary to save the life of the woman or when the pregnancy is the result of rape or incest.

None of the funds appropriated under this Act may be used to purchase health benefit coverage for abortions unless the federal contribution and the state funds eligible for matching under Title XIX are limited to those abortion services necessary to save the life of the woman or when the pregnancy is the result of rape or incest.

Atlantic - budget provisions

**JOSHUA  
GOTBAUM**

07/29/97 01:11:46 PM



Record Type: Non-Record

To: Jennifer L. Klein/OPD/EOP, Elena Kagan/OPD/EOP

cc: Nicolette Highsmith/OMB/EOP

Subject: Revised Hyde Language -- I'll Call you

### Hyde Amendment prohibition on Medicaid payment for abortion services

We understand that an amendment may be made in order ...to include a prohibition on the purchase of health benefit coverage that includes abortion. The President believes that abortion should be safe, legal, and rare. However, the amendment would codify and limit the range of conditions under which a woman's health would permit access to abortion. For this reason, the Administration prefers the substitute offered by Mrs. Lowey, which would maintain the limitation as it exists in current law. The amendment could also be construed to curtail the availability of State-only and privately funded abortion services. Most States purchase health coverage for Medicaid beneficiaries from managed care organizations (MCOs). This amendment could be construed as prohibiting state from contracting with MCOs that offer abortion services to any woman, even using private or State funds. The Administration opposes this attempt to constrain further the availability of abortion services and strongly urges the House not to adopt the Hyde amendment.



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Abertica -  
S.L.C. budget provincial

Senate  
Finance  
Medicaid

1 the State for medical assistance provided under such sec-  
2 tion, for expenditures for capitation payments to a man-  
3 aged care entity that becomes insolvent or for services con-  
4 tracted for with, but not provided by, such organization.

5 **"SEC. 1949. SANCTIONS FOR NONCOMPLIANCE BY MAN-**  
6 **AGED CARE ENTITIES.**

7 **"(a) USE OF INTERMEDIATE SANCTIONS BY THE**  
8 **STATE TO ENFORCE REQUIREMENTS.—**

9 **"(1) IN GENERAL.—**Each State shall establish  
10 intermediate sanctions, which may include any of the  
11 types described in subsection (b) other than the ter-  
12 mination of a contract with a managed care entity,  
13 which the State may impose against a managed care  
14 entity with a contract under section 1941(a)(1)(B)  
15 if the entity—

16 "(A) fails substantially to provide medi-  
17 cally necessary items and services that are re-  
18 quired (under law or under such entity's con-  
19 tract with the State) to be provided to an en-  
20 rollee covered under the contract,

21 "(B) imposes premiums or charges on en-  
22 rollees in excess of the premiums or charges  
23 permitted under this title,

24 "(C) acts to discriminate among enrollees  
25 on the basis of their health status or require-

(no state can't sanction  
it mgt care entity refuse  
to provide aka k)

O:\ERN\ERN97.416

S.L.C.

Senate  
Finance  
Medicaid

1           ments for health care services, including expul-  
 2           sion or refusal to reenroll an individual, except  
 3           as permitted by this part, or engaging in any  
 4           practice that would reasonably be expected to  
 5           have the effect of denying or discouraging en-  
 6           rollment with the entity by eligible individuals  
 7           whose medical condition or history indicates a  
 8           need for substantial future medical services,

9                   “(D) misrepresents or falsifies information  
 10           that is furnished—

11                   “(i) to the Secretary or the State  
 12           under this part; or

13                   “(ii) to an enrollee, potential enrollee,  
 14           or a health care provider under such sec-  
 15           tions, or

16                   “(E) fails to comply with the requirements  
 17           of section 1876(i)(8) (or comparable require-  
 18           ments under part C of title XVIII) or this part.

19                   “(2) RULE OF CONSTRUCTION.—For purposes  
 20           of paragraph (1)(A), the term ‘medically necessary’  
 21           shall not be construed as requiring an abortion be  
 22           performed for any individual, except if necessary to  
 23           save the life of the mother or if a pregnancy is the  
 24           result of an act of rape or incest.



Senate  
France  
Children's  
Health  
(creates  
new  
title  
XIX  
of SSA)

O:\ERN\ERN97.416

S.L.C.

1           “(1) IN GENERAL.—From the amount allotted  
2           to a State under section 2105(b) for a fiscal year,  
3           each State shall conduct outreach activities de-  
4           scribed in paragraph (2).

5           “(2) OUTREACH ACTIVITIES DESCRIBED.—The  
6           outreach activities described in this paragraph in-  
7           clude activities to—

8                   “(A) identify and enroll children who are  
9                   eligible for medical assistance under the State  
10                  plan under title XIX; and

11                   “(B) conduct public awareness campaigns  
12                  to encourage employers to provide health insur-  
13                  ance coverage for children.

14           “(b) STATE OPTIONS FOR REMAINDER.—A State  
15           may use the amount remaining of the allotment to a State  
16           under section 2105(b) for a fiscal year, determined after  
17           the payment required under section 2105(c)(1)(A), in ac-  
18           cordance with section 2107 or the State medicaid program  
19           but not both).

20           “(c) PROHIBITION ON USE FOR ABORTIONS.—

21                   “(1) IN GENERAL.—Except as provided in para-  
22                  graph (2), no funds provided under this title may be  
23                  used to pay for any abortion or to assist in the pur-  
24                  chase, in whole or in part, of health benefit coverage  
25                  that includes coverage of abortion.

O:\ERN\ERN97.416

S.L.C.

1           “(2) EXCEPTION.—Paragraph (1) shall not  
 2           apply to an abortion if necessary to save the life of  
 3           the mother or if the pregnancy is the result of an  
 4           act of rape or incest.

5           “(d) USE LIMITED TO STATE PROGRAM EXPENDI-  
 6           TURES.—Funds provided to an eligible State under this  
 7           title shall only be used to carry out the purpose of this  
 8           title.

9           “(e) ADMINISTRATIVE EXPENDITURES.—Not more  
 10          than 10 percent of the amount allotted to a State under  
 11          section 2105(b), determined after the payment required  
 12          under section 2105(c)(1)(A), shall be used for administra-  
 13          tive expenditures for the program funded under this title.

14          “(f) NONAPPLICATION OF FIVE-YEAR LIMITED ELI-  
 15          GIBILITY FOR MEANS-TESTED PUBLIC BENEFITS.—The  
 16          provisions of section 403 of the Personal Responsibility  
 17          and Work Opportunity Reconciliation Act of 1996 (8  
 18          U.S.C. 1613) shall not apply with respect to a State pro-  
 19          gram funded under this title.

20          \*SEC. 2107. STATE OPTION FOR THE PURCHASE OR PROVI-  
 21                                      SION OF CHILDREN'S HEALTH INSURANCE.

22          “(a) IN GENERAL.—An eligible State that opts to use  
 23          funds provided under this title under this section shall use  
 24          such funds to—

(Committee Print)

KIDCARE.008

House  
Commerce  
Committee  
Children's  
Health-  
(new  
title  
XXI of  
SSA)

1 cause the individual is eligible for or is provided child  
2 health assistance under the plan.

3 "(8) SECONDARY PAYER PROVISIONS.—Except as oth-  
4 erwise provided by law, no payment shall be made to a  
5 State under this section for expenditures for child health  
6 assistance provided for a targeted low-income child under  
7 its plan to the extent that payment has been made or can  
8 reasonably be expected to be made promptly (as determined  
9 in accordance with regulations) under any other federally  
10 operated or financed health care insurance program, other  
11 than an insurance program operated or financed by the In-  
12 dian Health Service, as identified by the Secretary. For  
13 purposes of this paragraph, rules similar to the rules for  
14 overpayments under section 1903(d)(2) shall apply.

15 "(9) LIMITATION ON PAYMENT FOR ABORTIONS.—

16 "(A) IN GENERAL.—Payment shall not be made to  
17 a State under this section for any amount expended  
18 under the State plan to pay for any abortion or to as-  
19 sist in the purchase, in whole or in part, of health bene-  
20 fit coverage that includes coverage of abortion.

21 "(B) EXCEPTION.—Subparagraph (A) shall not  
22 apply to an abortion—

23 "(i) if the pregnancy is the result of an act of  
24 rape or incest, or

25 "(ii) in the case where a woman suffers from  
26 a physical disorder, illness, or injury that would, as  
27 certified by a physician, place the woman in danger  
28 of death unless an abortion is performed.

29 "(c) ADVANCE PAYMENT; RETROSPECTIVE ADJUST-  
30 MENT.—The Secretary may make payments under this section  
31 for each quarter on the basis of advance estimates of expendi-  
32 tures submitted by the State and other investigation the Sec-  
33 retary may find necessary, and may reduce or increase the pay-  
34 ments as necessary to adjust for any overpayment or underpay-  
35 ment for prior quarters.

[Committee Print]

KIDCARE.006

*Advise  
Commerce  
Kids  
Cont*

1       uations submitted by States under paragraph (1), contain-  
2       ing any conclusions and recommendations the Secretary  
3       considers appropriate.

4       "SEC. 2108. DEFINITIONS.

5       "(a) CHILD HEALTH ASSISTANCE.—For purposes of this  
6       title, the term 'child health assistance' means payment of part  
7       or all of the cost of any of the following, or assistance in the  
8       purchase, in whole or in part, of health benefit coverage that  
9       includes any of the following, for targeted low-income children  
10      (as defined in subsection (b)) as specified under the State plan:

- 11            “(1) Inpatient hospital services.
- 12            “(2) Outpatient hospital services.
- 13            “(3) Physician services.
- 14            “(4) Surgical services.
- 15            “(5) Clinic services (including health center services)
- 16            and other ambulatory health care services.
- 17            “(6) Prescription drugs and biologicals and the admin-
- 18            istration of such drugs and biologicals, only if such drugs
- 19            and biologicals are not furnished for the purpose of caus-
- 20            ing, or assisting in causing, the death, suicide, euthanasia,
- 21            or mercy killing of a person.
- 22            “(7) Over-the-counter medications.
- 23            “(8) Laboratory and radiological services.
- 24            “(9) Prenatal care and pre-pregnancy family planning
- 25            services and supplies.
- 26            “(10) Inpatient mental health services, including serv-
- 27            ices furnished in a State-operated mental hospital and in-
- 28            cluding residential or other 24-hour therapeutically planned
- 29            structured services.
- 30            “(11) Outpatient mental health services, including
- 31            services furnished in a State-operated mental hospital and
- 32            including community-based services.
- 33            “(12) Durable medical equipment and other medically-
- 34            related or remedial devices (such as prosthetic devices, im-
- 35            plants, eyeglasses, hearing aids, dental devices, and adapt-
- 36            ive devices).
- 37            “(13) Disposable medical supplies.

KIDCARE.008

(Committee Print)

Abuse  
Commence  
Kids  
Court

1           “(14) Home and community-based health care services  
2           and related supportive services (such as home health nurs-  
3           ing services, home health aide services, personal care, as-  
4           sistance with activities of daily living, chore services, day  
5           care services, respite care services, training for family  
6           members, and minor modifications to the home).

7           “(15) Nursing care services (such as nurse practi-  
8           tioner services, nurse midwife services, advanced practice  
9           nurse services, private duty nursing care, pediatric nurse  
10          services, and respiratory care services) in a home, school,  
11          or other setting.

12          “(16) Abortion only if necessary to save the life of the  
13          mother or if the pregnancy is the result of an act of rape  
14          or incest.

15          “(17) Dental services.

16          “(18) Inpatient substance abuse treatment services  
17          and residential substance abuse treatment services.

18          “(19) Outpatient substance abuse treatment services.

19          “(20) Case management services.

20          “(21) Care coordination services.

21          “(22) Physical therapy, occupational therapy, and  
22          services for individuals with speech, hearing, and language  
23          disorders.

24          “(23) Hospice care.

25          “(24) Any other medical, diagnostic, screening, pre-  
26          ventive, restorative, remedial, therapeutic, or rehabilitative  
27          services (whether in a facility, home, school, or other set-  
28          ting) if recognized by State law and only if the service is—

29               “(A) prescribed by or furnished by a physician or  
30               other licensed or registered practitioner within the  
31               scope of practice as defined by State law,

32               “(B) performed under the general supervision or  
33               at the direction of a physician, or

34               “(C) furnished by a health care facility that is op-  
35               erated by a State or local government or is licensed  
36               under State law and operating within the scope of the  
37               license.

Alaska - budget provisions

From: Nancy A. Min@EOP@LNGTWY@EOPMRX@LNGTWY  
\*To: FOLEY\_M@A1@CD@LNGTWY  
\*To: Barbara Chow@EOP@LNGTWY@EOPMRX@LNGTWY  
Date: 6/25/97 1:15pm  
Subject: Conversation with Karen Nelson on Hyde Provisions  
Message Creation Date was at 25-JUN-1997 13:15:00

This may interest you.

----- Forwarded by Nancy A. Min/OMB/EOP on 06/25/97 01:15 PM  
-----

Barbara E. Washington  
06/25/97 01:11:31 PM  
Record Type: Record

To: Nancy A. Min/OMB/EOP  
cc: Barry T. Clendenin/OMB/EOP, Mark E. Miller/OMB/EOP, Nani A. Coloretti/OMB/EOP  
Subject: Conversation with Karen Nelson on Hyde Provisions

I spoke with Karen Nelson regarding the letter to the President that you faxed to us last night. You had a question about the following statement in the letter: "The Senate Finance Committee attached the same restriction (Hyde Amendment) to the entire Medicaid program in addition to the Children's Health Initiative." This statement was not consistent with our understanding of what was in the language. The following explanation is pretty long, but Karen's points were complicated.

Senate Medicaid Language

Karen said that the statement refers to the provision in the Senate Finance Medicaid language that appears on page 55 of the legislation, in the "sanctions for noncompliance by managed care entities" section. States may impose sanctions on managed care organizations that fail to substantially "provide medically necessary items and services." However, for the purposes of this sanction authority, the term "medically necessary" shall not be construed as requiring an abortion be performed for any individual except in the cases of rape, incest or life of the mother."

She acknowledged that the provision in the SFC Medicaid language does not really prohibit all Medicaid payments for abortion, it only means that if this bill language passed, and Hyde language was no longer in the L/HHS appropriations bill, a State would not be able to sanction a managed care organization for refusing to provide abortion services (unless that abortion was necessary because of rape, incest or to save the life of the mother).

- as long as there, this does nothing, bec a m.c. org can't provide such services

However, she said that the more important point was that the Majority had changed the definition of "medical necessity" in the Medicaid statute. Historically, Medicaid coverage of abortion services has ridden on the interpretation of the term "medically necessary services" to include abortion



services. The term "medically necessary" is not currently defined anywhere in the Social Security Act, only in regulation.

Karen said that by changing the definition of "medically necessary" to exclude abortion services in the law (even though it is only for the purposes of managed care sanctions and is not a blanket prohibition), the Majority is chipping away at the current regulations which define "medically necessary" services to include abortion services. Karen thought that because there is no statutory definition of what is "medically necessary", courts could point to this definition in the managed care sanctions section to overturn the regulation.

She also said that she had heard "fifth hand" that someone was planning to move to strike this provision on the Senate floor because it violates the Byrd rule.

#### House and Senate Children's Health Language

I asked her what she thought about the effect of the Hyde Amendment provisions in the children's health titles of the House and Senate bills. I indicated to her that after a preliminary review, staff thought that the Hyde Amendment language in the children's health titles prohibits the use of the funds allotted under the new Title XXI for abortion (with exceptions for rape, incest, and life of the mother). Under this interpretation, the Hyde Amendment language would affect the child health funds allotted under this new title, whether the States choose to use it for Medicaid or for the other purposes.

She said that she thought the construction of the amendments in the children's health titles was not clear. She said that, if it passed, it would probably be left up to the discretion of lawyers in the Administration whether or not the prohibition would apply to Medicaid spending under the new title, or just the new children's grant program.

She said that some could argue that the prohibition applied to all of the funds allotted under the children's health title, whether the State chooses to use the funds for Medicaid or a new grant. She said, on the other hand, though, one could also argue that the title allows states to spend Medicaid funds (from the Medicaid appropriation) equivalent to the amount of funds allotted under the new title. Under this scenario, the funds would come from the Medicaid appropriation, and a State's allotment under the new title would be decreased by an equal amount. Theoretically under this scenario, if there was no Hyde Amendment on the Medicaid appropriation, Medicaid funds spent on children's health would not be subject to the Hyde Amendment language in Title XXI.

She said that regardless of which interpretation is correct (which she said is academic at this point), they will urge the leadership to remove the restrictions.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

*Abortion - budget provisions*

MEMORANDUM

January 23, 1997

TO: Distribution

FR: Nancy-Ann Min *NAM*

RE: Treatment of Abortion-Related Provisions in the FY 1998 Budget

Attached is a list of provisions from FY 1997 appropriations bills relate to abortion. As you know, the budget must indicate any changes we propose to make to these provisions. What follows is a run-down of the provisions and what the Administration proposes to do. (HHS has been consulted on the various provisions that apply to their programs and concurs with these recommendations). Please feel free to call me, or my assistant Sarah Bianchi, at 5-5178 with any questions or comments.

Section in FY1997 Provision	ISSUE	Provision in FY 1997 Budget	Recommended Position for FY 1998
Hyde Amendment -- Medicaid (Labor, HHS bill)	Prohibits funding from being expended for any abortion, except in the cases of incest, rape, or to save the life of the mother.	Proposed to delete provision but inserted footnote stating Administration will work with Congress to resolve.	Same as last year. Delete provision and include FY 1997 footnote.

<b>Hyde Amendment - Prisons</b> (Commerce, Justice bill)	Prohibits Federal funding for abortion for Federal prisoners, except in the cases of rape and incest, or when the life of the mother is in endangered.	Proposed to delete the provision but inserted footnote stating that Administration will work with Congress to resolve.	Delete provision and include FY 1997 footnote.
<b>Hyde Amendment -- Federal Employees</b> (Treasury, Postal bill)	Prohibits FEHBP health plans from covering abortion except in cases of rape, incest, and when the life of the mother is in danger.	Proposed to delete provision.	Same as last year. Delete provision.
<b>Hyde Amendment - D.C.</b> (D.C. Bill)	Prohibits Federal and District funding for abortion except in the cases of rape, incest, and when the life of the mother is endangered.	Proposed to delete the provision.	Same as last year. Delete provision.
<b>International Family Planning</b> (Foreign Ops bill)	Prohibits Federal funding for abortion. Delays obligation of population funds to July 1, 1997. Imposes monthly "metering" requirements on amount of funds provided for international family planning activities.	Proposed to increase funds from FY 1996 enacted levels and delete provisions regarding delay and metering.	Same as last year. Propose to increase funds and delete delay and metering provisions.

<b>Embryo Research</b> (Labor, HHS bill)	Prohibits Federal funds from being used for research purposes and subjects embryo research to the same restrictions that apply to research involving fetuses.	Footnote stating that issue should not be addressed in legislation.	Same as last year. Repeat footnote from FY 1997 Budget.
<b>Family Planning</b> (Labor, HHS bill)	Obey amendment to require family planning clinics to certify that they encourage family participation in family planning decisions made by minors.	Not Applicable; new in FY 1997.	Retain (HHS says this is similar to what is already required by regulation).

cc: Pauline Abernathy, Barbara Chow, Rahm Emanuel, Debbie Fine, Martha Foley, Lyn Hogan, Elena Kagan, Janet Murguia, Betsy Myers, Greg Simon, Todd Stern, Melanne Vermeer