

NLWJC - Kagan

DPC - Box 030 - Folder 017

**Health - Women's Health
Initiatives**

THE WHITE HOUSE
WASHINGTON

October 21, 1997

MEMORANDUM TO THE PRESIDENT

FR: Chris Jennings and Jennifer Klein

RE: Status of the 48 Hour Mastectomy Rule

Tonight you are speaking in front of the Congressional Caucus on Women's Issues. Your speech will likely focus on your impressive accomplishments in women health. Just to mention a few, these include: doubling funding for breast cancer research; eliminating the deductible for the Medicare mammography benefit; and expanding Medicare coverage to all women ages 49 and older making this benefit consistent with recommendations from the National Cancer Institute; and significant new initiatives to combat violence against women.

One of the issues that is not resolved, however, both for this speech and for your upcoming radio address on breast cancer this Saturday is the degree to which you emphasize challenge to the Congress to move legislation that ensures that women are allowed to stay in the hospital at least 48 hours after a mastectomy. This memo reviews the current status of this legislation.

Previous Efforts to Highlight Mastectomy Legislation. As you know, the First Lady highlighted the Administration's support for DeLauro-Dingell-Roukema mastectomy legislation at an event last spring. More recently, you called on Congress to hold hearings on this issue in your speech to the Service Employees International Union (SEIU) last month. At SEIU, you also requested Congress take immediate action to pass existing other consumer protections to put in place anti-gag rules that give patients the right to know their treatment options, to pass laws preventing health plans from discriminating on the basis of genetic information, and to move legislation to adopt the new strong federal standards on medical privacy.

Reaction to Mastectomy Legislation following SEIU Speech. Your SEIU speech was very well received. Republicans on the Senate Labor Committee (the Committee of Jurisdiction) informed us they are planning to draft legislation on medical privacy and genetic discrimination this year, and we have already responded to their requests for briefings and technical assistance on these issues. They also expressed an interest in moving the anti-gag rule legislation you have supported perhaps in the context of a broader initiative on consumer protections. Having said this, the debate in Congress about consumer protections is likely to emphasize issues of access to services and providers rather than specific benefits, particularly time-limited benefits

The Committees of Jurisdiction in the House (Commerce) and the Senate (Labor) have informed us that there is little interest in moving the 48-hour mastectomy legislation. The Republicans and most moderate Democrats do not want to pass laws which regulate benefits and are particularly skeptical about the notion of legislating certain time limits for certain surgeries. (This is, of course, after a heavy amount of lobbying from the insurance and business communities; it also appears, however, to be a growing opinion in most independent policy circles.) Many view 48-hour legislation for newborns and their mothers as an anomaly that passed only because of the politics of a campaign year. As such, the Congress is therefore unlikely to hold hearings on this legislation and probably will not do so unless they believe there will be a political cost for not doing so; at this point, as will be explained below, they do not feel pressured to do anything on this matter.

Some leaders in the women's health community and the breast cancer community, such as the National Breast Cancer Coalition, have also informed us that while they support this legislation and appreciate the Administration's efforts to emphasize the 48 hour rule issue, it is not their highest legislative priority. Their current top legislative priorities include the genetic anti-discrimination legislation and the extension of Medicare coverage for cancer clinical trials. They are extremely pleased that you have taken a leadership role on the genetic screening legislation and are pushing us to support legislation on the cancer trials. (We are currently working with Nancy-Ann Min DeParle and the rest of the Department in developing a workable legislative proposal; however, the policy and cost development process has not been completed and it would be premature to announce at this time.) At this time, we are working to see if we can finalize the policy in time for an early November announcement.

It is also important to note that your Quality Commission, which is meeting today and tomorrow to finalize their draft consumer bill of rights, will not include a recommendation that all plans be mandated to provide 48 hours of coverage for mastectomies. Because of the broad representation on the Commission, they could not come close to reaching consensus on this issue. Instead, their recommendations will focus on process protections (consumer information and appeals protections), as well as some special access provisions, such as the right to qualified specialists for women's health providers.

Notwithstanding the hesitancy of the Congress to move on the 48 hour mastectomy bill, we believe that you should continue reference your support for the legislation and your desire for the Hill to at least hold hearings. However, we also recommend that you reference the bill as one of many initiatives, which will be in your speech, that you care deeply about. This ensures that we maintain a consistent position, but that we don't put all our eggs into one legislative basket.

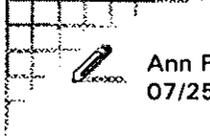
We also understand you are interested in considering ways to fight prostate cancer. Building on the new Medicare prostate cancer benefit you signed into law in the recent balanced budget, we are currently developing options in areas of research, coverage and outreach. We will soon forward you a memo that outlines the options in more detail. Suffice to say, the Medicare coverage of clinical cancer trials issue we raised above would focus on prostate, as well as all other types new promising cancer research.

CLINTON ADMINISTRATION INITIATIVES TO FIGHT BREAST CANCER

- **Introduced Legislation to Prevent Discrimination Based on Genetic Information.** The President has introduced bipartisan legislation to prohibit health plans from inappropriately using genetic screening information to deny coverage, set premiums, or to distribute confidential information. In many diseases, such as breast cancer, we are beginning to identify hidden genetic disorders which can spur early treatment. However, genetic testing also can be used by insurance companies and others to discriminate and stigmatize groups of people. In fact, studies show that a reason women do not get genetic testing for breast cancer is because they fear the information will be used to discriminate against them.
- **Took Action to Encourage Women to Follow National Cancer Institute's (NCI) Recommendations That Women Undergo Regular Mammogram Screening at Forty.** To bring Medicare, Medicaid, and federal employee health plans in line with the NCI's new recommendations, President Clinton is proposing that Medicare cover annual screening mammograms beginning at age forty and to eliminate coinsurance and deductibles for mammograms. The Health Care Financing Administration (HCFA) sent letters to every state Medicaid director encouraging them to cover annual mammogram screening beginning at age forty and make it clear that the federal government will provide federal matching payments for these services. President Clinton also directed the Office of Personnel Management to require all federal employee health benefit plans to cover annual mammograms beginning at age forty and he is encouraging all private plans to do the same.
- **Covers Annual Mammograms Screening for Medicare Beneficiaries.** In his balanced budget, President Clinton proposes to extend annual screening mammograms for Medicare beneficiaries over the age of 40. This proposal would make coverage consistent with the recommendations of most breast cancer experts.
- **Waives Cost-Sharing for Mammography Services.** The President's plan eliminates the copayment and deductible requirement for annual mammograms for beneficiaries over age 40, thereby increasing early detection and treatment of breast cancer. Although Medicare has covered screening mammography since 1991, only 14 percent of eligible beneficiaries without supplemental insurance receive mammograms.
- **Prevents Women From Being Forced Out of the Hospital Only Hours After a Mastectomy.** In his State of the Union Address, President Clinton endorsed bipartisan legislation to ensure that women are not forced out of the hospital before they are ready because of pressure from their health plan. The Department of Health and Human Services also recently announced that it was sending a letter to all Medicare managed care plans making it clear that they may not set ceilings for inpatient hospital treatment or set requirements for outpatient treatment, and that a woman and her doctor should make decisions about what is medically necessary.

- **Builds on HHS Commitment to Breast Cancer Research, Prevention and Training.** Since the Clinton Administration has taken office, funding for breast cancer research, prevention and treatment has nearly doubled, from about \$276 million in FY 1993 to \$513 million in the President's FY 1998 budget.
- **Continues Department of Defense Funding for Breast Cancer Funding.** In FY 1997, the DOD will spend \$112 million on breast cancer research.
- **Increases funding for Gene Research.** HHS-funded research led to the discovery of two breast cancer genes -- BRCA-1 and BCRA-2 -- which holds great promise for the development of new prevention strategies. On October 26, 1996, President Clinton announced \$30 million in new funding for research into the genetic basis of breast cancer.
- **Educates Older Women to Use the Medicare Mammography Screening Benefit.** The First Lady launched a mammography campaign to inform and encourage older women to use the Medicare mammography screening benefit.
- **Improves Mammography Quality Standards.** In October 1994, the FDA implemented a program for mammography standards in the United States to ensure that they meet standards for equipment, personnel, record-keeping, and quality control. The standards also require that facilities be inspected annually. Women can look for the FDA certificate as evidence that the facility meets quality standards. Women can also find a certified mammography facility by calling 1-800-4-CANCER.
- **Screens for Low-Income Women.** CDC's National Breast Cervical Cancer Early Detection Program offers free or low-cost mammography screening to low-income elderly and minority women. On October 1, 1996, Secretary Shalala announced the expansion of the program to all fifty states. The goal is to reduce breast cancer deaths among these women by 30% and cervical cancer deaths by 900% through increased mammographies and pap testing.
- **Promotes Imaging Technology.** HHS is working with other federal agencies, including NASA, the Defense Department, and the CIA, as well as private companies to adapt high-tech imaging technology to improve the early detection of cancer in women. In 1996, HHS, in collaboration with the CIA, awarded \$1.98 million to the University of Pennsylvania to conduct a series of clinical trials of imaging technology from the intelligence community- intended originally for missile guidance and target recognition- to improve the early detection of breast cancer.

Health - women's health
initiatives



Ann F. Lewis
07/25/97 09:57:03 AM

Record Type: Record

To: Ellen M. Lovell/WHO/EOP, Elena Kagan/OPD/EOP, Stephanie S. Streett/WHO/EOP, Jennifer M. Palmieri/WHO/EOP

cc: Phillip Caplan/WHO/EOP

Subject: Breast Cancer stamp

I see that Congress has passed and sent to the President legislation authorizing a new postage stamp that will support breast cancer research.

We should begin thinking about what (and when) the signing for this bill might look like.

Health-women's health

Mammograms for Women ages 40-49

[**Background:** Yesterday the American Cancer Society recommended the women in their forties undergo annual mammograms. The National Cancer Institute at NIH issued the attached response to the ACS recommendation saying it appreciates the ACS's contribution, NCI will work with ACS to communicate a clear message to women, and that the National Cancer Advisory Board is "*nearing completion of its work* to develop clearly recommendations to NCI on screening mammography for women in their forties."

You will recall that in January, a panel of outside experts issued a controversial draft recommendation to NIH that the decision be left up to women in this age group and their doctors. On Thursday, we expect the National Cancer Advisory Board will issue a recommendation consistent with the ACS's, *but this is not yet public information*. There is a *possibility* of the President doing an event on Thursday with Secretary Shalala to say we are taking steps to make Medicare and Medicaid coverage of mammograms for women ages 40-49 consistent with the ACS and expected NCI recommendations.]

Q: What is the Administration's response to yesterday's American Cancer Society recommendation the women in their forties undergo annual mammograms.

A: We appreciate the American Cancer Society's contribution to this issue. A National Cancer Advisory Board is currently reviewing the same new studies that the Cancer Society reviewed and yesterday the National Cancer Institute issued a statement saying the Advisory Board "is nearing completion of its work to develop clear recommendation to NCI about screening mammography for women in their 40s." So we expect those recommendations shortly.

The Clinton Administration has done everything it can to be sure that women in America receive the best information and services to help them in the fight against breast cancer. In the last 4 years, we have *nearly doubled funding* for breast cancer research, prevention and treatment at HHS. And we have worked to ensure that mammograms are reliable by implementing quality standards that require mammography facilities to obtain an FDA "seal of approval."

Q: What about Medicare and Medicaid coverage of mammograms?

A: For women ages 40-49, Medicare currently covers one screening

mammogram every two years. For women with a high risk of developing breast cancer (e.g. a woman with a mother, sister or daughter who has had breast cancer), Medicare covers one screening mammogram every year. Diagnostic mammograms are a mandatory service under Medicaid, so every state covers them. Each State determines whether its Medicaid program covers mammogram screening.

M E M O R A N D U M

February 27, 1997

TO: Bruce Reed, Gene Sperling, Ann Lewis, Rahm Emanuel, Melanne Verveer, Betsy Myers, Susan Brophy, and Janet Murguia

FR: Chris Jennings and Nancy-Ann Min

RE: Women's Health Initiatives

cc: Elena Kagan, Kathy Wallman, Pauline Abernathy, Barbara Woolley

Attached is an updated summary of the President's priority women's health initiatives. As you will note, it is quite an impressive list. This information could be used as a stand-alone document, or it could be used as back-up information to a separate women's health event. (It could also be utilized as a helpful group or Hill information piece to illustrate our continued strong record in this area).

I hope you find this information useful. Please feel free to call me at 6-5560 with questions or suggestions.

PRESIDENT CLINTON'S HEALTH CARE PRIORITIES FOR WOMEN

- **Strengthens and Preserves Medicare.** The Medicare program primarily serves women, covering 22 million women, nearly 60 percent of all Medicare beneficiaries. It is especially important to older women. There are 13 million women on Medicare who are over the age of 75 and 2.8 million who are over the age of 85 (twice the number of men over 85). The President's budget preserves and improves the Medicare program. It extends the life of the Part A Hospital Insurance Trust Fund into 2007, gives beneficiaries more choices among private health plans, invests in new preventive health benefits.
- **Covers Annual Mammograms Screening for Medicare Beneficiaries.** In his balanced budget, President Clinton proposes to extend annual screening mammograms for Medicare beneficiaries 65 and over. Screening mammograms for women age 65 and over are now covered biennially, even though breast cancer mortality increases with age. This proposal would remove this anomaly in current law and make coverage consistent with the recommendations of most breast cancer experts.
- **Waives Cost-Sharing for Mammography Services.** The plan eliminates the copayment and deductible requirement for annual mammograms for beneficiaries over age 50, thereby increasing early detection and treatment of breast cancer. Although Medicare has covered screening mammography since 1991, only 14 percent of eligible beneficiaries without supplemental insurance receive mammograms.
- **Provides Alzheimer's Respite Benefit.** Since women make up two-thirds of informal caregivers for elderly in communities, they bear the financial and emotional strain of caring for people with Alzheimer's and other debilitating diseases. The President's budget takes the first step towards helping these families with a new Alzheimer's respite benefit to provide temporary help for families of Medicare beneficiaries with Alzheimer's and other dementia.
- **Prevents Women From Being Forced Out of the Hospital Only Hours After a Mastectomy.** In his State of the Union Address, President Clinton endorsed bipartisan legislation to ensure that women are not forced out of the hospital before they are ready because of pressure from their health plan. The Department of Health and Human Services also recently announced that it was sending a letter to all Medicare managed care plans making clear that they may not set ceilings for inpatient hospital treatment or set requirements for outpatient treatment, and that a woman and her doctor should make decisions about what is medically necessary.

- **Continues HHS Commitment to Breast Cancer Research, Prevention and Training.** Since the Clinton Administration has taken office, funding for breast cancer research, prevention and treatment has nearly doubled, from about \$276 million in FY 1993 to over \$500 million in the President's FY 1998 budget. This includes money for breast cancer screening as well as **the NIH-funded discovery of two breast cancer genes -- BRCA-1 and BCRA-2 -- which holds great promise for the development of new prevention strategies.**
- **Combats Violence Against Women.** Millions of women throughout our nation are plagued by the terror of family violence. Approximately 20 percent of all emergency room visits by women result from domestic violence. The President's FY 1998 budget proposes \$381 million to combat gender-based crime -- an \$123 million increase. This money funds grants to facilitate coordination among law enforcement officials, prosecutors, and victims assistance programs and to encourage mandatory arrest policies. Studies have shown that mandatory arrest policies often break the cycle of violence and reduce subsequent incidences of violence.
- **Funds Full Participation in Women, Infants, and Children (WIC).** WIC provides nutritional assistance, nutrition education and counseling, health and immunization referrals, and prenatal care to those who would otherwise not get it. WIC participation has grown by 25% over the last four years and will serve 7.5 million by 1998, fulfilling the President's goal of full participation.
- **Prevents and Treats AIDS Through the Ryan White CARE Act.** The incidence of AIDS has increased far more rapidly among women than men. For example, the incidence of AIDS among women in 1994 was 14.4 times that of 1985, while the incidence among men in 1994 was only 5.5 times that of 1985. The President's budget proposes just over \$1 billion for activities under the Ryan White CARE Act which funds grants to cities and States to help finance medical and support services for individuals with HIV; to community-based clinics for early HIV intervention services; to pediatric AIDS; and to HIV education and training programs. The budget also includes \$167 million dedicated to AIDS drug assistance programs to improve access to protease inhibitors and other life-extending AIDS medications.

DRAFT

MEMORANDUM

January 31, 1997

TO: Distribution
FR: Chris Jennings
RE: Women's Health Initiatives

In addition to our policy clarification to Medicare regarding quality coverage of mastectomies and our support of legislation to ensure quality care for all women who need mastectomies, we have an extremely strong women's health care package which should be highlighted next week during the budget roll out.

I would like to get your input as to how we can best give this package the attention it deserves. The package includes the following:

- Medicare coverage for mammograms
- Quality care for women needing mastectomies
- A quality commission to develop a patients' bill of rights
- Anti-gag rule for Medicare and Medicaid and support for anti-gag legislation for all health plans
- Increased funding at NIH, including funding for ground breaking breast cancer research
- Health insurance for workers' who are in between jobs
- An alzheimer's respite benefit for families of Medicare beneficiaries
- Increased funding for Women, Infants, and Children (WIC).

DRAFT

- Medicare and Medicaid reform
- Expanded coverage for kids
- Measures to reduce tobacco use among young people

Please feel free to call me at 6-5660 with any questions or comments.

WOMEN'S HEALTH CARE PRIORITIES

IMPROVING WOMEN'S HEALTH CARE

- **Expands the Medicare Coverage for Mammograms.** The President's budget contains new preventive benefits for women, including annual mammograms for beneficiaries age 50 and over, waiver of cost-sharing for mammography. It also covers other preventive benefits, including diabetes management, and certain immunizations protecting older Americans from pneumonia and influenza.
- **Ensures Quality Care for Women Needing Mastectomies.** The President has asked Secretary of Health and Human Services, Donna Shalala, to clarify that Medicare plans guarantee women the right to stay in the hospital 48 hours after a mastectomy. He also strongly support to bipartisan legislation to guarantee this treatment option for women who must fight this disease and assure women a decent standard of care.
- **Improves Health Care Quality through Other Initiatives**
 - **Quality Commission.** The President is in the process of establishing, a non-partisan, advisory commission to develop a patients' bill of rights for all health care consumers and to study ways to guarantee quality in our rapidly changing health care system.
 - **Anti-Gag Rule.** Recently, President Clinton took action to ensure that all Medicare and Medicaid health plans do not restrict communication between doctors and their patients. He also intends to work with the Congress to pass bipartisan legislation which will extend this anti-gag rule to all health plans.
- **Increases Funding for National Institutes of Health (NIH).** The President's budget proposes \$13.1 billion for biomedical research that will lay the foundation for future innovations that improve health and improve disease. The budget includes funding for high priority research areas, such as HIV/AIDS, breast cancer, spinal cord injury and genetic medicine. **The NIH-funded discovery of two breast cancer genes -- BRCA-1 and BCRA-2 -- holds great promise for the development of new prevention strategies.**
- **Provides Health Insurance for Families with Workers' Who are In-Between Jobs.** In today's strong but dynamic economy, 7 million working Americans - including nearly 3 million women -- who had health insurance through their employer lose their job and look for a new one. This initiative would provide temporary health insurance premium assistance for workers who are in-between jobs and their families to ensure that each of them can afford to maintain their health insurance while they look for their next job.

DRAFT

IMPROVING HEALTH CARE FOR FAMILIES AND CHILDREN

- **Provides Alzheimer's Respite Benefit.** The President's budget takes the first step towards improving long-term care services with a new Alzheimer's respite benefit to assist families of Medicare beneficiaries with Alzheimer's diseases.
- **Promotes Full Participation in Women, Infants, and Children (WIC).** WIC provides nutritional assistance, nutrition education and counseling, health and immunization referrals, and prenatal care to those who would otherwise not get it. WIC participation has grown by 25% over the last four years and will serve 7.5 million by 1998, fulfilling the President's goal of full participation.
- **Expands Children's Health Care Coverage.** The President's budget proposes a series of initiatives to expand coverage to the 10 million uninsured children, including, 1) outreach to the three million children who are qualified for Medicaid, but are not currently enrolled; 2) grants to states to help develop innovative ways to provide coverage for uninsured children who are not eligible for Medicaid; and 3) temporary coverage for children whose parents have lost their health insurance because they have been laid off.
- **Strengthens and Preserves Medicare.** The President's budget preserves and improves Medicare, extending the life of the Part A Hospital Insurance Trust Fund into 2007. His plan gives beneficiaries more choices among private health plans, invests in new preventive health benefits, without imposing any new costs on beneficiaries.
- **Protects and Improves Medicaid.** The budget would reform Medicaid to give States much more flexibility to manage their programs, while preserving the guarantee of health coverage for the millions of children, pregnant women, people with disabilities, and older Americans who currently depend on the Medicaid.
- **Reduces Tobacco Use Among Young People.** In 1996, the Administration approved an FDA regulation of nicotine products that aims to cut tobacco use among young people by half over seven years; the budget includes \$34 million to implement the regulation. Tobacco is linked to over 400,000 deaths a year from cancer, respiratory illness, heart disease, and other health problems. Each year, another million young people become regular smokers, and more than 300,000 of them will die earlier as a result.

JANUARY 24, 1997

MEMORANDUM FOR RAHM EMANUEL
SYLVIA MATHEWS
JOHN PODESTA
ANN LEWIS
BRUCE REED
JOHN HILLEY
ELENA KAGAN
JANET MURGULA
PAULINE ABERNATHY
CHRIS JENNINGS

FROM: BETSY MYERS

RE: BREAST CANCER LEGISLATION

In 1996, more than 184,000 cases of breast cancer were diagnosed and more than 44,000 of those women will die from the disease. Breast cancer is the most common cancer among women, accounting for one out of every three cancer diagnoses.

The following is an update on the breast cancer legislation (with strong bi-partisan support) pending in the House and Senate. The legislation corrects several injustices in the health care system affecting all American women. The President has an opportunity at the beginning of the new Congress before the State of the Union to take a leadership role on these measures.

The President could support the legislation through several avenues: (1) in the State of the Union; (2) in a radio address; and (3) in a letter to Congress.

A fourth option would be participating in a breast cancer event on February 3 with a bi-partisan group of members of Congress and Lifetime television. The network has collected more than 15,000 signatures of women supporting Congresswoman DeLauro's legislation which would mandate at least 48 hours of hospitalization for women who have had a mastectomy. We are recommending that the President host the event at the White House by accepting the petition, along with the members of Congress. In addition to supporting Congresswoman's DeLauro's bill, the President could express support in his remarks at the event for several other breast cancer measures. (See the attached scheduling request for more details.)

We recommend the President support the following legislation:

- **The DeLauro-Dingell-Roukema Breast Cancer Protection Act of 1997:** This bill would guarantee a minimum hospital stay of 48 hours for a woman having a mastectomy and 24 hours for lymph node removal for the treatment of breast cancer. Under pressure from managed care organizations to reduce costs, doctors

have had to perform mastectomies and lymph node dissection as outpatient surgery. This has resulted in women being sent home when the surgery is still weighing heavily on their physical and mental state. To ensure that the bill is on a fast-track, Congresswoman DeLauro wrote the bill with language similar to that in the 48-hour maternity bill that we supported last year. The simplicity of the bill should also help ensure its passage. There is bi-partisan support for this bill in the House. Senator Daschle has introduced a companion bill.

- **The Reconstructive Breast Surgery Benefits Act:** This bill, introduced by Congresswoman Eshoo, would require health insurance companies that provide coverage for mastectomies to cover reconstructive breast surgery that results from those mastectomies including surgery to establish symmetry between breasts. The legislation would prohibit insurance companies from denying coverage for breast reconstruction resulting from mastectomies on the basis that the coverage is for cosmetic surgery. Congresswoman Eshoo is working with Senator Kennedy who will file a companion bill.
- **The Breast Cancer Early Detection Act:** This legislation, introduced by Congresswoman Maloney, would require Medicare to cover annual mammograms for women over 65. Currently, Medicare only covers mammograms every other year.
- **The Medicare Mammography Enhancement Act:** This legislation, introduced by Congresswoman Kennelly, would require Medicare to cover annual mammograms for women over 50. In addition, the legislation would waive the 20 percent co-payment and any deductible costs for the screening.