Reproductive Health–Related Developments in the States in 2002

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In a year when most state legislators were preoccupied with budget deficits and redistricting battles, relatively few laws affecting family planning and abortion were enacted (see chart). Advocates of women's reproductive health and rights continued to make progress on contraceptive insurance coverage, and they advocated successfully for a remarkable cluster of reproductive rights measures in California. Antiabortion activists also made gains, however, both in their long-standing campaign to erect barriers to women's access to abortion and in their attacks on publicly supported family planning programs. They were far less successful, however, in their push to have states completely proscribe human cloning.

Reproductive Rights Agenda

For the last few years, reproductive health and rights advocates have placed contraceptive coverage at the forefront of their proactive agenda. Unlike abortion, an issue on which they have been kept busy beating back restrictive legislation, contraceptive coverage was one area where they have repeatedly experienced legislative victories. The trend continued this year: Three states—Arizona, Massachusetts and New York—passed laws mandating health insurance plans that cover prescription drugs to also cover contraceptive drugs and devices that have been approved by the Food and Drug Administration ("Twenty States Now Require Contraceptive Insurance Coverage," *TGR,* August 2002, page 13).

It was in California, however, that advocates broke new ground, enacting a package of bills that together achieve many of the goals of state-level advocates across the country. For many, the most significant accomplishment was the codification into California law of the essence of the U.S. Supreme Court's 1973 decision in *Roe v. Wade*. The new law permits abortion without regard to reason until the point in pregnancy when the fetus is viable and at any time thereafter if the pregnancy endangers the woman's life or health. Codifying *Roe* is a step that advocates see as important lest a future Supreme Court Reverse itself and send the issue of abortion legality back to the states to decide. The same statute also allows qualified midlevel medical professionals to provide medical abortion, striking down a long-standing policy that permitted only physicians to perform abortions of any kind.

A second California law mandates that all obstetrics and gynecology residency programs provide abortion training. The law allows individual medical students and residency programs to opt out for moral or religious reasons, although a program that does so must still ensure that all students are given access to abortion training. California's is the first statewide policy. It builds off a recent directive issued by New York City Mayor Michael R. Bloomberg (R) that applies to all of the city's public hospitals.

STATE POLICY: 2002 ACTION AND TOTALS

Type of Policy	*Adopted in 2002*	*Number of States With Policies*
Contraceptive Coverage	Arizona*, Massachusetts*, New York*	17 in effect, plus 3 effective January 2003
Promoting Abortion Access		
Requiring abortion training	California*, New York City†	NYC in effect, plus 1 effective January 2003
Confidentiality protection	California*	1 effective January 2003
Emergency Room Access to Emergency Contraception	California*, New York, Washington	4 in effect, plus 1 effective January 2003
Ban on All Human Cloning	Iowa	3 in effect
Family Planning Funding Restriction	Michigan, Pennsylvania	6 in effect
Waiting Period for Abortions	Alabama*	17 in effect 4 enjoined or otherwise blocked 1 effective October 2002
'Choose Life' License Plates	Mississippi, Oklahoma*	2 in effect 2 enjoined 1 effective November 2002

**Not yet in effect. †Applies only to public hospitals.*

A third, again precedent-setting, law expands protections for reproductive health care providers and patients from antiabortion threats and violence. On the heels of a statute last year protecting access to clinics, this law establishes a confidentiality program—modeled after an existing one protecting domestic violence and stalking victims—that withholds providers' and patients' personal information, such as addresses and telephone numbers, from public records.

Finally, California established a policy that requires hospitals to provide women who have been raped with information about emergency contraception and to dispense the drug on request. New York and Washington State also established similar policies this year. The three states join two others that, over the last few years, have addressed this issue in response to reports that many hospitals, both religious and secular, do not routinely provide these time-sensitive services.

Antiabortion Agenda

Many observers anticipated that the issue of human cloning would take center stage among antiabortion state legislators ("Not Waiting for Congress to Act, Some States Move to Ban Human Cloning," *TGR*, February 2002, page 13). Nearly half the states considered cloning restrictions this year, but only Iowa enacted a ban that fully meets the movement's goals, encompassing both reproductive cloning and so-called therapeutic cloning used for the production of stem cells. California, in contrast, went against antiabortion activists by making permanent a temporary ban on reproductive cloning but at the same time giving its imprimatur to and establishing rules for embryonic stem cell research.

In their continued attempts to marginalize family planning and stigmatize abortion, antiabortion lawmakers passed new laws in two states restricting the distribution of family planning funds. Pennsylvania's new law prohibits the use of state funds for abortion-related activities and requires that projects supported by state family planning funds be physically and financially separate from any organization's abortion-related activities, except for the nondirective counseling and referral required by and paid for under the Title X law. Michigan, which already had a restriction on the use of state funds for abortion-related services, enacted an innovative new system for the distribution of state and federal funds that gives priority to organizations that agree not to perform or provide referrals for abortion. Antiabortion advocates hope that the priority system, as opposed to a flat-out ban, will meet less resistance publicly and in court ("Michigan Breaks New Ground in Restricting Family Planning Funds," *TGR*, August 2002, page 13).

Mostly, though, the bulk of successful antiabortion activity revolved around measures aimed at more directly restricting women's access to abortion. Alabama enacted a 24-hour waiting period with a few new twists: Counseling must be done in person or by certified mail, in which case a physician must have the signed receipt of certified mail at least 24 hours before the surgery. In addition, a woman may sue the physician for "wrongful death" of the fetus if the physician fails to adhere even to the law's most technical requirements, such as retaining all related documents, including the certified mail receipt, for at least four years after the procedure. In related actions, a mandatory waiting period bill in West Virginia was vetoed by the governor, while a federal appeals court upheld an Indiana waiting period law that contained an in-person counseling requirement. The decision would effectively force Indiana women to make two trips in order to obtain an abortion.

Antiabortion advocates in Mississippi pushed through a law that prohibits public institutions or employees from using federal, state and local public funds in any way for abortions, except in cases of life endangerment, rape, incest or a fetal abnormality that would prevent a live birth. The measure impacts a range of venues—from public hospitals to public employees' insurance plans—beyond the Medicaid programs that states more typically restrict. (In that area, while not doing so explicitly, the law appears to finally put the state in compliance with federal law, which mandates that state Medicaid programs cover abortions in cases of life endangerment, rape or incest. Heretofore, Mississippi policy did not allow funding in the latter two cases.) Also this year, Alaska's governor vetoed a public funding bill that contained a narrow definition for what constituted a "medically necessary" abortion reimbursable by Medicaid. Meanwhile, an Idaho judge upheld a law restricting Medicaid reimbursement for abortions to cases of life endangerment, rape or incest.

Finally, Mississippi and Oklahoma joined a growing number of states that have authorized the production of specialty license plates bearing the antiabortion message: "Choose Life." A similar bill in Kansas was vetoed. Money from the sale of these plates is set aside to fund antiabortion crisis pregnancy centers, which often offer medically inaccurate information and biased counseling to women seeking a pregnancy test or counseling with regard to an unintended pregnancy ("Crisis Pregnancy Centers Seek to Increase Political Clout, Secure Government Subsidy," *TGR*, May 2002, page 4). So far, abortion rights activists have not experienced much success challenging the constitutionality of these laws. This year, federal courts upheld "Choose Life" license plate laws in Florida and Louisiana.