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Advocates Again Look to States to Promote Eased Access to Emergency Contraception

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By the time the Food and Drug Administration (FDA) announced last August—for the third time since 2004—that it was not yet willing to grant over-the-counter (OTC) status to the emergency contraceptive Plan B, most emergency contraception advocates had long since ceased to be surprised. Still, news that the agency was persisting in its refusal to heed the recommendations of both its senior staff and two expert advisory panels sent waves of anger throughout the reproductive health community. On Capitol Hill, Plan B's leading champions, Sens. Hillary Rodham Clinton (D-NY) and Patty Murray (D-WA), vowed that they would block the confirmation of the FDA's acting commissioner, Andrew von Eschenbach, as permanent commissioner until a final decision is made, one way or the other. Yet, whatever the disposition of the von Eschenbach nomination, most observers are betting that the indefinite delay announced by the FDA will hold for the duration of the Bush administration.

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Having been blocked by politics at the federal level, advocates are redoubling their efforts at the state level to enable women to have access to back-up birth control within the short window of time in which the method can effectively prevent pregnancy after unprotected intercourse. Much of their attention will continue to focus on state collaborative practice laws, which grant prescriptive authority to pharmacists and provide an approximation of over-the-counter availability. Growing support of other practices, such as advanced prescriptions for Plan B, demonstrates that these avenues are worth pursuing as well. In 2005, the Guttmacher Institute conducted an investigation of policies to explore the range of possible options available on the state level and to provide additional strategies, with which advocates are likely to make some progress in the face of federal inaction.

Collaborative Practice Agreements

Collaborative practice laws allow pharmacists to enter into an agreement with physicians to prescribe medication directly in a pharmacy setting. Where applied to emergency contraception, these policies greatly reduce the time it takes for a woman to obtain emergency contraceptives, by removing the need for her to visit a doctor. To date, nine states (Alaska, California, Hawaii, Maine, Massachusetts, New Hampshire, New Mexico, Vermont and Washington) have policies that specifically allow pharmacists to dispense emergency contraceptives to women without a prior prescription (see table, page 12); another six states have considered similar legislation this session.

According to the 2005 Guttmacher Institute investigation, 28 additional states have some type of collaborative practice policy on the books, which could be used to expand access to emergency contraceptives; however, some of these laws are extremely general, whereas others are comparatively restrictive. For example, some limit agreements to specific patient

PRESCRIPTION DRUG POLICIES

Some states already have various policies in place that have been or could be used to promote easier access to the emergency contraceptive Plan B.

	Collaborative Practice Policies		Limited Agreements Possible				
	Policy currently allows direct pharmacy access to EC	Current policy could accommodate direct pharmacy access to EC	Applies to patient named by the prescriber	Pharmacists may modify an existing prescription	No policy or no agreement possible	Time limit on prescriptions (in years)	Emergency refills permitted*
Alabama					X	No limit	
Alaska	X					1	
Arizona					X†	1	
Arkansas			X			1	
California	X					No limit	Maintenance of health
Colorado		X				1	Maintenance of health
Connecticut					X†	No limit	Maintenance of health
Delaware					X	1	
Dist. of Columbia					X	No limit	
Florida			X			1	
Georgia			X	X		No limit	Maintenance of health
Hawaii	X					15 months	
Idaho			X‡			1	Professional judgment
Illinois		X				1	
Indiana					X†	1	
Iowa					X	18 months	Maintenance of health
Kansas		X				1	
Kentucky			X			1	
Louisiana			X			1	Professional judgment
Maine	X					1	
Maryland			X	X		1	
Massachusetts	X					No limit	
Michigan		X				1	
Minnesota				X		1	
Mississippi			X			1	Maintenance of health
Missouri					X	1	
Montana			X			1	
Nebraska			X			1	
Nevada			X			1	
New Hampshire	X					1	Maintenance of health
New Jersey			X	X		1	
New Mexico	X					1	Maintenance of health
New York					X	No limit	
North Carolina			X			1	
North Dakota					X†	1	
Ohio			X	X		1	
Oklahoma					X	1	
Oregon			X			2	Professional judgment
Pennsylvania					X†	1	
Rhode Island			X	X		1	
South Carolina		X				2	
South Dakota		X				No limit	
Tennessee		X				1	
Texas			X§			1	
Utah		X				1	Professional judgment
Vermont	X**					1	
Virginia					X†	2	
Washington	X					1	Professional judgment
West Virginia					X	1	
Wisconsin		X				1	
Wyoming			X			2	

*In the case of "maintenance of health," a refill may only be dispensed to prevent undesirable health consequences, to prevent patient suffering or to protect the patient's health, safety and welfare. †Agreement is limited to hospitals or other institutions that are inaccessible to most women. ‡Patient must be referred by a prescriber. §Prescriber must have a relationship with the patient. **Policy goes into effect in July 2006.
Source: Guttmacher Institute, 2005.

populations, such as patients explicitly named by the prescriber, patients who have a relationship with the prescriber or patients referred to the pharmacist by the prescriber. Although the laws vary considerably by state, supportive policymakers can use them as frameworks to develop agreements that specifically apply to the provision of emergency contraceptives.

Utilizing State Pharmacy Boards

In states where the likelihood of enacting a collaborative practice agreement specific to Plan B is slim because of the political makeup of the state legislature, advocates can turn their attention to a separate state body that also controls the fate of prescription drugs: the board of pharmacy. Boards of pharmacy are responsible for enforcing pharmacy practice law. They are empowered to control the practice of pharmacy and issue specific regulations regarding the licensing of pharmacists and pharmacies, and the sale and distribution of drugs and related devices, among other things. The boards may impose disciplinary sanctions when a pharmacist or pharmacy has violated state policies.

Time limits for prescriptions are one component of state pharmacy policy that could be used to increase women's access to emergency contraceptives. According to the Guttmacher analysis, most pharmacy board policies allow pharmacists to fill a prescription up to a year after it is written; after that time, the prescription becomes invalid and the patient must obtain a new one if she wishes to receive medication. Some providers are using these existing time limits to prescribe emergency contraceptives to their patients in advance, with the hope that women will either have the prescription filled and store the pills or keep the prescription in case of future need. Many advocates and public health organizations, including the American College of Obstetricians and Gynecologists (ACOG), readily support this method. In addition, advocates could work in tandem with their state pharmacy board to have these limits extended or waived altogether.

Another opportunity to increase access to emergency contraceptives is through the use of policies related to prescription refills. Most state policies firmly restrict the number of refills allowed under a particular prescription order. Thirteen states, however, allow pharmacists—after first trying to contact the prescriber—to refill any previously prescribed drug to a patient whose refills have run out. In some states, this can be done solely on the basis of a pharmacist's professional judgment. In other states, a pharmacist may refill an otherwise expended prescription to prevent "patient suffering" or an "undesired health consequence"—outcomes that could certainly be interpreted to apply to an unplanned, unwanted pregnancy. Although these policies have not yet been applied to the refilling of prescriptions for emergency contraceptives, they may prove to be a successful means of using existing pharmacy rules to dispense the method.

Plan C: Best Practices on the Ground

In light of the inescapable reality that the effectiveness of emergency contraceptives is directly related to the timeliness with which they are taken, other means of expediting women's access to the method beyond official state policies are being explored. Advocates across the country are launching grassroots campaigns to raise awareness of emergency contraception among providers and the general public, to ensure that key stakeholders are stocking and dispensing the drug, and to increase women's access to it through the promotion of online pharmacies and telephone prescriptions.

The "Back Up Your Birth Control" (BUYBC) campaign, for example, promotes emergency contraception by visiting local pharmacies and distributing educational materials to pharmacists in training. In addition, they have developed information packets for the general public in both English and Spanish. Along these same lines, the Pharmacy Access Partnership has created "family planning centers" in some retail pharmacy settings, where promotional and educational materials on emergency contraception are on display and available to the public. More recently, ACOG launched the "Ask Me" campaign, aimed at educating women about emergency contraception and encouraging them

to get advanced prescriptions from their doctor. ACOG encourages doctors to wear buttons that read "Ask Me" to spur conversations between the doctor and the patient about Plan B.

In addition to providing information about emergency contraception, advocates are working to ensure that stakeholders in the private sector are stocking and dispensing Plan B. For example, in March, after years of refusing to stock Plan B because of "low demand," the multibillion-dollar Wal-Mart corporation buckled under mounting political pressure and agreed to stock it in all its pharmacies nationwide (after already having been required to sell the product in Massachusetts and Illinois). This decision was a huge victory for advocates because Wal-Mart—the third largest U.S. pharmacy chain, with over 3,600 locations nationwide—plays an important role in the timely provision of Plan B, especially for women living in rural communities where Wal-Mart may be the only local pharmacy. As a follow-up to this announcement, the BUYBC campaign spearheaded an initiative that enlists volunteers to visit local Wal-Mart stores and conduct surveys of pharmacists, to ensure that Wal-Mart complies with its new nationwide policy.

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In an earlier effort to promote the provision of Plan B in the private sector, the New York City Council in 2003 enacted several measures. One prohibits city agencies from contracting with hospitals that do not either provide counseling about emergency contraception or dispense the actual medication to victims of sexual assault upon request. A second measure requires pharmacies that do not carry emergency contraceptives to post a sign indicating such. To date, a handful of public officials from other cities and states are considering similar sign-posting policies, including Illinois Gov. Rod Blagojevich (D), who announced such a proposal in March 2006. (Also, the council simultaneously enacted a measure to require all city clinics and health centers that provide STD treatment to provide emergency contraceptives.)

Another initiative that has significant potential to increase women's access to emergency contraceptives is the promotion of the Internet as a means of obtaining prescriptions. For example, Not-2-Late.com, a Web site set up by Princeton University, allows women to search by zip code for pharmacies and clinics that provide Plan B, and Getthepill.com provides prescriptions to women after they have completed an online medical questionnaire. (For the time being, however, Getthepill.com has its limitations; it does not provide prescriptions for patients living in 31 states.)

Finally, advocates urge providers to prescribe emergency contraceptives over the phone, obviating the need for women to see a clinician in person. The most recent systematic data available, which were compiled by the Guttmacher Institute, reveal that in 2003 more than one-third of publicly funded family planning agencies that provided emergency contraceptives also prescribed the method over the phone. Recent anecdotal evidence gathered from Planned Parenthood affiliates across the country suggests that, in the years since, the use of phone and Internet to prescribe Plan B has accelerated. Some clinicians have even started writing a standard prescription for every woman who makes a visit to the clinic.

All in all, these multilayered efforts demonstrate a commitment among advocates to support widespread and timely access to Plan B by whatever means available. By advancing policies in both the public and private sectors, advocates are incrementally creating greater access for women all across the country despite a series of disappointments—all with the hope that emergency contraception will one day be approved as a nonprescription product, once and for all.

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