

## Minors' Rights at Center Stage in Medical Records Privacy Debate

President Bill Clinton joined Department of Health and Human Services (DHHS) Secretary Donna Shalala October 29 in proposing federal regulations that would establish the first national standards to protect patients' personal medical records in some cases. The standards would apply to medical records created by health care providers, hospitals, health plans and health care clearinghouses, provided that those records are either transmitted or maintained electronically. Paper printouts from these records also would be protected.

The regulations are required under the terms of the 1996 Health Insurance Portability and Accountability Act. That law committed Congress to enacting comprehensive legislation to prevent medical information, maintained electronically or otherwise, from being disseminated without patients' consent by August 21, 1999. The law further provided that if Congress failed to do so by that date, DHHS was to begin drafting more limited regulations for completion by February 2000. Lawmakers missed this deadline and, in fact, have been stymied by the medical privacy issue for several years. A number of competing proposals are on the table, but action has been postponed, in large part because of controversy on whether a uniform national standard governing parents' access to the medical records of their minor children should preempt state policy on this matter.

In the absence of a federal policy, state laws concerning the right of minors to consent on their own to medical care also determine whether their records are confidential. Currently, 23 states and the District of Columbia explicitly guarantee minors the authority to consent to

contraceptive services, and 49 states and the District of Columbia allow minors to consent to the diagnosis and treatment of sexually transmitted diseases. No state explicitly mandates parental involvement for minors to obtain these services. Regarding abortion, however, the situation is quite different; 41 states have enacted laws requiring either parental consent or notification before a minor may obtain an abortion, although the laws are not in effect in all of those jurisdictions.

The proposed regulations would keep state policies on this subject in force. DHHS is accepting public comments until January 3.

## Appeals Courts Differ Over State 'Partial Birth' Abortion Bans

With conflicting rulings handed down earlier this fall by two U.S. appellate courts, the question of the constitutionality of laws banning "partial-birth" abortion—enacted to date in 30 states—is likely headed for the Supreme Court.

In late September, a three-judge panel of the Court of Appeals for the Eighth Circuit unanimously struck down "partial-birth" abortion bans enacted in Arkansas, Iowa and Nebraska. Rejecting the argument that these laws are aimed at a discrete abortion procedure, tantamount to "intact dilation and extraction" (D&X), the panel ruled that the statutes are so broadly written as to prohibit several common abortion procedures performed early in pregnancy.

A month after the Eighth Circuit's decision, however, the full Court of Appeals for the Seventh Circuit came to the opposite conclusion, ruling 5-4 that similarly worded bans enacted in Illinois and Wisconsin can be applied in a constitutional manner. The court acknowledged that the current language of the statutes is an "imperfect

match" for the medical definition of D&X. Nevertheless, it upheld the bans as they apply to D&X abortions. At the same time, the court took the unusual step of instructing the federal district courts in both states to issue "precautionary injunctions" to prevent prosecution for abortion procedures other than D&X until the courts further clarify the laws.

On November 15, Nebraska's attorney general petitioned the Supreme Court to review the Eighth Circuit's decision. Appeals of the Seventh Circuit's ruling are expected to be filed shortly.

In early November, meanwhile, Maine voters soundly rejected a proposed ban on "partial birth" abortion, 55-45%. Opponents of the measure successfully cast the ban as so vague that it could be construed to outlaw most abortions, even early in pregnancy. In 1998, voters defeated similar "partial-birth" bans in Colorado and Washington State.

## Use of Fewer Embryos During In Vitro Fertilization Endorsed

The practice of implanting multiple embryos during in vitro fertilization (IVF) to improve the odds of a successful pregnancy has been a factor—along with the use of fertility drugs—in the rising rate of multiple births in the United States. Multiple births increase both the risk and the financial cost of complications during pregnancy and delivery; they also increase the incidence of birth defects. Groups such as the American Society for Reproductive Medicine (ASRM), which represents providers of infertility treatment, note that U.S. patients often choose to implant more embryos than recommended in part because IVF procedures are expensive and generally not covered by insurance (*TGR*, Vol. 2, No. 5, October 1999).

A study published in November in the *Journal of the American Medical Association*, however, concludes that for younger women, implanting three or more embryos during IVF, does not improve the odds of a successful birth, although it does significantly increase the risk of multiple births. The study, conducted by Centers for Disease Control and Prevention researchers and including more than 35,500 IVF procedures nationwide in 1996, found that the chances of a live birth peaked at 43% among women aged 20–29 when two embryos that were judged to be of high quality were implanted. The rate of multiple births per live birth among the same age group, however, doubled (from 23% to 46%) when three embryos were implanted rather than two. The study also found that both the live-birth rate and the odds of a multiple birth decreased dramatically with age; they were 24% and 25%, respectively, among women aged 40–44, even when five embryos were implanted.

These findings have prompted ASRM to revise its IVF guidelines to recommend that a maximum of two embryos be transferred for most younger women; ASRM's previous guidelines had recommended a maximum of three embryos for such patients. For older women and for women for whom treatment has failed repeatedly in the past, ASRM recommends transferring up to five embryos.

### **CDC Calls for Elimination of Syphilis From the United States**

In 1998, syphilis incidence in the United States declined to a historic low—6,993 total cases, or 2.6 cases per 100,000 people—prompting the Centers for Disease Control and Prevention (CDC) earlier this fall to announce a national plan to completely eradicate this sexually transmitted disease (STD). “We have an unprecedented window of opportunity to eliminate syphilis in the United States,” says Judith

Wasserheit, director of CDC's STD prevention division, “because rates are at an all-time low and because the disease is now extremely concentrated geographically.” Indeed, half of all new cases in 1998 were reported from only 28 counties, primarily in southeastern states.

CDC officials say that syphilis elimination would have far-reaching public health implications, because it would remove two “devastating consequences of the disease—increased likelihood of HIV transmission and compromised ability to have healthy babies due to miscarriages, stillbirths and multi-system disorders caused by congenital syphilis acquired from mothers with syphilis.” In addition, they say, it would significantly decrease “one of this Nation's most glaring racial disparities in health.” Although the disparity between reported syphilis rates for black and white Americans has decreased markedly since the early 1990s, blacks living in poverty are still disproportionately affected by the disease.

While syphilis is a complex STD, it is relatively easy to diagnose and treat; one dose of penicillin can cure a person who has been infected for less than a year. Moreover, because syphilis also is entirely preventable—indeed, recent reductions in syphilis infections have been attributed in part to safer sex practices, such as using condoms and having fewer partners, as well as increased funding for treatment—Wasserheit adds, “no American should have to face this disease in the 21st century.”

Other industrialized countries already have eliminated syphilis, and to move the United States toward that goal, CDC has targeted 33 areas in the country with the heaviest current caseload or with a high potential for reemergence. With funds redirected from other CDC activities and matched with state and local funds, these targeted areas will

implement comprehensive programs aimed at expanding surveillance, providing screening and laboratory services, improving agency partnerships and enhancing community awareness and involvement in preventive efforts. CDC has set two goals for 2005: fewer than 1,000 cases nationwide and an increase in the proportion of syphilis-free counties from 78% to 90%.

### **UN, World Bank Recommit to Reducing Maternal Mortality**

Key United Nations agencies and the World Bank issued a joint statement October 29 recommitting themselves to placing a high priority on reducing maternal mortality worldwide. The World Health Organization (WHO), United Nations Population Fund (UNFPA) and United Nations Children's Fund (UNICEF) joined the World Bank in marking the 10th anniversary of the Safe Motherhood Initiative and announcing priority actions that governments and societies must take to reduce the 600,000 deaths that occur annually from causes related to pregnancy and childbirth. Ninety-eight percent of these deaths take place in developing countries.

The three core areas cited in the joint statement are advancing the empowerment of women “to make choices in their reproductive lives with the support of their families and communities”; improving access to and quality of maternity care and delivery services; and ensuring access to family planning information and services, to enable women “to choose if and when to become pregnant.”

In issuing the statement, WHO Director-General Gro Harlem Brundtland said joint action “will result in greater synergy in our work at the country level, and in the end save more lives.” She noted that the leading causes of maternal death are hemorrhage, high blood pressure,

obstructed labor and unsafe abortion; in some parts of the world, she said, unsafe abortion alone accounts for more than one-third of maternal deaths. For her part, UNICEF Executive Director Carol Bellamy stressed that since nearly half of all infant deaths are attributed to poor maternal health care, saving more mothers will also result in saving more children.

Speaking to the importance of enhancing women's role in society, UNFPA Executive Director Nafis Sadik

asserted that "motherhood cannot be safe until women are allowed to be more than mothers and properly valued and respected by their families and by society. Discrimination against women and girls in terms of nutrition, health care, education, and employment opportunities must be eliminated," she said, "and access to reproductive health, including family planning information and services, must be guaranteed." ☉

### *Review...*

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the parental involvement requirements of the minor's home state.

Finally, the Unborn Victims of Violence Act made its congressional debut this year and passed the House, 254-172. This bill would make it a federal crime to harm an "unborn child" during the commission of another federal crime. Paradoxically, this bill exempts abortion while at the same time defining the fetus as a person. As in the case of the "partial-birth" abortion ban, it is the latest in a series of renewed attempts on the part of antiabortion activists to change minds, if not the law, about the status of the fetus and the legitimacy of abortion (see related story, page 3). ☉



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