

## Congress in 2000: Actions to Date On Major Reproductive Health Issues

By Susan A. Cohen

At this writing, almost a month after the national elections, the 106th Congress remains officially in session, and actions on key reproductive health-related matters have yet to be taken. Still, the year's legislative headline undoubtedly was written when Congress and the president, in late October, agreed to a foreign aid bill that eliminated the "global gag rule" and increased funding for international family planning assistance for the first time since 1996. The demise of the global gag rule, combined with the formal repeal in July of the gag rule affecting domestic family planning programs, means that President William J. Clinton—who suspended both versions two days after taking office in 1993—will be leaving office with family planning policy on a solid footing, at least for the short term.

The year 2000 also was notable for the fact that antiabortion forces made no new inroads in the session leading up to the elections. Further, the U.S. Supreme Court in July declared "partial-birth" abortion ban legislation—which had been the movement's centerpiece in Congress and the states as a matter of both policy and public relations over the last six years—unconstitutional, and the Food and Drug Administration (FDA) in September gave long-awaited final approval to mifepristone as a method of early nonsurgical abortion.

Meanwhile, Congress—which originally had planned to adjourn for the year in early October—shut down temporarily only days before the elections, hoping that once the will of the voters became clear, its outstanding disputes, both internally

and with the president, could be resolved in short order. With the outcome of the presidential election still uncertain, however, and with both houses of the incoming Congress virtually evenly divided between the two major parties, prospects for progress in the December lame-duck session are uncertain. One of the primary unresolved issues is the set of policy and funding questions surrounding the bill funding Department of Health and Human Services programs for the fiscal year that began October 1. These programs are being maintained at their FY 2000 levels until such time as the 106th Congress this year, or the 107th next year, acts on an FY 2001 bill.

### International Family Planning

Against all odds, the administration and key pro-family planning negotiators in Congress—led by Reps. Nancy Pelosi (D-CA), Nita M. Lowey (D-NY), Carolyn B. Maloney (D-NY) and James Greenwood (R-PA)—prevailed this year not only in removing the global gag rule but also in increasing funding for the U.S. Agency for International Development's (USAID's) overseas family planning program by more than \$50 million, to \$425 million from the \$372.5 million available in FY 2000. The battle royal over the gag rule had been raging ever since Republicans took control of both houses of Congress in 1995.

Finally put into effect in November 1999 (as the price for allowing Clinton to repay past U.S. debts to the United Nations), the gag rule aims to persuade overseas-based family planning groups—in exchange for USAID family planning support—to refrain

from using their own funds either to provide legal abortion services or to engage in abortion-related advocacy activities. Several of the largest such organizations, including the United Nations' World Health Organization and the London-based International Planned Parenthood Federation, would not or could not agree to these conditions. Under the terms of the law, they were still able to receive U.S. family planning assistance up to a total of \$15 million collectively. (Since USAID has until October 2001 to disburse all population aid funds appropriated under the FY 2000 law, the gag rule will still apply in 2001 to those organizations receiving support under last year's law.)

In return for agreeing to drop the gag rule and accede to a funding increase, program opponents prevailed in attaching a provision stipulating that *none* of the FY 2001 funds appropriated for international family planning may be spent until February 15, 2001. Before the election, banking on a Gov. George W. Bush victory for the presidency, they had calculated that early in his administration, Bush would restore the gag rule in the form of an executive decision. In light of the closely divided 107th Congress, however, and the apparent need of the new president, whoever he turns out to be, to avoid controversy, at least at the outset, the prospects for an automatic renewal of the gag rule under a Republican administration are considerably less certain.

In addition to the agreement reached on USAID's program, the FY 2001 law continues the deal struck in 1999 that allows for a contribution of up to \$25 million to the United Nations Population Fund (UNFPA), with a deduction for the amount UNFPA spends in China next year (\$3–5 million). Further, the new law requires that USAID devote at least \$15 million in this fiscal year—a sevenfold increase over the current amount—to

research and development on microbicides under the auspices of its HIV/AIDS prevention program.

### Abortion Rights

In April, the House rushed once again to pass a ban on “partial-birth” abortion, 287–141, in order to go on the record before the U.S. Supreme Court could render its opinion on the constitutionality of such a prohibition. But once the court struck down Nebraska’s law (which is virtually identical to the federal legislation) in *Stenberg v. Carhart* in June, the centerpiece of the antiabortion movement’s agenda went into a stall.

Meanwhile, the Senate declined to take action at any time during this Congress on three other antiabortion initiatives. The House passed two of these bills in 1999: legislation designed to effectively impose a nationwide parental notification law (the so-called Child Custody Protection Act) and a bill whose purpose is to criminalize harm to an “unborn child” from the moment of conception (the Unborn Victims of Violence Act). Then in September 2000, the House added to its roster the Born-Alive Infants Protection Act. While abortion foes claimed that a new law was necessary to protect infants who survive abortions in light of the *Stenberg* decision, abortion rights advocates also voted for the legislation on the grounds that it would break no new legal ground as regards

either abortion or the treatment of newborns. Although the measure passed the House by a vote of 380–15, the Senate declined to act on this bill as well.

In July, the House tried, but failed on a vote of 182–187, to pass legislation blocking FDA consideration of mifepristone. After the FDA gave final approval to this method of early medical abortion in September, abortion opponents introduced legislation to restrict the conditions under which it could be distributed and administered (see *For the Record*, page 13). So late in the congressional session, the bill never progressed, although it is likely to resurface next year. Finally, the only abortion-related provisions that actually became law this year are the various long-standing prohibitions on federal funding of abortion services or insurance coverage of abortion. Prochoice legislators challenged some of these restrictions over the course of the year, but they failed in all cases to change the status quo.

### Domestic Family Planning

Until such time as Congress decides to take action on an FY 2001 appropriations bill for Department of Health and Human Services programs, the prospects for the president’s proposed \$35 million increase in Title X funding remain uncertain. In addition, the fate of two other controversial policy issues remains

in limbo: a Senate-passed amendment prohibiting the use of federal funds for the distribution of emergency contraception at school-based health centers and a House-passed amendment requiring condom labels to warn about the risk of contracting human papillomavirus.

One important but little-noticed provision affecting Title X-funded family planning clinics did get enacted this year, in the context of a bill designed to promote adoption through a new pregnancy-counselor training program. After extensive political wrangling, language in the original Adoption Awareness Act that would have reinstated the gag rule by banning abortion information and referrals at Title X-supported clinics was transformed into a requirement that individuals trained under the act be trained to provide “adoption information and referrals to pregnant women *on an equal basis with all other courses of action included in nondirective counseling to pregnant women*” (emphasis added). This new statutory endorsement of the concept of nondirective pregnancy counseling, combined with the administration’s formal repeal of the gag rule, would seem to suggest that the ability of health care providers in publicly funded clinics to provide complete and accurate information to pregnant women about their legal medical options is more secure now than it has been in many years. ☺