

Reproductive Health Politics and Policy in Congress: Where Things Stand

By Susan A. Cohen

Congress got off to a particularly slow start this year, including with regard to policy affecting reproductive health and rights, and then shifted in a radical new direction once Sen. Jim Jeffords (I-VT) renounced his Republican party affiliation in late May—handing control of the Senate to the Democrats and, effectively, to the prochoice side of the debate. While few brakes on the antiabortion movement's agenda had been foreseen during the few months that both the legislative and administrative branches of government remained in conservative Republican hands, only one item on their list of proactive bills had advanced by that time. At this point, even that bill's future is in doubt, and the politics of other abortion-related bills seem to be lining up in favor of the status quo. Meanwhile, there is cause for some optimism that progress might actually be made on family planning issues.

Overseas Family Planning and Population Assistance

FY 2002 funding for reproductive health programs overseas likely will increase by the time the appropriations process is completed this fall. Meanwhile, although the administration's global gag rule policy remains intact for now, the House came within four votes of overturning the policy earlier this year. And negotiations with the Senate, where gag rule opponents now control the agenda in addition to having the votes, is still to come.

The House-passed FY 2002 foreign aid appropriations bill reflects the administration's request that the U.S. Agency for International Development's (USAID's) "reproductive health/voluntary family planning" program (renamed at the

administration's request to fit under a "global health rubric") be continued at \$425 million. Also as requested by the president, up to \$25 million in additional funds would be available under the House bill for a U.S. contribution to the United Nations Population Fund (UNFPA), with a deduction for the amount UNFPA will spend in China this year (\$3–5 million). The Senate's version, which has yet to go before the full Senate, would allocate "at least" \$450 million for reproductive health/voluntary family planning and "at least" \$39 million for UNFPA, the only caveat being that none of the U.S. contribution can be used in UNFPA's China program.

[On related matters, both the House and Senate already are in agreement that at least \$15 million should be spent next year on microbicide research and development as part of USAID's HIV/AIDS prevention efforts. The overall HIV/AIDS account itself will almost certainly increase next year, to a level well above the current amount of \$315 million.]

With Democrats in charge of the negotiations for the Senate and with a new House Foreign Operations Subcommittee chairman, Jim Kolbe (R-AZ), who is a strong supporter of family planning programs, there is a good likelihood that a compromise on population-account funding can be found that exceeds the current levels. Compromise will be harder to achieve on the gag rule, however; predicting the "endgame" is particularly difficult this year in light of the changed political dynamics. Another showdown between the House and Senate, and indirectly with the president, is looming on the gag rule in the fall.

In the Senate, momentum to overturn the president's policy began building with its first-ever hearing on the gag rule, in the Foreign Relations Committee on July 19. Sen. Barbara Boxer (D-CA) chaired the session and highlighted the Global Democracy Promotion Act (GDPA), of which she is the lead sponsor, as an antidote to what she described as the president's antidemocratic, anti-family planning policy. The GDPA states that no overseas group can be denied U.S. development assistance on the basis of its non-U.S.-funded advocacy, counseling or referral activities, or its provision of medical services, so long as those activities or services would be permissible for U.S.-based groups operating in the United States.

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The committee heard testimony about the gag rule's negative effects on family planning efforts in Nepal and Bangladesh, where two prominent nongovernmental organizations (NGOs) will lose their U.S. family planning support—and the women they serve will lose access to family planning services—because of it. Meanwhile, speaking from the perspective of an NGO that felt compelled to accept the U.S. policy in return for desperately needed U.S. support, the head of a Peruvian NGO implored Congress to overturn the gag rule as antithetical to the principles of democracy, free speech and the promotion of civil society. These are among the very goals of her own organization and, she pointed out, of USAID as well.

Two weeks later, the committee's 10 Democrats were joined by Sen. Lincoln Chafee (R-RI), another original cosponsor of the GDPA, and

antiabortion Sen. Gordon H. Smith (R-OR) to approve the proposal, 12–7. At about the same time, the Senate Appropriations Committee approved its version of the FY 2002 foreign aid appropriations bill, also incorporating the operative language of the GDPA.

Whatever happens ultimately with the Foreign Relations Committee–reported “freestanding” GDPA bill, there will be a confrontation with the House in the context of reconciling a foreign aid spending bill, which must be enacted by the time Congress adjourns for the year. While the Senate will likely head into the House-Senate conference committee with a position that repudiates the president’s position, the House-passed bill is silent on the subject, which would leave the gag rule in place. House gag rule opponents, led by Reps. Barbara Lee (D-CA) and lead GDPA House sponsor Nita M. Lowey (D-NY), did force a vote on the policy earlier this year on another legislative vehicle, but failed to overturn it, 210–218.

Domestic Family Planning

Neither the House nor the Senate had even begun work before the August recess on the FY 2002 spending bill for the Department of Health and Human Services that funds Title X and other health programs. Accordingly, key decisions have yet to be made on the level of funding for the Title X family planning program in the coming year, whether those funds will be restricted in any way and the total amount that will be spent on sexuality education efforts that promote abstinence alone and exclude information about contraception.

In a major breakthrough, however, actions already taken in both the House and Senate virtually guarantee the continuation of contraceptive coverage for federal employees

under the Federal Employees Health Benefits Program. In his budget request, the president had proposed eliminating this requirement, which has been law for the past three fiscal years. But in a surprise move, even some of contraceptive coverage’s previously most consistent and staunchest opponents joined Lowey in voting, 40–21, to continue it when the matter was raised in the House Appropriations Committee on July 25. At that point, the administration conveyed that it would not oppose the provision, and the House passed the spending bill to which it is attached without a fight. Just before the recess, the Senate Appropriations Committee approved its version of the spending bill and incorporated the contraceptive coverage requirement without even taking a vote.

With contraceptive coverage apparently secured for federal employees, original sponsors of the Equity in Prescription Insurance and Contraceptive Coverage Act (EPICCC)—which would guarantee this coverage for all Americans—are planning the next step. The Senate Health, Education, Labor and Pensions Committee will hold a hearing on EPICCC on September 10, its first since Democrats took control of the Senate.

Abortion Policy and Politics

Efforts to further restrict abortion, or at least to push the politics of abortion in that direction, went into a stall once control of the Senate’s agenda shifted to the Democrats. Prior to that, the House passed the Unborn Victims of Violence Act, 252–172, on April 26. The purpose of the legislation is to establish separate criminal penalties for individuals who harm an “unborn child,” either knowingly or unknowingly, in the course of committing a federal crime (“The Antiabortion Campaign to Personify the Fetus: Looking Back to the Future,” *TGR*, December 1999, page 3).

Once it became clear that Senate Majority Leader Tom Daschle (D-SD) would not be scheduling any antiabortion bills for Senate floor action anytime soon, the little momentum that had accrued in the House to advance other bills dissipated.

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It is noteworthy, however, that even before the party shift in the Senate, the movement to ban “partial-birth” abortions—one of President Bush’s most highly touted campaign promises—had faltered. In light of the U.S. Supreme Court’s 2000 decision in *Stenberg v. Carhart* that Nebraska’s “partial-birth” ban was unconstitutional, abortion foes have not been able even to write a new federal ban that would both be constitutional and satisfy their own political bottom line, that the ban apply without any health exception and at all stages of pregnancy.

Further, the other eagerly anticipated major development in abortion politics this year apparently has turned into a “nonevent” as well. Despite early signals to the contrary, Secretary of Health and Human Services Secretary Tommy G. Thompson announced in June that he has no plans to second-guess the Food and Drug Administration’s 2000 approval of mifepristone as safe and effective for very early, non-surgical abortion. “Nobody has written to me asking me to review it on any safety concerns,” he said. No similar protestations on that front have been heard in Congress, either, where in both the House and Senate legislation to revoke or restrict the terms of mifepristone’s approval were introduced early in the year but have not been considered. ☉