

## State Policy in 2001: Major Reproductive Health-Related Developments

By Rachel Benson Gold and Elizabeth Nash

By the beginning of December, all but five state legislatures had completed their work for the year and adjourned. Regarding reproductive health and rights, seven states enacted major new antiabortion or anti-family planning policies, while six states expanded contraceptive insurance coverage or access to emergency contraception services or information. Also this year, the number of state laws facilitating the legal abandonment of infants continued to mount, as did state bans on human cloning.

### Abortion

When the federal Food and Drug Administration (FDA) approved mifepristone in September 2000, many analysts forecast that the action would usher in a rush of policy-making by state legislatures in 2001. Contrary to expectations, however, most legislatures stayed away from the issue this year. A range of measures was introduced in 11 states, but only in Arkansas and Kentucky were bills approved by even one house. Most of the proposals either would have allowed pharmacists to refuse to

provide the drug or would have extended existing state abortion restrictions to mifepristone. A few bills, however, would have gone much further. One in Ohio, for example, would have limited use of mifepristone to cases in which the life or health of the woman was endangered; that measure never even made it out of committee.

Meanwhile, several state courts this year considered challenges—on state constitutional grounds—to bans on public funding for abortions for low-income women. The supreme courts in Arizona and Florida upheld abortion-funding bans, saying the restrictions did not unconstitutionally impinge on women's right to choose abortion. Shortly after the Florida decision, however, advocates filed a new case alleging that the restriction amounts to sex discrimination; that second case is still pending. The Alaska Supreme Court, meanwhile, overturned a funding ban this year, saying it violated the state constitution's guarantee of equal protection. A lower court in Idaho enjoined the state's 2001 funding ban temporarily while a challenge is pending. Across the country, 18 states are using their own funds to pay for all or most abortions for low-income women; 14 of them are under court order to do so.

Finally, a handful of legislatures enacted measures on a variety of other topics related to abortion. Arkansas and Virginia enacted laws requiring a waiting period before a woman may obtain an abortion; this brings to 17 the number of states with such requirements in effect. Oklahoma passed a measure that effectively mandates parental involvement by allowing the physician to be held liable, if an abortion was performed without the parent's knowledge, for the cost of subsequent medical care that might become necessary. South Carolina enacted a measure establishing specialty license plates bearing slogans such as "Choose Life" and earmarking proceeds from the plates' sale to

MAJOR STATE POLICY CHANGES IN 2001

TYPE OF POLICY	ADOPTED IN 2001	NUMBER OF STATES WITH POLICIES
<i>Abortion</i>		
Public funding ban	Idaho*	32 plus DC in effect 14 enjoined or otherwise blocked
Waiting period	Arkansas, Virginia	17 in effect 4 enjoined or otherwise blocked
Mandated parental involvement	Oklahoma	32 in effect 10 enjoined or otherwise blocked
"Choose Life" license plates	South Carolina*	1 in effect 2 enjoined
Contraceptive Coverage	Missouri†, New Mexico, Texas†, Washington†	14 in effect, plus 3 effective January 2002
Family Planning Funding Restriction	Missouri, Ohio	7 in effect
Access to or Information About Emergency Contraception	California†, Illinois	3 in effect, plus 1 effective January 2002
Infant Abandonment	Arizona, Arkansas, Delaware, Idaho, Illinois, Iowa, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Wisconsin	35 in effect
Human Cloning Prohibition	Virginia	6 in effect

antichoice organizations; Louisiana and Florida have similar laws. The Florida statute is in effect, while the Louisiana and South Carolina measures have been enjoined pending the resolution of legal challenges.

### **Contraceptive Coverage**

Four states adopted measures this year requiring private insurance plans to cover contraceptive services and supplies; this brings the number of states with contraceptive coverage mandates to 17. By midyear, Missouri, New Mexico and Texas had enacted laws requiring that insurers that cover prescription drugs cover all FDA-approved prescription contraceptive drugs and devices. In September, the Washington State insurance commissioner issued a regulation that will have the same effect. Under the new rule, which is based on existing state sex discrimination statutes, insurance plans may not “restrict, exclude, or reduce coverage or benefits...on the basis of sex.”

All three of the newly enacted laws allow some employers or insurers in the state to be exempted from the mandate. Of the three, the hard-fought compromise in Missouri is the broadest. The measure applies to employers and insurers and allows exemptions based on moral or ethical, as well as purely religious, objections. At the same time, however, it allows enrollees in an employer-based plan that has been exempted to buy coverage directly from the insurer; it also protects enrollees from discrimination and guarantees them privacy in relation to their coverage. New Mexico’s exemption, like the exemptions in most of the 12 states that have them, applies only to “religious” employers, and Texas’s is applicable only to “religious” insurers; neither includes options or protections for enrollees.

Exemptions—whether to have them at all and, if so, how broad they should be—were at issue in other states as well. This issue is widely

seen as the primary obstacle to enactment of a mandate in New York, where the houses of the legislature adopted competing bills. Meanwhile, a state appeals court in California turned back a challenge from a Catholic Charities affiliate to the state’s narrow exemption, which is limited to bona fide “religious employers” that can meet a very stringent definition of that term; the ruling has been appealed to the state supreme court. A contraceptive coverage mandate passed by the Wisconsin Senate in October includes an exemption patterned after this California provision. Although the measure failed to pass the Assembly before the end of the session, it will carry over to next year. In the meantime, the state insurance commissioner, as required by state law, released a report on the potential impact of the bill. The report found that while four in five insurance plans in Wisconsin cover at least one contraceptive method, only one in five covers all FDA-approved methods.

### **Family Planning Funding Limits**

In recent years, several states have adopted, or tried to adopt, restrictions on state family planning funds; typically these restrictions either prohibit the use of state funds for activities—such as counseling or referral—related to abortion or the receipt of state family planning funds by organizations that provide such services. Two states, Ohio and Missouri, moved to expand existing restrictions this year. Ohio, which had previously prohibited the use of state family planning funds to perform abortion-related counseling or referral, added a requirement that agencies receiving funds be physically and financially separate from agencies that provide abortion services. Missouri, which has renewed its prohibition annually since 1996, added a requirement that family planning agencies that obtain funding through the federal Title X program and that also wish to receive

state family planning funds must first obtain a letter from the federal Department of Health and Human Services stating that Title X grantees are required to provide nondirective counseling on all pregnancy options (as, indeed, they are). Seven states have enacted some type of abortion-related restriction on state family planning funds.

Legislators in three additional states—Michigan, Minnesota and Wisconsin—fought bitterly over similar restrictions this year. The proposal in Michigan, if enacted, would add a new twist by assigning a lower ranking in the competition for state funds to organizations that are affiliated with providers of abortion-related services.

### **Emergency Contraception**

New laws enacted in California and Illinois bring to four the number of states with policies related to promoting access to or information about emergency contraception. The California law, which is similar to a long-standing policy in Washington State, allows a pharmacist to dispense emergency contraception without a prescription if done within a protocol developed in conjunction with a person who is authorized to prescribe medication. The new Illinois law, however, only requires hospitals to provide information about emergency contraception, and only to women who have been sexually assaulted; it does not require the hospital to provide the drug itself. An existing law in South Carolina requires hospitals to provide emergency contraceptives to sexual assault victims on request.

### **Infant Abandonment**

Since 1999, 35 states have enacted infant abandonment measures; 19 such provisions were enacted this year alone. Generally, these laws seek to offer a safe and confidential alternative to abandoning newborns without threat of prosecution. In a new approach, laws in Idaho, Iowa

*(Continued on page 14)*

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### *State Policy in 2001...*

*Continued from page 12*

and Wisconsin contain provisions utilizing the 911 emergency system. For example, the Iowa statute allows a parent to leave an infant at a hospital or similar medical facility as long as the parent notifies the facility, via regular telephone or 911, of the location of the infant.

### **Human Cloning Prohibitions**

Even before the recent announcement that scientists at a Massachusetts biotechnology firm had purportedly created a cloned human embryo, state legislatures had been considering bans on human cloning. A new law in Virginia bans “the creation of or attempt to create a human being by transferring the nucleus from a human cell from whatever source into an oocyte from which the nucleus has been removed.” Five other states—California, Louisiana, Michigan, Rhode Island and South Dakota—had already enacted similar measures. ⊕