

The States at Midyear: Major Actions on Reproductive Health-Related Issues

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By the middle of May, over half of the 44 state legislatures in session this year had already adjourned, and a substantial amount of activity had occurred across the country on such perennial issues as abortion, insurance coverage of reproductive health services and teenagers' access to those services. Several legislatures also had given serious consideration to emerging controversies over such matters as infant abandonment, emergency contraception for women who have been raped and the use of fetal tissue in research.¹

Abortion

Legislative action on abortion so far in 2000 has centered on four key issues: "partial-birth" abortion, parental involvement, state-directed counseling and mandatory delays, and the establishment of separate penalties for harm to a fetus when a pregnant woman is assaulted. By the beginning of the year, a majority of states already had passed laws limiting or restricting "partial-birth" abortions, although the majority of those laws have been struck down. So far this year, new restrictions have been enacted in New Mexico, await action by governors in Florida and Ohio and have been proposed in 16 additional states. In April, the U.S. Supreme Court heard oral arguments in a challenge to the ban enacted by Nebraska in 1999; a decision is expected before the Court adjourns for the year by the end of June (see *For the Record*, page 12). Currently, 11 states have bans against "partial-birth" abortion in effect, three other states have bans that are in effect

with limited enforcement and 17 states have bans that are enjoined.

Legislators in 10 states have introduced measures this year that would require some form of parental involvement when minors seek an abortion, with the bills about evenly divided between those that would require that parents be notified and those that would require that parents actually give consent. Consent laws have been enacted in Arizona and Idaho, which will bring to 18 the number of states with a parental consent law in effect; consent statutes in three additional states are enjoined. Fourteen state have laws in effect requiring parental notification; notification laws in an additional six states are enjoined.

Meanwhile, legislation to require state-directed counseling and a mandatory 24-hour delay for women seeking an abortion was vetoed this year by governors in Iowa and Minnesota, leaving at 14 the number of states that require both counseling and a delay; five additional states have similar laws that are enjoined. Eight states currently have statutes requiring counseling only; two additional states have counseling-only laws that are enjoined.

Finally, bills have been introduced in 22 states that in one way or another address the type and severity of criminal penalties that are appropriate when a pregnant woman is injured. While some of these measures focus on creating or enhancing penalties for the assault on the woman, legislation in other states would explicitly criminalize harming a fetus, a move widely regarded as a back-door way of establishing fetal personhood under the law so as to

pave the way for eventually criminalizing abortion. So far this year, Mississippi and Utah have enacted laws of the former type, establishing criminal penalties for the intentional injury of a pregnant woman that results in miscarriage or stillbirth.

Family Planning Funding Limits

Family planning advocates scored a big victory in Pennsylvania on May 15 when a conference committee deleted a "gag rule" from budget legislation that had been passed by both houses of the legislature. The provision would have blocked clinics from receiving state family planning funds if they provided clients with information on where to obtain abortion services. It also would have required abortion-related services to be separate, both physically and financially, from family planning services.

The physical- and financial-separation provisions considered in the Pennsylvania measure were similar to those approved by the Missouri legislature, and upheld by a federal appeals court, in 1999 ("The States in 1999: Actions on Major Reproductive Health-Related Issues," *TGR*, February 2000, page 5). Because the Missouri provisions were enacted as part of the state appropriations process, they must be reenacted each year. This year's bill, including the family planning language, was given final approval by the legislature on May 5 and is pending on Gov. Mel Carnahan's (D) desk.

Minors' Access

Beyond parental involvement for abortion, most of the legislative action related to teenagers and reproductive health this year has focused on promoting abstinence education and restricting access to contraception. On April 10, Colorado Gov. Bill Owens (R) signed an omnibus education measure requiring schools to emphasize abstinence in sexuality education and parents to give permission

1. Information in this article is current as of May 15, 2000. The term "serious consideration" means, at a minimum, action by a full committee in at least one house of a state legislature.

before children may take part in the instruction. The new law only applies to schools that accept state health grants, fewer than one-fifth of the school districts in the state.

In February, Utah Gov. Mike Leavitt (R) vetoed abstinence-only legislation because it would permit discussion of contraception, albeit only in terms of the failure rates of various contraceptive methods. Leavitt then turned around and instructed the state education board to implement several of the bill's provisions, including a requirement that school districts establish a committee of parents and educators to approve outside materials and guest speakers. He also instructed the board to implement provisions requiring a standardized parental consent form and an Internet site on which parents could review the curriculum.

Supporters of reproductive rights won a minor victory in Kentucky, where legislation requiring school-based sexuality education to follow the federal abstinence definition was defeated. According to media reports, however, the measure was defeated not because of a lack of support for abstinence education, but rather because many legislators believed that the state should not mandate what schools teach.

In addition, the legislatures in South Carolina and Minnesota have considered proposals to restrict minors' access to contraception, although apparently with different outcomes. The South Carolina bill, which passed one chamber, would allow parents to block minors younger than 16 from receiving contraceptive services from "state agencies," which leaves unclear whether the ban would apply to all entities receiving state funding. Moreover, reproductive health advocates are concerned that this measure may encourage the legislature in neighboring North Carolina to repeal that state's law allowing minors to access

contraceptive services; already five counties in the state have passed resolutions requesting a repeal. Meanwhile, a provision that would prohibit the distribution of contraceptives on school property, which was added to an omnibus education bill and passed by both houses of the Minnesota legislature, was removed in conference committee.

Insurance Mandates

On April 20, Gov. Thomas J. Vilsack (D) signed legislation making Iowa the 11th state in the nation to require private-sector insurance coverage of all Food and Drug Administration--approved prescription contraceptives in plans that cover other prescription drugs and devices. Unlike many of its predecessors, the new Iowa law does not include an exemption for religious employers or insurers. Contraceptive coverage bills have been approved so far this year by one house of the state legislature in four other states—Kentucky, Massachusetts, New York and Rhode Island.

By mid-May, one state, Kentucky, had enacted a new law to require direct access to women's health care providers, and two others had approved expansions of existing direct access statutes. The Kentucky law, signed by Gov. Paul E. Patton (D) on March 31, allows women to obtain an annual Pap smear from an obstetrician-gynecologist (but not other women's health care providers) without a referral from a primary care provider; Kentucky is the 37th state that requires some direct access for a Pap test. Maryland and Washington, meanwhile, enacted legislation to apply existing direct access laws to such nonphysician providers as nurse practitioners and midwives. Seventeen states now allow direct access to some non-physician providers.

On the heels of a January veto of a mandate for insurance coverage of infertility treatment by New Jersey Gov. Christine Todd Whitman (R)

("Bills to Expand Infertility Insurance Introduced, Vetoed," *TGR*, April 2000, page 13), two other states have made headway in expanding infertility coverage. Maryland enacted legislation altering an existing state law requiring coverage of in vitro fertilization (IVF). The legislation extends the requirement to health maintenance organizations; it previously applied only to other types of insurers. The measure also removes a marriage requirement and adds an exemption to the mandate for religious employers. The New York Assembly and Senate passed competing bills to mandate IVF coverage; the state currently requires coverage for some infertility treatments, but not IVF.

Emerging Controversies

Although barely mentioned in previous years, the issue of infant abandonment has taken center stage in 2000. More than 50 bills have been introduced in over 20 states, with measures in 15 legislatures receiving serious consideration thus far. Four states—Indiana, Louisiana, Minnesota and West Virginia—have enacted legislation this year, bringing to five the total number of states with infant abandonment laws on the books.

In general, the measures follow the standard set by Texas last year when it passed the nation's first law in response to the abandonment of several infants in Houston. The law allows an emergency medical provider to accept an infant younger than 30 days of age from a parent who expresses no interest in the return of the child. Several states have expanded the Texas language to include other medical providers. Other variations include requiring that parents be given information on parental rights, shortening the age limit to three days, attempting to obtain the medical history of the infant and even providing the infant and the parent with identification bracelets to aid in reunification at a later date.

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Legislation requiring hospitals to provide emergency contraception to women who have been raped is another legislative issue that has emerged in two key states. Interest in the issue rose in New York on the heels of a study by the state affiliate of the National Abortion and Reproductive Rights Action League. The study of hospital emergency rooms in the state, both religious and secular, revealed that more than half do not provide emergency contraception to rape survivors. Two bills were quickly introduced, one of

which has been approved by a committee in the Assembly, while the other died. A similar measure died in Illinois when it became entangled in a debate between the state's Catholic conference and Catholic hospitals, on the one hand, and family planning advocates, on the other, over whether emergency contraception is abortion or contraception.

For their part, antiabortion advocates have sought to ban the use of fetal tissue in biomedical research. Although an extended debate in Nebraska has garnered most of the media attention, proposed bans have been introduced in five other states,

with one awaiting final approval by Kansas Gov. Bill Graves (R). The Nebraska controversy began in late 1999, after newspapers reported that the University of Nebraska Medical Center was using fetal tissue in research searching for treatments for Alzheimer's and other neurological diseases. In a widely publicized attempt to end this work, opponents introduced a bill that quickly became a focal point of the legislative session. However, the measure died after several legislators, including its chief sponsor, began to question its constitutionality; the effort to ban fetal tissue research is expected to resume in the state next year. ☉