

The States in 1999: Actions on Major Reproductive Health-Related Issues

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As in years past, state legislative activity during 1999 produced a number of significant antiabortion and anti-family planning restrictions, yet also yielded a notable crop of measures more favorable to reproductive rights. To be sure, antiabortion legislators were effective in using the “partial-birth” abortion controversy to alter public discourse and rhetoric on abortion and to threaten the principles of *Roe v. Wade*. Yet 1999 was also the year that mandating insurance coverage for prescription contraceptives emerged as a potent and successful wedge for promoting a reproductive rights agenda. And although supporters of abstinence-only education saw their continued share of small victories, advocates of comprehensive sexuality education managed to temper this movement and make gains of their own.

Abortion Rights

This past session, antiabortion crusaders again proved their savvy in milking “family values”—such as parental rights and concern for the health of infants and mothers—to promote restrictions on abortion. At the core of this agenda was a new twist in their long-standing campaign to make the fetus a child, in the eyes of the law and the public: They labeled later abortion as “infanticide” in the rhetoric surrounding and even the language defining “partial-birth” abortion (*TGR*, Vol. 2, No. 6, December 1999). By the numbers, the “partial-birth” issue has tailed off somewhat since 1997, when 34 states seriously considered “partial-birth” abortion bans and 16 enacted them. During 1999, in contrast, 18 states seriously considered such bans and four states saw them become law.

Yet these four new laws indicate a shift in strategies for antiabortion

forces. Although 28 states had enacted bans on “partial-birth” abortion by the end of 1998—most of them closely mirroring the language of the federal Partial-Birth Abortion Ban Act, twice vetoed by President Bill Clinton—almost every legal challenge against these bans had been successful. Judges across the country were nearly unanimous in holding that the laws were unconstitutionally vague, effectively prohibiting common abortion procedures used before and after fetal viability and leaving physicians without clear direction in applying the nonmedical language of the bans.

All four 1999 laws differ from the standard language of the federal proposals in at least nominal attempts to alleviate this vagueness. An amendment to a Montana law that had been enjoined in 1998 adds language delineating four steps that occur in the banned procedure. A new North Dakota law goes further, describing specific situations in which a “living intact fetus” is considered “partially born” and protected under the ban.

Michigan’s second attempt at a “partial-birth” ban (after its groundbreaking 1996 law was permanently enjoined in 1997) and Missouri’s new law, passed over the veto of Gov. Mel Carnahan (D), avoid the term “partial-birth” abortion entirely. Both laws use the term “infant” in place of “fetus,” and the Missouri statute, in fact, establishes the crime of infanticide. This shift in language appears to be both an attempt at influencing public opinion and a means of asserting that these bans fall outside the scope of *Roe* and do not restrict abortion at all. Abortion opponents will soon have a chance to make this case

before the U.S. Supreme Court, which agreed on January 14 to review a September 1999 appellate court decision that struck down a Nebraska ban (see *For the Record*, page 12). A total of 30 states have passed “partial-birth” abortion bans; 10 of these bans were being fully enforced and two others were being partially enforced as of January 1 (see chart).

Following up on a successful 1998 ballot initiative in Colorado requiring parental notification in a minor’s abortion, antiabortion lawmakers in 1999 succeeded in enacting such requirements in three more states—Florida, New Jersey and Texas (see chart). A fourth measure was vetoed by Oregon Gov. John Kitzhaber (D). At the beginning of the year, 38 states already had laws on the books mandating some kind of parental involvement in abortion, and 29 states were enforcing these requirements. Yet bills were introduced in 1999 in 22 states and seriously considered in 10 of them; many of the bills were designed to make an existing law even more restrictive, by switching from parental notification to consent, for example. Parental involvement laws are attractive to antiabortion policymakers and activists as a means of tapping support for the rights of parents and the sanctity of the family. The power of this “profamily” argument was particularly evident in the decision of New Jersey Gov. Christine Todd Whitman (R), long considered a solid supporter of abortion rights, to sign a parental notification requirement into law.

Antiabortion forces used similar tactics to promote other abortion restrictions. Policymakers in Arizona, Louisiana, Michigan and Texas, for example, imposed onerous rules on reproductive health care providers and facilities—from setting specific architectural requirements to applying existing standards to providers that had previously been exempt because they provide fewer abortions—in the name of improving

Selected State Reproductive Health-Related Policies

STATE	RESTRICT "PARTIAL-BIRTH" ABORTION	REQUIRE PARENTAL INVOLVEMENT IN MINORS' ABORTIONS	REQUIRE COMPREHENSIVE INSURANCE COVERAGE OF PRESCRIPTION CONTRACEPTIVES	REQUIRE ABSTINENCE TO BE EMPHASIZED IN SEX, STD OR HIV EDUCATION
U.S. TOTAL	12 (30)	30 (41)	10	29
ALABAMA	X*	CONSENT		X
ALASKA	(X)	(CONSENT)		
ARIZONA	(X)	(CONSENT)		X [†]
ARKANSAS	(X)	NOTIFICATION		
CALIFORNIA		(CONSENT)	X	X
COLORADO		(NOTIFICATION)		X [†]
CONNECTICUT			X	
DELAWARE		NOTIFICATION		
FLORIDA	(X)	(NOTIFICATION)		X
GEORGIA	X*	NOTIFICATION	X	X
HAWAII			X	X [†]
IDAHO	(X)	NOTIFICATION		
ILLINOIS	(X)	(NOTIFICATION)		X
INDIANA	X	CONSENT		X
IOWA	(X)	NOTIFICATION		
KANSAS	X	NOTIFICATION		
KENTUCKY	(X)	CONSENT		X
LOUISIANA	(X)	CONSENT		X [†]
MAINE			X	
MARYLAND		NOTIFICATION	X	
MASSACHUSETTS		CONSENT		
MICHIGAN	(X)	CONSENT		
MINNESOTA		NOTIFICATION		X
MISSISSIPPI	X	CONSENT		X [†]
MISSOURI	(X)	CONSENT		X[†]
MONTANA	(X)	(NOTIFICATION)		
NEBRASKA	(X)	NOTIFICATION		X [†]
NEVADA		(NOTIFICATION)	X	
NEW HAMPSHIRE			X	X
NEW JERSEY	(X)	(NOTIFICATION)		
NEW MEXICO		(CONSENT)		
NEW YORK				X
NORTH CAROLINA		CONSENT	X	X
NORTH DAKOTA	X	CONSENT		
OHIO	(X)	NOTIFICATION		X
OKLAHOMA	X			X
OREGON				X
PENNSYLVANIA		CONSENT		X
RHODE ISLAND	(X)	CONSENT		X
SOUTH CAROLINA	X	CONSENT		X
SOUTH DAKOTA	X	NOTIFICATION		
TENNESSEE	X	(CONSENT)		X
TEXAS		NOTIFICATION		X[†]
UTAH	X	NOTIFICATION		X
VERMONT			X	
VIRGINIA	X	NOTIFICATION		X[†]
WASHINGTON				X
WEST VIRGINIA	(X)	NOTIFICATION		
WISCONSIN	(X)	CONSENT		
WYOMING		CONSENT		

standards of care and safety. Opponents maintain that the real intent and effect of such legislation is to force the temporary or permanent closing of clinics because of the cost of the new standards.

Supporters of abortion rights succeeded in enacting only one new law of their own: a much-awaited clinic access statute in New York that provides state protection to reproductive health facilities. Gov. George Pataki (R) signed the act in November, a year after the shooting death of clinic doctor Barnett Slepian.

Family Planning

Reproductive rights advocates in 1999 saw their most substantial victories in the burgeoning movement to require contraceptive coverage in private-sector insurance plans. Measures were enacted in nine states (see chart), saw serious consideration in 16 others and were introduced in nine more. Lawmakers were clearly building on two major precedents in 1998: mandates in Maryland and in the Federal Employees Health Benefits Program that insurance plans cover all Food and Drug Administration–approved prescription contraceptive methods.

Such proposals, including the federal Equity in Prescription Insurance and Contraceptive Coverage Act, were first introduced at least partly in response to research by The Alan Guttmacher Institute that found that while virtually all traditional fee-for-service plans cover prescription drugs, only half cover any prescription contraceptives and only 15% cover a full range of options. Most proposals tie contraceptive coverage

NOTES TO TABLE: *ENFORCEMENT IS LIMITED AS A RESULT OF COURT ACTION OR ATTORNEY GENERAL OPINION. †THE STATE DOES NOT REQUIRE SEXUALITY, STD OR HIV EDUCATION BUT REQUIRES ABSTINENCE TO BE EMPHASIZED IF SUCH EDUCATION IS PROVIDED. *NOTES:* POLICIES ADOPTED IN 1999 ARE IN BOLD. POLICIES IN PARENTHESES ARE NOT CURRENTLY BEING ENFORCED; TOTALS IN PARENTHESES INCLUDE ALL POLICIES.

to other prescription drug benefits. Advocates have also used the quick decision by most insurance plans to cover the impotence drug Viagra as another example of inequity.

If 1999 is any indication, contraceptive coverage bills will continue to see serious consideration in states across the country during the 2000 session, and the most serious opposition to such bills will come from groups promoting exemptions that allow employers and insurers affiliated with religious organizations to refuse to comply with contraceptive coverage mandates (see related story, page 8, and *TGR*, Vol. 2, No. 4, August 1999).

Overshadowed by the successes and media glare of contraceptive coverage were victories by reproductive health advocates in securing “direct access” to women’s health care under managed care plans. Although this movement has slowed since the prior two years, Ohio and Wisconsin enacted laws last year allowing women to obtain services from obstetricians and gynecologists without prior referral or authorization, bringing to 40 the number of states that mandate some form of direct access. In addition, Florida, Nevada and Oregon expanded existing direct access statutes.

On the negative side, however, officials in Colorado and Missouri stepped up efforts to defund family planning agencies because of their putative association with abortion-related activities. After repeated court decisions striking down the attempts of Missouri legislators to prevent the state’s Planned Parenthood affiliates from receiving funds for family planning, a federal appellate court ruled in February 1999 that the state could require groups receiving state family planning funds to be separately incorporated and to have separate facilities and financial records from any affiliated group that performs abortion services. A state court in November

upheld more restrictive provisions, approved by the legislature in May, that include such additional demands as separate employee salaries and different organizational names. The court rejected contracts between the state health department and Planned Parenthood affiliates based in Kansas City and St. Louis and ordered the affiliates to return their grant monies; they have appealed the ruling to the state’s supreme court.

Colorado’s health department, meanwhile, cut off family planning funding for a private Boulder-area clinic that also provides abortion while renewing a contract with Planned Parenthood. An August decision by the department reinterpreted a long-standing state constitutional provision prohibiting direct or indirect public funding of abortion to mean that groups that provide abortion could not receive family planning funding. Both groups had spun off their abortion operations into separate legal corporations in response, but the department faulted the Boulder clinic for refusing to provide further documentation of this separation. Earlier in the year, Gov. Bill Owens (R) threatened to veto funding for private family planning clinics because some also provide abortion, but backed off after objections by pro-family planning legislators.

Preventing Teen Pregnancy

Although four states enacted abstinence-related bills this year, none of them follow the restrictive model of the federal “abstinence-only” program that was enacted as part of the 1996 welfare reform act. That law includes an eight-point definition of “abstinence education” that characterizes sexual activity outside of marriage as immoral and harmful to individuals, families and society.

While all four states—Minnesota, Missouri, Texas and Virginia—did alter their state policies to put greater emphasis on abstinence at the expense of more comprehensive

sexuality education, none of them prohibited discussion of contraception or used language quite so severe as the federal statute. The Texas legislature perhaps came closest to the federal abstinence-only definition in amending an HIV prevention program for minors to include teaching that “sexual activity before marriage is likely to have harmful psychological and physical consequences.”

A new Missouri law establishing a comprehensive set of requirements for any sexuality or sexually transmitted disease (STD) education that is provided in public schools may provide the most complete illustration of the competing forces at work. The measure requires such instruction to emphasize abstinence and the dangers of sexual activity. At the same time, it requires that sexuality and STD education be medically and factually accurate and that students be taught about contraception. California also amended its laws to require all information for sexuality education to be medically accurate, as well as free of gender, ethnic or racial bias. Similar provisions are included in the laws and regulations of at least two other states, but advocates of comprehensive sexuality education are looking to the 1999 laws as a stimulus for 2000. To date, 29 states require that abstinence be emphasized in school sexuality, STD or HIV education (see chart). Twenty of these states mandate sexuality, STD or HIV education; the remaining nine require that abstinence be emphasized if such education is taught.

Outside of sexuality education, three significant new programs designed to prevent teen pregnancy were enacted last year. Arkansas established a home-visitation program for first-time teen mothers, touted in part as a method of preventing repeat teen pregnancies but reportedly siphoning from existing funding for family planning and teen pregnancy prevention. Connecticut cre-

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Microbicides...

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ated a “fatherhood initiative” to, among other things, establish a teen pregnancy prevention program aimed at young men. And Florida, as part of continued reform to its welfare system, initiated a program designed to reduce welfare dependency among teens by providing services to reduce the incidence of pregnancy and repeat childbearing among adolescents.