

IV. REPRODUCTIVE HEALTH SERVICES

Reproductive health services are an integral component of women's health care. Women's reproductive health care needs have received considerable attention from state policymakers. In addition to mandating that private insurers cover services that are important to women's health and expanding access to reproductive health services under Medicaid, states have adopted a host of other provisions to facilitate or limit access to a range of reproductive health care services, including abortion and emergency contraception.

This chapter examines state policies that affect women's access to reproductive health services, specifically abortion and emergency contraception, as well as the practice of allowing health care providers, hospitals and other health facilities, employers and insurers exemptions from providing certain reproductive health services because of moral or religious objections. With increasing numbers of religious plans merging with non-sectarian plans, these policies will influence the extent of reproductive services available to women. (Note: information on private insurance coverage and Medicaid coverage of various reproductive health services is contained in several sections and tables of Chapters II and III.)

ABORTION

Access to abortion remains controversial at the national and state levels. The 1973 *Roe v. Wade* Supreme Court decision that legalized abortion and subsequent court rulings on abortion give states considerable latitude in setting policies that affect women's access to abortion services. States may constitutionally restrict access to pre-viability abortions as long as restrictions do not place an "undue burden" on a woman's constitutional right to abortion or endanger her health or life. After the point of fetal viability, states have more leeway to restrict abortion, but must not endanger the life and health of the woman. As a result, some laws dealing with abortion are designed to enhance access to services, while others are explicitly designed to limit access.

Clinic Access Laws

More than 90% of abortions are performed in clinics or physicians' offices.¹⁴⁹ Many clinics that provide abortion services have been targeted by abortion protestors, who sometimes intimidate patients in an effort to dissuade them from having abortions. The federal Freedom of Access to Clinic Entrances (FACE) Act prohibits acts of physical or psychological intimidation that impede access to clinics and reproductive health services for women and the health care workers who provide services.¹⁵⁰ States can pass additional laws to prosecute acts of violence or intimidation against clinic staff, patients and facilities; several states have passed such clinic access laws, however, most of them are not as protective as the federal FACE Act.

Regulation of Abortion Providers

In recent years, a number of states have adopted laws and regulations specific to abortion clinics and providers. These statutes and regulations usually apply to zoning, building codes, record keeping and administration. Advocates of these measures contend they help protect the health and safety of women receiving abortions, since most abortion clinics and providers fall outside of hospital or inpatient clinic licensing and regulatory procedures. However, abortion rights advocates fear that such laws are a back-door method of discouraging the provision of abortion by increasing providers' costs through expensive renovations or administrative requirements.¹⁵¹

TABLE IV-1 CLINIC ACCESS LAWS AND ABORTION PROVIDER REGULATIONS

- ▶ 15 states and the District of Columbia have clinic access laws.
 - 14 states and the District of Columbia have limited clinic access laws.
 - Washington has a comprehensive clinic access law that expands protections found in the federal FACE act, allowing individuals to go to court to halt activities forbidden by the law and to sue accused violators for damages.
- ▶ 36 states have laws that specifically regulate abortion providers and clinics; some of these laws are enjoined or not enforced.

TABLE IV-1
Clinic Access Laws and Abortion Provider Regulations

State	Clinic Access Laws	Abortion Provider Regulations**
United States Total	15 + DC	36
Alabama		●
Alaska		●
Arizona		●
Arkansas		●
California	○	●
Colorado	○	
Connecticut	○*	●
Delaware		
District of Columbia	○	
Florida		●
Georgia		●
Hawaii		●
Idaho		●
Illinois		●
Indiana		●
Iowa		
Kansas	○	
Kentucky		●
Louisiana		●
Maine	○	
Maryland	○	
Massachusetts	○	●
Michigan	○	●
Minnesota	○	●
Mississippi		●
Missouri		●
Montana		●
Nebraska		●
Nevada	○	
New Hampshire		
New Jersey		●
New Mexico		
New York	○	●
North Carolina	○	●
North Dakota		●
Ohio		●
Oklahoma		●
Oregon	○	
Pennsylvania		●
Rhode Island		●
South Carolina		●
South Dakota		●
Tennessee		●
Texas		●
Utah		●
Vermont		
Virginia		●
Washington	●	
West Virginia		
Wisconsin	○	●
Wyoming		

Notes:

Clinic Access Laws:

- State has law
- State has limited law
- * Does not have explicit law pertaining to clinics, but legislative history of Conn. Gen. Stat. § 53-37b clearly indicates that it was intended to serve that purpose. Statements on Senate Floor Concerning S.B. 1046 (June 2, 1993), at <http://www.cga.state.ct.us>.

Abortion Provider Regulations:

- State has law
- ** Some of these laws may be enjoined or not enforced.

Sources: National Conference of State Legislatures Health Policy Tracking Service unpublished data collected for this report (May 2002).
Data current as of December 2001

Information on Abortion Provider Regulations, Center for Reproductive Law And Policy, *Targeted Regulation of Abortion Providers: Avoiding the "TRAP"* (New York: Center for Reproductive Law and Policy, October 2001). **Data current as of October 2001**

Post-Viability Bans

The U.S. Supreme Court has held that states may constitutionally ban or restrict abortions after the point of fetal viability except where necessary to preserve a woman's life or health.¹⁵² State post-viability bans set a gestational age after which a woman cannot have an abortion (usually between 19 and 25 weeks), and most include life and health exceptions. The majority of states have passed such bans, though four of these laws have been found unconstitutional or unenforceable by a state attorney general.

Bans on So-Called "Partial-Birth" Abortion Procedures

A number of states have sought to ban what abortion rights opponents call "partial-birth" abortion. These bans generally claim to prohibit the dilation and extraction procedure (D&X), which is used in a small percentage of second trimester abortions, but is similar to the more common second trimester procedure, dilation and evacuation (D&E). Abortion rights supporters, however, state that these bans often cover more than just the D&X procedure. In 2000, the Supreme Court ruled that the Nebraska state "partial birth" abortion ban was unconstitutional, as it could be interpreted to prohibit a pre-viability D&E, consequently imposing an undue burden on a woman's right to terminate before viability, and it lacked an exception for cases where the health of the woman was at risk. In 2003, both houses of Congress passed national so-called "partial-birth" abortion bans. It is expected that a bill will be signed into law and that court challenges will follow.

TABLE IV-2 POST-VIABILITY AND SO-CALLED "PARTIAL BIRTH" ABORTION BANS

- ▶ 40 states and the District of Columbia have post-viability abortion bans.
 - Post-viability bans in 4 states have been enjoined by a court or found unenforceable by an attorney general.
- ▶ 36 states and the District of Columbia provide exceptions to their post-viability abortion bans.
 - 29 states and the District of Columbia provide exceptions for the life and health of the woman.
 - 3 states provide exceptions for the life and health of the woman and fetal abnormalities.
 - 1 state, Arkansas, provides exceptions for the life and health of the woman and rape.
 - 3 states, Idaho, Michigan and New York, provide an exception for life only.
 - 4 states provide no exceptions: California, Connecticut, Delaware and Rhode Island.
- ▶ 31 states have banned so-called "partial birth" abortion procedures.

TABLE IV-2**Post-Viability and So-Called “Partial-Birth” Abortion Bans**

State	Post-Viability Bans		Bans on So-Called “Partial Birth” Abortion Procedures~
	Bans	Exemptions	
United States Total	40 + DC	37	31
Alabama	●	life and health	●
Alaska			●
Arizona	●	life and health	●
Arkansas	●	life, health, and rape	●
California	●	none	
Colorado			
Connecticut	●	none	
Delaware	⊙	none	
District of Columbia	●	life and health	
Florida	●	life and health	●
Georgia	●	life and health	●
Hawaii			
Idaho	●	life only	●
Illinois	●	life and health	●
Indiana	●	life and health	●
Iowa	●	life and health	●
Kansas	●	life and health	●
Kentucky	●	life and health	●
Louisiana	●	life and health	●
Maine	●	life and health	
Maryland	●	life, health, and fetal anomaly	
Massachusetts	●	life and health	
Michigan	●	life only	●
Minnesota	⊙	life and health	
Mississippi			●
Missouri	●	life and health	●
Montana	●	life and health	●
Nebraska	●	life and health	●
Nevada	●	life and health	
New Hampshire			
New Jersey			●
New Mexico			●
New York	●	life only	
North Carolina	●	life and health	
North Dakota	●	life and health	●
Ohio	⊙	life and health	●
Oklahoma	●	life and health	●
Oregon			
Pennsylvania	●	life and health	
Rhode Island	●	none	●
South Carolina	●	life and health	●
South Dakota	●	life and health	●
Tennessee	●	life and health	●
Texas	●	life, health, and fetal anomaly	
Utah	⊙	life, health, and fetal anomaly	●
Vermont			
Virginia	●	life and health	●
Washington	●	life and health	
West Virginia			●
Wisconsin	●	life and health	●
Wyoming	●	life and health	

Notes:**Post-Viability Bans:**

- State has law
- ⊙ Law is enjoined or not enforced

So-Called “Partial-Birth” Abortion Bans:

- State has law
- ~ To the extent that these laws are like Nebraska’s, ruled unconstitutional in *Stenberg v. Carhart*, 530 U.S. 914 (2000), they are unconstitutional and/or unenforceable.

Sources: National Conference of State Legislatures Health Policy Tracking Service unpublished data collected for this report (May 2002).
Data current as of December 2001

Injunction and enforcement data, Alan Guttmacher Institute, *State Policies in Brief* (Washington, D.C.: Alan Guttmacher Institute, April 2002).
Data current as of December 2001

Parental Consent and Notification Laws

Parental consent or notification laws require minor females to receive parental consent or to notify a parent or legal guardian before receiving an abortion. Most states with these laws apply them to girls under age 18, although several set the level to 16 or 17. Some states broaden the definition of who can consent for minors to stepparents, grandparents or other relatives such as adult siblings. Most states with parental consent or notification laws have a judicial bypass procedure that allows a minor to obtain an abortion without informing a parent if the court finds the individual is mature enough to make the decision or that informing her parents would endanger the girl. A few states allow health care providers to waive the requirement.

TABLE IV-3 PARENTAL CONSENT AND NOTIFICATION LAWS

- ▶ 43 states have parental consent or notification laws; 12 of these states do not enforce the law.
 - 23 states require parental consent before a female minor may have an abortion.
 - 21 states require parental notification before a female minor may have an abortion (Ohio has both consent and notification laws).
 - 7 states allow notification to or consent by an adult other than the minor's parents.
- ▶ 22 of the 23 states with parental consent laws have a judicial bypass; New Mexico does not have a judicial bypass.
- ▶ 15 of the 21 states with parental notification laws have a judicial bypass. Maryland, one of the 6 states without a judicial bypass, allows notification to be waived by the treating physician.

Mandatory Waiting Periods

Mandatory waiting period laws require that a woman seeking an abortion receive counseling and then wait a specified period of time before having the procedure. Most states with waiting period laws require a 24-hour wait between the time the woman states her intention of obtaining an abortion and the time the procedure can be performed.

TABLE IV-3 MANDATORY WAITING PERIOD LAWS

- ▶ 22 states have mandatory waiting periods before a woman may obtain an abortion; 4 of these laws are currently enjoined or not enforced.
 - 18 states require women to wait 24 hours before receiving an abortion.
 - 3 states require waiting periods of less than 24 hours; South Carolina's waiting period is one hour.
 - Tennessee has a two-day waiting period, but it is currently enjoined.

TABLE IV-3

Abortion Parental Consent/Notification and Mandatory Waiting Period Laws

State	Parental Consent and Notification Laws			Mandatory Waiting Period Laws	
	Parental Consent Law	Parental Notification Law	Age/Exceptions	Waiting Period Laws	Waiting Period
United States Total	23	21		22	
Alabama	●♦			●	24 hours
Alaska	⊙♦		under age 17		
Arizona	⊙♦				
Arkansas		○♦		●	(prior to and not on the same day as procedure)
California	⊙♦				
Colorado		⊙			
Connecticut					
Delaware		⊙♦	under age 16; allows notification to grandparent or mental health professional	⊙	24 hours
District of Columbia					
Florida		⊙♦			
Georgia		○♦			
Hawaii					
Idaho	●♦			●	24 hours
Illinois		⊙♦	Allows notice to grandparent or stepparent.		
Indiana	●♦			●	18 hours
Iowa		○♦	Allows notice to grandparent.		
Kansas		○♦		●	24 hours
Kentucky	●♦			●	24 hours
Louisiana	●♦			●	24 hours
Maine	●♦		Allows treating physician to determine that minor is mentally and physically capable of consenting.		
Maryland		○	Notification may be waived by treating physician.		
Massachusetts	●♦			⊙	24 hours
Michigan	●♦			●	24 hours
Minnesota		○♦			
Mississippi	●♦			●	24 hours
Missouri	●♦				
Montana		⊙♦		⊙	24 hours
Nebraska		○♦		●	24 hours
Nevada		⊙♦			
New Hampshire					
New Jersey		⊙♦			
New Mexico	⊙				
New York					
North Carolina	●♦		allows consent by grandparent		
North Dakota	●♦			●	24 hours
Ohio	⊙♦	○	Allows consent by adult sibling, grandparent or stepparent.	●	24 hours
Oklahoma		⊙			
Oregon					
Pennsylvania	●♦			●	24 hours
Rhode Island	●♦				
South Carolina	●♦		under 17; allows consent by grandparent	●	1 hour
South Dakota		○		●	24 hours
Tennessee	●♦			⊙	48 - 72 hours
Texas		○♦			
Utah		○		●	24 hours [^]
Vermont					
Virginia		○♦		●	24 hours
Washington					
West Virginia		○♦			
Wisconsin	●♦		Allows consent by sibling 25 years old or older, grandparent, aunt or uncle.	●	24 hours
Wyoming	●♦				

Notes:

Parental Consent/Notification Laws:

- State has a parental consent law
- State has a parental notification law
- ⊙ Law is enjoined or not enforced
- ♦ Law has judicial bypass

Waiting Period Laws:

- State has law
- ⊙ Law is enjoined or not enforced
- [^] Waived if pregnancy is result of rape or incest, fetus has grave defects, or woman is under 15

Sources: National Conference of State Legislatures Health Policy Tracking Service unpublished data collected for this report (May 2002). **Data current as of December 2001**

Injunction and enforcement data, Alan Guttmacher Institute, State Policies in Brief (Washington, D.C.: Alan Guttmacher Institute, Feb. 2003). **Data current as of February 2003**

EMERGENCY CONTRACEPTION

Approximately half the pregnancies that occur in the U.S. each year are unintended.¹⁵³ Health experts estimate that as many as 1.7 million of the more than 3 million unintended pregnancies that occur annually could be prevented by the use of emergency contraception.¹⁵⁴ Emergency contraception is birth control that is used after unprotected sex or in the event of a known contraceptive failure, and must be used within days of unprotected sex to prevent pregnancy.¹⁵⁵ Two forms of emergency contraception are available in the United States. One method is a short-term, high dose of birth control pills, of which there are currently two FDA-approved forms of pre-packaged emergency contraception pills: Preven and Plan B. The second method of emergency contraception is the insertion of an intrauterine device. Both methods work by preventing the fertilized egg from implanting in the uterus. Emergency contraception pills will not end an established pregnancy.¹⁵⁶

OB/GYNs and family practice physicians support the use of emergency contraception to prevent unintended pregnancy.¹⁵⁷ However, a survey of OB/GYNs found that just under one-third (31%) prescribed emergency contraceptive pills more than five times a year.¹⁵⁸ This section identifies ways that states can increase access to emergency contraceptive pills, including Medicaid coverage and special provisions for the administration of emergency contraception.

Medicaid Coverage

While all state Medicaid programs must cover family planning services, each state defines “family planning” for its own program, leading to variety in the services and contraceptive drugs and devices that are covered.¹⁵⁹ The FDA approved emergency contraception in 1997 as a safe and effective way to prevent pregnancy, and approved a pre-packaged, brand-name emergency contraceptive in 1998.¹⁶⁰ Just over half the states cover emergency contraception in their Medicaid programs.

Direct Access Through Pharmacies

Because emergency contraception only works within days of unprotected sex, the requirement of obtaining a prescription may pose a barrier to access; yet in most states, women must obtain a prescription from a physician for a dose of emergency contraception. Studies have found that many women seek emergency contraception on weekends or after normal business hours, and as a result have difficulty obtaining a prescription from a physician.¹⁶¹ Many women’s health organizations have been advocating for making emergency contraception available without a prescription to enhance its utility and because it meets some of the primary criteria for non-prescription usage—the condition at hand (unprotected sex) is easily diagnosed by the patient and the treatment regimen is easy to follow. In one such non-prescription effort, a few states are explicitly allowing pharmacists to offer emergency contraception directly to women seeking the medication without a prescription from a doctor.¹⁶² Pharmacists typically operate at later hours than physicians and may be more easily accessible.

TABLE IV-4
Emergency Contraception

State	Medicaid Coverage [⊗]	Emergency Room Mandates for Sexual Assault Survivors	Pharmacist Provision of Emergency Contraception Without Physician Contact [~]
United States Total	27 + DC	7	4
Alabama			
Alaska	●		●
Arizona	●		
Arkansas			
California	●	●	●
Colorado			
Connecticut			
Delaware	●		
District of Columbia	●		
Florida			
Georgia	●		
Hawaii	●		
Idaho			
Illinois		●	
Indiana	●		
Iowa			
Kansas			
Kentucky	○		
Louisiana			
Maine			
Maryland	○		
Massachusetts	●		
Michigan	●		
Minnesota			
Mississippi	N/A		
Missouri	●		
Montana			
Nebraska	●		
Nevada	●		
New Hampshire			
New Jersey	●		
New Mexico	N/A	●	●
New York	●	●*	
North Carolina	●		
North Dakota	●		
Ohio		●*	
Oklahoma			
Oregon	●		
Pennsylvania	●		
Rhode Island	●		
South Carolina	●	●	
South Dakota			
Tennessee			
Texas			
Utah	○		
Vermont	●		
Virginia	●		
Washington	●	●	●
West Virginia			
Wisconsin	○		
Wyoming	N/A		

- Notes:**
- State has the policy
 - State has a limited policy (whether emergency contraception is covered by Medicaid depends on context of visit)
 - ~ In these states, a woman may obtain emergency contraception from a pharmacy without first contacting a physician.
 - N/A State did not respond to the survey
 - * A health care provider electing not to provide EC must refer the patient to another provider.
 - ⊗ The survey conducted for these data did not specifically ask states to define emergency contraception.

Sources: **Information on Medicaid Coverage,** The Henry J. Kaiser Family Foundation, *Medicaid Coverage of Family Planning Services* (Washington, D.C.: The Henry J. Kaiser Family Foundation, 2001), Table II-3, p.17. **Data current as of January 2000**

Information on Emergency Room and Pharmacist Provisions, Alan Guttmacher Institute, *State Policies in Brief* (New York: Alan Guttmacher Institute, February 2003); Information for New Mexico (pharmacy provision), New Mexico Board of Pharmacy and the National Association of Boards of Pharmacy Foundation, Inc., *The New Mexico Board of Pharmacy*, December 2002, [online] <http://www.nabp.net/ftpfiles/newsletters/nm/nm122002.pdf>. **Data current as of May 2003**

Emergency Room Mandates

There are an estimated 32,000 rape-related pregnancies annually in women over the age of 18.¹⁶³ However, studies have found that many hospitals do not routinely offer emergency contraception to women who have been raped. Some hospitals do not have a protocol for offering emergency contraception to rape survivors, and some religious facilities such as Catholic hospitals do not provide emergency contraception because of religious objections.¹⁶⁴ Some states have begun to mandate that emergency rooms provide information about and access to emergency contraception for women who have been raped.

TABLE IV-4 EMERGENCY CONTRACEPTION

- ▶ 27 states and the District of Columbia cover emergency contraception as a family planning service under their Medicaid program.
 - In 4 of these states, the context of the Medicaid beneficiary's visit determines if emergency contraception is covered as a family planning service.
- ▶ 4 states, Alaska, California, New Mexico and Washington, allow pharmacists to dispense emergency contraception without a prescription.
- ▶ 6 states require emergency room staff to administer emergency contraception to sexual assault survivors upon request; one state, Illinois, does not require provision of emergency contraception, but does require hospitals to develop and implement protocols to ensure rape survivors receive medically accurate information about emergency contraception.

RELIGIOUS OR MORAL REFUSAL CLAUSES CONCERNING PROVISION OF REPRODUCTIVE HEALTH SERVICES

Women's access to reproductive health care is limited by providers' use of refusal clauses. Several states allow refusal clauses or exemptions to providers, employers, and/or insurers who have moral or religious objections to offering certain services. The federal Church Amendment, passed shortly after the Supreme Court's 1973 *Roe v. Wade* decision that legalized abortion, allows individual or institutional health care providers that receive federal funding or who work for entities receiving such funding, to refuse to perform or assist in performing abortions if these procedures conflict with their individual or their facilities' religious or moral convictions.¹⁶⁵ By 1974, more than half the states had also adopted such provisions, allowing providers to deny provision of abortion services.¹⁶⁶ During the mid-to-late 1970s, many states adopted laws that allowed refusal clauses for contraception and sterilization as well.¹⁶⁷

The Church Amendment also prohibits discrimination against health care providers because of their nonparticipation. The law, however, does not provide criteria for determining when a health care facility may claim a religious or moral refusal clause, resulting in great variation among states in how they allow use of these exemptions.

The scope of these exemptions has broadened over the last 30 years, from individual clinicians and facilities to entities such as insurers and employers seeking so-called "conscience" exemptions from a range of medical services, as well as more indirect forms of involvement in reproductive health care, such as providing insurance coverage for contraception.¹⁶⁸ A wave of mergers between secular and non-secular institutions and the participation of some Catholic managed care organizations in state Medicaid programs has spurred the claim of refusal clauses and has raised questions about the impact of these exemptions on access.¹⁶⁹ As a result, states are struggling to reconcile the interests of providers seeking these exemptions, patients who expect comprehensive care, and state requirements regarding health care providers who receive public funding.¹⁷⁰

A number of states that allow refusal clauses require written notification of the intent to refuse to provide reproductive health services. Some states require notification only for refusal to provide abortion and/or sterilization services, while a small number of states require notification for refusal to participate in any reproductive health service. Many of the exemptions tied to contraceptive and infertility coverage mandates require that the entity notify consumers in writing of their refusal to participate in the service.

This section examines moral and religious-based exemptions as they pertain to abortion, family planning services, and infertility coverage.

Religious or Moral Refusal Clauses Concerning Abortion Services

Abortion was the first service that became subject to refusal clauses under the Church Amendment. Since then, most states have passed their own laws allowing for providers to invoke refusal clauses. These state laws often move beyond the federal law, allowing exemptions for both public and private entities; however, some states have concluded that these exemption laws apply only to private institutions, since public institutions must comply with state constitutional privacy and reproductive rights laws.¹⁷¹ The majority of exemptions require the service to be provided if a woman's life is in danger. The majority of states also protect exempted providers from discrimination; fewer than ten provide anti-discrimination protection for those who do perform abortions.¹⁷²

TABLE IV-5 REFUSAL CLAUSES CONCERNING ABORTION SERVICES

- ▶ 45 states allow individual health care providers to refuse to perform or participate in abortions; North Carolina allows exemptions only for doctors and nurses.
- ▶ 21 states allow any health facility to refuse to perform or participate in abortions.
- ▶ 20 states allow only hospitals to refuse to perform or participate in abortions.
- ▶ A total of 41 states allow both individual and institutional exemptions.
- ▶ 23 states allow providers to refuse providing abortion services for any reason; 21 states allow refusal clauses for religious or moral reasons and Colorado provides a refusal clause only for religious reasons.
- ▶ Federal or state courts in 2 states have ruled state abortion exemptions unconstitutional because they found that when applied to public facilities, or facilities serving a similar purpose, they amounted to an unconstitutional interference with the right to an abortion, as well as other state and federal constitutional rights.

TABLE IV-5
Religious or Moral Refusal Clauses Concerning Abortion Services

State	Exempted Individuals/Entities			Basis for Exemption
	Individual Health Care Providers	Any Health Facility	Entities Hospitals Only	
United States Total	45	21	20	
Alabama				
Alaska	●		●♦	any
Arizona	●	●		religious/moral
Arkansas	●		●	any
California	●			religious/moral
Colorado	●		●	religious
Connecticut	●			any
Delaware	●		●	any
District of Columbia				
Florida	●	●		religious/moral
Georgia	●	●		religious/moral
Hawaii	●		●	any
Idaho	●		●	religious/moral
Illinois	●	●		any
Indiana	●		●	religious/moral
Iowa	●		●**	religious/moral
Kansas	●		●	any
Kentucky	●	●		religious/moral
Louisiana	●	●		any
Maine	●	●		any
Maryland	●		●	any
Massachusetts	●	●**		religious/moral
Michigan	●	●		religious/moral
Minnesota	●	●**		any
Mississippi				
Missouri	●		●	religious/moral
Montana	●	●		religious/moral
Nebraska	●	●		any
Nevada	●	●		religious/moral
New Hampshire				
New Jersey	●	●^		any
New Mexico	●		●	religious/moral
New York	●			religious/moral
North Carolina	●*	●		religious/moral
North Dakota	●		●	any
Ohio	●		●	any
Oklahoma	●		●**	any
Oregon	●		●**	any
Pennsylvania	●	●**		religious/moral
Rhode Island	●			religious/moral
South Carolina	●	●**		any
South Dakota	●		●	any
Tennessee	●		●	any
Texas	●	●**		any
Utah	●		●**	religious/moral
Vermont				
Virginia	●	●		religious/moral
Washington	●	●**		any
West Virginia				
Wisconsin	●		●	religious/moral
Wyoming	●	●**		any

- Notes:**
- State allows moral/religious exemption
 - * Doctors and nurses only
 - ** Applies to private entities only
 - ^ A court has ruled these provisions unconstitutional as applied to non-sectarian, non-profit hospitals. *Doe v. Bridgeton Hospital Association*, 366 A.2d 641 (NJ 1976), cert. Denied, 433 U.S. 914 (1977).
 - ♦ A court has ruled this law unconstitutional as applied to "quasi-public" institutions and has issued a permanent injunction. *Valley Hospital Association v. Mat-Su Coalition for Choice*, 948 P. 2d 963 (Alaska 1997).

Source: National Conference of State Legislatures Health Policy Tracking Service, "Conscience Clause: Abortion," unpublished data collected for this report (December 2001). **Data current as of December 2001**

Religious or Moral Refusal Clauses Concerning Family Planning Services

A number of states allow religious and moral exemptions from providing reproductive health services other than abortion. Some health care organizations such as hospitals and HMOs sponsored by religious institutions, particularly Catholic organizations, argue that the provision of contraception and contraceptive sterilization conflicts with the tenets of their religion. In addition, some religious employers have also sought exemptions from state contraceptive coverage mandates.¹⁷³

TABLE IV-6 REFUSAL CLAUSES CONCERNING FAMILY PLANNING SERVICES

- ▶ 22 states allow individual health care providers exemptions from providing family planning services.
 - 12 states allow exemptions for religious or moral reasons, 7 allow exemptions for religious reasons and 3 allow exemptions for any reason.
 - 8 states allow providers to withhold information and/or counseling about contraceptives.
 - 8 of the state laws are limited to sterilization services.
- ▶ 27 states allow exemptions for various health care entities from providing family planning services; some states allow exemptions for more than one category of provider.
 - 12 states allow exemptions for any health facility: 7 for moral or religious reasons, 4 for religious reasons and 1 for any reason; 6 of the laws are limited to sterilization and 7 apply only to private entities.
 - 6 states allow exemptions for hospitals only: 3 only for moral reasons and 3 for religious reasons only; 3 of the laws are limited to sterilization.
 - 12 states allow exemptions for employers: 11 only for religious reasons and 1 for moral or religious reasons.
 - 4 states allow exemptions for insurers: 2 for moral or religious reasons and 2 only for religious reasons.

TABLE IV-6

Religious or Moral Refusal Clauses Concerning Family Planning Services

State	Exempted Entities				
	Individual Health Care Providers	Any Health Facility	Hospitals Only	Employers	Insurers
United States Total	22	12	6	12	4
Alabama					
Alaska					
Arizona				⊙	
Arkansas	●	●~			
California				⊙	
Colorado	⊙*	⊙*~			
Connecticut				⊙	●
Delaware				⊙	
District of Columbia					
Florida	⊙*				
Georgia	⊙*				
Hawaii				⊙	
Idaho	●**		●**		
Illinois	●*	●*			
Indiana					
Iowa					
Kansas	○**	○**			
Kentucky	●**	●**			
Louisiana					
Maine	⊙*	⊙*~		⊙	
Maryland	○**		○**	⊙	
Massachusetts	●* **	●* **~		⊙	
Michigan					
Minnesota	○* (state employees only)				
Mississippi					
Missouri				●	●
Montana	●* **	●* **~			
Nebraska					
Nevada					⊙
New Hampshire					
New Jersey	●		●		
New Mexico		●**		⊙	
New York	● (social service employees only)				
North Carolina			○**	⊙	
North Dakota					
Ohio					
Oklahoma					
Oregon	● (Dept. of Human Services employees only)				
Pennsylvania	●**	●**~			
Rhode Island	●**			⊙	
South Carolina					
South Dakota					
Tennessee	⊙*	⊙*~			
Texas					⊙
Utah					
Vermont					
Virginia			⊙*		
Washington					
West Virginia	⊙	⊙			
Wisconsin	●		●		
Wyoming	⊙				

- Notes:**
- State allows moral/religious exemption
 - State allows exemption for any reason
 - ⊙ State allows religious exemption
 - * Individual providers allowed to withhold information/counseling about contraceptives.
 - ** Law is limited to sterilization
 - ~ Applies to private entities only

Sources: National Conference of State Legislatures Health Policy Tracking Service, "Conscience Clause: Family Planning/Contraceptive Coverage, 2002," unpublished data collected for this report (December 21, 2001). **Data current as of December 2001**

Information on Employers and Insurers, National Women's Law Center, unpublished data collected for this report (on file with NWLC); Alan Guttmacher Institute, State Policies in Brief (New York: Alan Guttmacher Institute, April 2002). **Data current as of May 2002**

Religious or Moral Refusal Clauses Concerning Infertility Treatment Mandates

A number of laws that require coverage for the treatment of infertility allow employers or insurers to refuse to provide coverage based on moral or religious objections. Unlike many of the abortion and contraception exemptions, which tend to be broader in reach, infertility exemptions are found exclusively within infertility treatment mandates and apply only to religious entities.

TABLE IV-7 REFUSAL CLAUSES CONCERNING INFERTILITY TREATMENT MANDATES

- ▶ 5 of the 15 states that mandate private insurance coverage for treatment of infertility allow religious and/or moral exemptions for religious entities.
 - 2 states allow exemptions for religious employers and insurers, 2 states allow exemptions for employers only and 1 for insurers only.
 - 2 states allow exemptions for religious or moral reasons and 3 for religious reasons.

* * *

Reproductive health services have long been subject to political, judicial, religious and moral debate. Consequently, this has generated high levels of state regulation, particularly on access to abortion. Reproductive health care is an integral component of women's total health care needs, yet women face numerous limits on access to vital services.

Foremost, states have imposed heavy restrictions on abortion services, with the majority of states maintaining provider regulations, bans on certain abortion procedures, and parental consent and notification laws. Many states also have waiting periods before a woman may receive an abortion. These restrictions operate in different ways toward the same goal of erecting barriers to women seeking abortions. Conversely, far fewer states have passed clinic access laws, which facilitate access to abortion.

About half of state Medicaid programs provide coverage for emergency contraception. Very few states have moved to facilitate broader access to EC though, either through emergency room mandates for sexual assault survivors or through direct pharmacy offering without a physician visit.

States have also limited access to reproductive health care for women by broadly allowing providers to invoke religious or moral exemptions from providing important reproductive health services. The majority of states allow individual providers to decline provision of abortion services for religious or moral reasons. Though several of these states require that women be notified about alternate providers, many women have limited means to seek out alternate providers or are in areas that have few providers to begin with. These exemptions have also been extended to withhold basic family planning services, including contraception.

TABLE IV-7**Religious or Moral Refusal Clauses Concerning Infertility Treatment Coverage**

State	Exempted Entity		Basis for Exemption
	Religious Employer	Religious Insurer	
United States Total	4	3	
Alabama			
Alaska			
Arizona			
Arkansas			
California	●	●	religious/moral
Colorado			
Connecticut			
Delaware			
District of Columbia			
Florida			
Georgia			
Hawaii			
Idaho			
Illinois		●	religious/moral
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana			
Maine			
Maryland	●		religious
Massachusetts			
Michigan			
Minnesota			
Mississippi			
Missouri			
Montana			
Nebraska			
Nevada			
New Hampshire			
New Jersey	●		religious
New Mexico			
New York			
North Carolina			
North Dakota			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
Rhode Island			
South Carolina			
South Dakota			
Tennessee			
Texas	●	●	religious
Utah			
Vermont			
Virginia			
Washington			
West Virginia			
Wisconsin			
Wyoming			

Notes: ● State has the policy

Source: "Conscience Clause: Infertility, Insurer Notice and Exemption Requirements," National Conference of State Legislatures Health Policy Tracking Services unpublished data collected for this report (December 31, 2001). **Data current as of December 2001**