On the Road to Recovery

Reproductive Health Legislative, Regulatory and Political Highlights of 2008

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In 2008, virtually all reproductive health debates and decisions in the legislative and policy arenas took place against the backdrop of one of the most unforgettable presidential campaigns in history – one in which voters could not have been presented with a starker choice between candidates on reproductive health policy. When the dust had settled, the country had elected a pro-choice, pro-prevention President with a strong track record of support for women’s reproductive health.

The fast pace of the campaign trail stood in stark contrast to the activity on Capitol Hill. Senate Democrats, faced with a Republican minority not afraid to use the filibuster, presided over a chamber where the legislative process essentially came to a grinding halt by late summer. The Senate held the lowest number of votes since 1961 and failed to pass a single annual 2009 appropriations bill. The House was slightly more active, passing more legislation, including one appropriations bill – Military Construction – before both bodies approved a stopgap funding measure in September to keep the government operating through March 6, 2009. In unveiling the continuing resolution, House Appropriations Chair David Obey (D-WI) declared the fight over for the year and stated the obvious: “If McCain wins, we get Bush’s budget; if Obama wins, we get the Budget Committee budget.”

Although Congress postponed most policy decisions until the 111th Congress convenes, including those affecting reproductive health, the outgoing Bush Administration took no such holiday. Seeing a window closing, the Administration put forward last-minute policy changes intended to undermine domestic and international family planning programs – culminating in the December 19 publication of a “midnight regulation” intended to strengthen the ability of health care providers to refuse to provide needed health care services. This regulation is squarely aimed at limiting access to birth control and abortion.

What follows is a review of selected legislative, regulatory, and electoral highlights of 2008 – the final year of an administration dedicated to undermining women’s reproductive rights and access to health care – as well as a look ahead to what we might expect in 2009.

Reproductive Rights and the 2008 Campaign

Supporters of reproductive rights were hopeful that the outcome of the election would dramatically improve the public policy climate for reproductive health issues, including access to birth control and abortion, research for newer and more effective contraception, and the availability of comprehensive sex education. And it appears that those hopes may well be realized. Yet, the consensus among commentators for much of the 2008 election cycle was that reproductive rights would not play a significant role. While it is true that these issues were eclipsed by the economy, they continued to surface throughout the campaign as right-wing opponents lobbed attacks designed to paint pro-choice candidates as extremists. However, in the
final months of the election cycle – fueled in part by the selection of Sarah Palin as the Republican Vice Presidential nominee – several congressional candidates highlighted their pro-choice credentials in order to distinguish themselves from their opponents. In addition, the ability of Obama’s campaign to garner the support of many pro-life Catholics and the defeat of anti-choice ballot initiatives in California, Colorado, and South Dakota suggest that the public may have had their fill of ideologically-driven public policy making.

**Democratic Party Platform Includes Stronger Commitment to Reproductive Rights, Low-Income Women**

The 2008 Democratic National Platform represented a significant improvement over 2004. It abandoned the Clinton formula of “safe, legal, and rare,” while continuing to oppose the Hyde Amendment, which currently prevents Medicaid payment for abortion. It also improved language recognizing the value of family planning and comprehensive sex education. Some interpreted new language in the 2008 Platform regarding adoption and a woman’s right to choose motherhood as a new attempt to reach out to mixed and anti-choice Evangelical and Catholic voters. Others viewed the language as a commonsense statement reflecting where the Democratic Party had always stood on those issues.

The 2008 Platform stated:

The Democratic Party strongly and unequivocally supports *Roe v. Wade* and a woman’s right to choose a safe and legal abortion, regardless of ability to pay, and we oppose any and all efforts to weaken or undermine that right.

The Democratic Party also strongly supports access to affordable family planning services and comprehensive age-appropriate sex education which empowers people to make informed choices and live healthy lives. We also recognize that such health care and education help reduce the number of unintended pregnancies and thereby also reduce the need for abortions.

The Democratic Party also strongly supports a woman’s decision to have a child by ensuring access to and availability of programs for pre-and post-natal health care, parenting skills, income support, and caring adoption programs.

In contrast, the 2004 section on reproductive rights said:

We will defend the dignity of all Americans against those who would undermine it. Because we believe in the privacy and equality of women, we stand proudly for a woman’s right to choose, consistent with *Roe v. Wade*, and regardless of her ability to pay. We stand firmly against Republican efforts to undermine that right. At the same time, we strongly support family planning and adoption incentives. Abortion should be safe, legal, and rare.
Republican Platform Reasserts Opposition to Abortion

The 2008 Republican Party Platform reasserted the party’s opposition to abortion. The Platform “…affirm[s] that the unborn child has a fundamental individual right to life that cannot be infringed. We support a human life amendment to the Constitution, and we endorse legislation to make clear that the Fourteenth Amendment’s protections apply to unborn children.” As in 2004, it did not allow exceptions in the cases of rape, incest or to save the life of the mother, even though Senator John McCain has long called for such exceptions. McCain argued strongly in 2000 for the platform to include abortion exceptions. He affirmed that position as recently as May 2008 in an interview with Glamour magazine that appeared in its October issue. “My position has always been: exceptions of rape, incest and the life of the mother,” he said. Asked if he would encourage the party to include them in the platform, he said, “Yes.” But McCain in fact did little to push for the exceptions, and told Glamour in late July that he had “not gotten into the platform discussions.” Governor Palin opposed any exception for abortion, except to save the life of the mother.

The Republican Platform also supported parental notification requirements, saluted “pregnancy care centers,” and called abortion “a fundamental assault on the sanctity of innocent human life.” Although it claimed that “we have a moral obligation to assist, not to penalize, women struggling with the challenges of an unplanned pregnancy,” the Platform makes no mention of those women whose lives would be in jeopardy without access to legal abortion.

The Platform also included vague language that suggested limitations on affordable family planning along the lines of the recent HHS rule that would allow providers to define birth control as abortion. It stated: “We believe medicines and treatments should be designed to prolong and enhance life, not destroy it. Therefore, federal funds should not be used for drugs that cause the destruction of human life.”

The document also stated that: “No health care professional – doctor, nurse, or pharmacist – or organization should ever be required to perform, provide for, or refer for a health care service against their conscience for any reason. This is especially true of the religious organizations which deliver a major portion of America’s health care, a service rooted in the charity of faith communities.”

President-Elect Obama and Reproductive Rights

During the campaign, the contrast in views between the two Presidential candidates on reproductive rights could not have been greater. Throughout his career in the Illinois Senate and the U.S. Senate, Obama supported reproductive health and family planning issues. He has stated directly that he will “make preserving women’s rights under Roe v. Wade a priority as President.” He voted to increase access to family planning services and to support comprehensive sex education. For example, he sponsored the Prevention First Act, which would improve access to family planning services and replace failed “abstinence-only” sex education with comprehensive, medically accurate curricula. He also cosponsored legislation to restore birth control discounts for low-income and college women and to expand Medicaid coverage of family planning services.
Not surprisingly, this strong and consistent support did not go unnoticed by anti-choice voters. Obama responded to their criticism by reaching out to those ambivalent about abortion, including a segment of anti-choice Catholic voters, to emphasize the importance of reducing unintended pregnancy by increasing access to birth control. In his speech accepting the Democratic nomination, Obama spoke of finding common ground on the issue: “We may not agree on abortion but surely we can agree on reducing unwanted pregnancies in this country.”

In an interview with Relevant, a Christian magazine, Obama was asked about his opposition to restrictions on induced abortions where the fetus sometimes survives for a short period. Obama voted against a bill to impose such restrictions when he was in the Illinois Senate, saying that there was already a law in place that required life-saving treatment to any infant under any circumstances, and that the bill actually was designed to overturn Roe v. Wade. He has said he supported a federal version of the law that contained more precise language.

Despite his strong pro-choice record, Obama did not escape criticism from pro-choice quarters during the campaign. Some expressed disappointment at his response to a question on when “a baby get[s] human rights” at Pastor Rick Warren’s Saddleback Church Presidential Forum. Obama’s response that it was “above his pay grade” was viewed as inartful by some and an attempt to dodge the question by others. Obama also was criticized by pro-choice advocates for statements made in the interview with Relevant, in which he said prohibitions on late-term abortions must contain “a strict, well defined exception for the health of the mother,” adding that he didn’t think “mental distress qualifies as the health of the mother.” He went on to say that “it has to be a serious physical issue that arises in pregnancy, where there are real, significant problems to the mother carrying that child to term.” Some abortion rights supporters argued that his apparent willingness to limit the health exception to a “serious physical issue” was contrary to Roe and to his longstanding support for the decision.

**Senate Democrats Lock in Majority Party Control and Pick Up Pro-Choice Seats**

Democrats came into the 2008 election cycle invigorated by picking up six seats in 2006 that gave them party control of the Senate. The pre-election partisan breakdown was 49 Democrats, 49 Republicans and two Independents that were part of the Democratic Caucus – Bernie Sanders (VT) and Joe Lieberman (CT). In this year’s cycle, Democrats faced the easier task of defending only 12 of their own seats, with all 12 incumbents re-elected. In contrast, Republicans faced the more difficult task of protecting 23 seats, including 5 Republican-controlled seats vacated by retiring Senators Wayne Allard (CO), Larry Craig (ID), Chuck Hagel (NE), Pete Domenici (NM), and John Warner (VA).

The partisan breakdown for the 111th Congress has been in limbo for the first few weeks of the session. The Senate began the first session of the 111th Congress on January 6, 2009, with vacant seats in Illinois and Minnesota. In addition, President-elect Obama looked to the Senate to fill key administration positions, leaving governors in Colorado, Delaware, and New York to appoint Senators to these seats once they become vacant. Assuming all of these seats remain in Democratic control, the partisan breakdown for the 111th Congress is expected to be 57 Democrats, 2 Independents (part of the Democratic Caucus), and 41 Republicans. This represents a net gain of 8 seats for the Democrats and brings the Democratic Caucus to 59 Senators – one vote shy of the 60 votes needed for a filibuster-proof majority.
Senators Ken Salazar (D-CO) and Hillary Clinton (D-NY) will remain on the roster for the 111th Congress pending the approval of their nominations as Interior Secretary and Secretary of State respectively. Similarly, Vice-President-elect Joe Biden (D-DE) remains on the Senate roster for the 111th Congress until the Presidential inauguration. Colorado Governor Bill Ritter named Denver Public Schools Superintendent Michael Bennett (D) to fill Salazar’s seat and Delaware Governor Ruth Ann Minner (D) chose longtime Biden aide, Edward “Ted” Kaufman (D), to replace Biden. Although Caroline Kennedy and Andrew Cuomo emerged as the leading contenders for Clinton’s seat at the beginning of the year, New York Governor David Patterson had yet to announce his pick by mid-January. Embattled Illinois Governor Rod Blagojevich (D) picked former Illinois Attorney General Roland Burris (D) to fill Obama’s Senate seat. However, the initial hesitancy by the Senate Democratic Leadership to seat anyone chosen by Blagojevich prevented Burris from being seated at the start of the new Congress. Finally, on January 5, 2009, the Minnesota Canvassing Board declared Al Franken (D-MN) the winner over incumbent Senator Norm Coleman (R-MN) in a hotly contested Senate race. However, it appears that Franken must still survive a legal challenge, filed by Coleman, in order to be seated in the 111th Congress. Both Burris and Franken could be seated in the next few weeks.

All eight of the Democratic pick-ups for the 111th Congress are solidly pro-choice. Our best estimate is that 58 Senators can be considered pro-family planning, including 43 of those that can be considered solidly pro-choice, and that 42 Senators can be considered solidly anti-choice. A more nuanced and accurate assessment is possible only after multiple votes. This represents a considerable gain over the 110th Congress, in which 35 Senators were considered solidly pro-choice, 52 pro-family planning, and 48 anti-choice.

*Family Planning Support Grows in House, but Majority Still Anti-Choice*

Heading into the election Democrats controlled 236 House seats and Republicans held 199. Of the 35 open House seats, 29 were in Republican hands — meaning that even the goal of retaining seats would be an uphill battle. In the end, the Democrats gained 20 seats (Democrats picked up 24; Republicans picked up 4), leaving party control in the House at the start of the 111th Congress at 256 Democrats, 178 Republicans, and one vacancy (Rep. Rahm Emanuel’s seat) that is expected to be filled by a Democrat.

After almost a decade of running in place, pro-reproductive health advocates are daring to dream again. In the 110th Congress, 220 members were considered solidly anti-choice, a slight but agenda-stopping majority for the 215 members considered pro-family planning (including 165 members considered solidly pro-choice). Assuming that former Representative Emanuel’s seat will be filled by a reproductive health supporter, we estimate that about 23 newly-elected members – either self-proclaimed family planning supporters or receiving pro-choice endorsements – should be added to the pro-family planning or pro-choice roster. Accordingly, we estimate that the 111th Congress will have 230 pro-family planning members (including 184 members considered solidly pro-choice) and 205 anti-choice members. This represents a net gain of about 15 pro-reproductive health members because some new House members are replacing like-minded members while others seats held by members friendly to reproductive health fell to anti-choice candidates. For example, Chris Shays (CT-4) lost his re-election bid to pro-choice
Democrat Jim Himes and retiring, mixed-record Republican Jim Ramstad (R-MN) was replaced by anti-choice Erik Paulsen (R).

Reproductive health advocates cheered the exit of several high profile anti-choice members including Representatives Marilyn Musgrave (R-CO), Tim Walberg (R-MI), Thelma Drake (R-VA), and Dave Weldon (R-FL). Although Weldon chose to retire and was ultimately replaced by a fellow conservative, his exit was noteworthy because of his numerous and successful assaults on reproductive health access. In what reproductive health advocates might consider poetic justice, Musgrave, Walberg and Drake were replaced by pro-choice candidates.

As part of a national campaign strategy to expand the Democratic majority, the Democratic Congressional Campaign Committee (DCCC) recruited and/or funded over a dozen anti-choice Democrats to compete in open seats or challenge Republican incumbents. This strategy, considered troubling by many pro-choice advocates, certainly paid off in terms of Democratic gains but in the end did not negatively impact support for reproductive health issues because the seats were largely already held by anti-choice candidates.

**Americans Reject State Ballot Initiatives to Restrict Reproductive Health**

In keeping with pro-choice, pro-family planning gains at the top of the ticket, voters rejected anti-choice ballot measures in three states. A fourth approved the use of state funds for stem cell research.

**California– Parental Notification (Proposition 4):** The ballot measure sought to amend the California Constitution to require health care providers to notify a minor’s (under age 18) parent or legal guardian 48 hours before performing an abortion. It would have permitted notification to certain adult relatives if the health care provider reports parental mistreatment to law enforcement or Child Protective Services. The measure allowed for notification exceptions in cases of medical emergency or if a parent requests a waiver of the 48 hour waiting period. The measure also allowed damages against physicians for violations. This marked the third time in four years a parental notification measure was put before voters and the third time the measure was narrowly defeated. The measure failed 53% to 47%.

**Colorado– Defining ‘Personhood’ (Amendment 48):** Amendment 48 sought to amend the Colorado Constitution to define the term “person” to include “any human being from the moment of fertilization” for those provisions in Colorado’s constitution dealing with inalienable rights, due process, and equality access to justice. The amendment sought to make abortion illegal and threatened stem cell research, in vitro fertilization, and common birth control methods. The amendment was handily defeated 73% to 27%.

**South Dakota– Abortion Ban (Initiated Measure 11):** Measure 11 sought to amend the South Dakota Constitution to ban virtually all abortions except in cases of rape or incest, to save a woman’s life or to avert a “substantial and irreversible” maternal health risk of impairment to “a major bodily organ or system.” Measure 11 was a slightly modified version of a ballot initiative rejected in 2006. The initiative was defeated 55% to 45%.
Michigan- Stem Cell Research (Proposal 08-2): This initiative sought to amend the state constitution to expand the use of human embryos for research permitted under federal law. The measure also prohibits anyone from selling or purchasing embryos. The measure was approved 53% to 47%.

Reproductive Rights in the 110th Congress – Running in Place

Bush Budget for FY 2009 Continues Anti-Family Planning, Pro-Abstinence Policies

President Bush submitted his budget to Congress on February 4, 2008 with little fanfare and few surprises. The FY 2009 budget called on Congress to slash funding for overseas family planning programs by $134 million (a 29% decrease) from the current level of $461 million and flat funded Title X, the domestic family planning program, at $300 million. The Bush budget even proposed that the 90% match rate for Medicaid-funded family planning services be eliminated.

Other reproductive health programs that were flat funded include the Centers for Disease Control and Prevention’s sexual transmitted disease (STD) program and the Maternal and Child Health Block Grant. In one of the more outrageous and surprising moves, the President requested that Congress increase funding by $28 million for discredited and dangerous abstinence-only programs targeted at young Americans.

FY 2009 Funding for the Title X Family Planning Program Unclear

House and Senate appropriators began work in June on the FY 2009 Labor, Health and Human Services, and Education (Labor-HHS) funding bill but the measure never made it to the floor of either chamber. The Labor-HHS bill, which included funding for myriad public health programs, including the Title X family planning program, was one of the casualties of a stalemate between congressional Democrats and Republicans over the FY 2009 appropriations bills. Thus, spending for most programs is frozen at FY 2008 levels through March 6, 2009 under a continuing resolution (PL 110-329) that was signed by President Bush on September 30, 2008.

The House Labor-HHS Appropriations Subcommittee approved a $625.5 billion bill on June 19 that was $7.8 billion more than President Bush requested and about $8 billion above the FY 2008 bill. However, on June 26, at the House Appropriations Committee mark-up, Republicans tried to force a vote on an amendment to expand domestic oil drilling. Rather than consider the amendment, Appropriations Committee Chairman David Obey (D-WI) adjourned the markup and refused to schedule any full committee mark-ups. The Senate Appropriations Committee approved its FY 2009 Labor-HHS bill (S. 3230) on June 26 but the bill was not considered by the full Senate.

The House Labor-HHS spending bill included $315 million for the Title X family planning program, a $15 million increase over last year’s level, but still well shy of needed resources. Disappointingly, the Senate bill approved by the full Appropriations Committee provided no increase for Title X. As a result of the overall appropriations stalemate, virtually all programs
were level-funded for FY 2009 in a continuing resolution that expires on March 6, 2009, leaving the 111th Congress to finish work on the bill. At that point, Congress is expected to wrap all the unfinished spending measures into another omnibus bill prior to the expiration of the continuing resolution. How big a mark the new Obama Administration will want to make on final funding levels is unclear.

Abstinence-Only Education Programs

Efforts to Eliminate Funding for Abstinence-Only Programs Gain Traction but Fall Well Short of Goal

2008 witnessed some progress in the drive to direct scarce public health resources away from abstinence-only-until-marriage programs and toward evidence-based public health programs. One highlight of the year was the April 23 hearing in the House Oversight and Government Reform Committee chaired by Representative Henry Waxman (D-CA). Waxman invited medical organizations, researchers, and members of Congress to testify about the federally funded abstinence education programs, many of whom presented compelling evidence that the programs are a waste of taxpayer dollars and harmful to youth. Waxman himself lamented that abstinence-only programs are getting significant funding for classroom activities while comprehensive sex-ed programs get none.

Abstinence-Only Programs Continue to Receive Administration Backing Despite Growing Evidence of their Ineffectiveness

Despite Representative Waxman’s hearing, new research confirming the ineffectiveness of abstinence-only programs, positive press, and the growing number of Representatives willing to go on record in opposition to continued funding, pleas for a more rational allocation of public health dollars went unheeded by the White House and House appropriators. The President’s budget called for more than $200 million for abstinence-only programs in FY 2009 – a $28 million increase over FY 2008. The increase was confined to the largest and most restrictive of three streams of funding – Community-Based Abstinence Education or CBAE. Under CBAE, funded in FY 2008 at $113 million, the Department of Health and Human Services (HHS) awards grants directly to community-based organizations that comply with a strict definition of “abstinence education.” This prescriptive eight-point definition is spelled out in the federal law establishing the first stream of abstinence funding, Title V (Section 510 of the Social Security Act). The Title V definition specifies, in part, that “a mutually faithful monogamous relationship in the context of marriage is the expected standard of all human sexual activity” and that “sexual activity outside the context of marriage is likely to have harmful psychological and physical effects.”

The version of the Labor-HHS bill approved by the House Appropriations Subcommittee rejected the President’s call for additional funding, but continued to fund CBAE at the current level of $113 million. Although disappointing, the decision was a decided improvement over FY 2008, when the House Appropriations Committee, at the behest of Chairman David Obey (D-WI), approved a $17 million increase.
In addition to boosting CBAE funding, the President’s FY 2009 Budget contained $50 million for abstinence education programs for the second stream of funding through Title V of the Social Security Act. Under Title V, states that choose to accept funds can distribute them to community-based organizations, schools, county and state health departments, or other entities. As of FY 2007, Title V-funded programs were required to focus on individuals ages 12-29. This focus on older youth and adults was greeted with some skepticism, given that over 90% of people ages 20 to 29 have had sexual intercourse. Every state, with the exception of California, has at one time accepted Title V funds. However, growing evidence of the ineffectiveness of the programs, uncertainty about continued federal funding, and the required state match of $3 for every $4 of federal money has led about half of the states to forgo funding.

The President’s Budget also maintained $13 million in funding for the third and smallest funding stream for abstinence programs – the Adolescent Family Life Act (AFLA, Title XX of the Public Health Service Act). The program was established in the early 1980s to promote “chastity” and “self-discipline.” Since FY 1997, funding for AFLA has also been explicitly tied to the same eight-point definition of abstinence education found in Title V.

These three specific funding streams, however, do not represent the total amount of money spent on abstinence-only-until-marriage programs. In recent years, additional funding for these programs has been allocated through a variety of federal funding vehicles, including earmarks obtained by Labor-HHS Appropriations Subcommittee Ranking Republican Senator Arlen Specter (R-PA) for abstinence-only programs in his home state of Pennsylvania.

As in prior years, the Senate took a markedly different approach from the Bush Administration. Under the leadership of Labor-HHS Subcommittee Chair Senator Tom Harkin (D-IA), the bill approved by the Senate Appropriations Committee in July reduced funding for CBAE by $28 million – the first step in a plan to eliminate funding altogether over a four to five year period. However, like virtually all programs funded through the Labor-HHS bill, funding will remain at the FY 2008 level through early March, when the continuing resolution will expire. House and Senate negotiators will return to the drawing board in early 2009 to determine the final funding level for the program.

**Congress Continues to Pass Short-Term Extensions of Title V Authorization**

Public health advocates have been urging Congress to allow the Title V authorization to expire as a relatively simple mechanism to reduce abstinence-only funding. As a short-term response, Congress approved a series of extensions of three to six months with the current authorization set to expire on June 30, 2009. The decision to kick the can down the road reflects the unwillingness of certain key legislators to provoke the inevitable fight that eliminating the program would bring. Another legislative barrier to letting the authorization of Title V expire has been its linkage to the authorization for transitional Medicaid assistance – a program which has considerable political support. As a result, any long term decision regarding the program’s fate will be delayed until 2009, when a new, more supportive administration is in office and congressional opposition to abstinence-only education programs presumably will have strengthened.
At various points, members have also explored the option of improving, rather than eliminating, funding for Title V. The most recent effort took place last year in the House, where Representative John Dingell (D-MI), Chairman of the House Energy and Commerce Committee, championed changes to the current law that would have provided states with the flexibility to craft more appropriate education for young people in which both abstinence and birth control are discussed. Under Dingell’s plan, programs would also be required to teach information that is medically accurate. Dingell’s improvements were passed as part of the House of Representative’s version of the State Children’s Health Insurance Program (SCHIP) bill, although that version never became law.

**Access to Reproductive Health Care**

The publication in the waning days of the Bush Administration of the so-called provider “conscience” regulation capped a year of speculation that 11th hour attacks on reproductive rights were all but inevitable. During the first half of the year, concerns focused on the stepped up campaign by anti-choice activists to defund Planned Parenthood. Early in the year, a corollary was added to this campaign – a request urging President Bush to use his executive authority to reissue the Reagan-era “domestic gag rule” regulations.

The Family Research Council (FRC) circulated a letter signed by tens of thousands of individuals and almost 70 conservative organizations calling on President Bush to issue a rule to impose a “gag” on Title X providers. The original gag rule sought to deny federal funds to Title X providers that use their own, private funds to provide abortion services, including counseling and referral services. In the early 1990s, opponents filed suit and the regulation effectively was put on hold while the lawsuits played out. The U.S. Supreme Court eventually upheld the regulation, which was suspended when President Clinton took office. A dramatically different rule was ultimately reissued in 2000 by the Clinton Administration. Activists on the right pleaded with President Bush to reinstate previous, stricter rules.

The publicity surrounding the conservative campaign fueled rumors that some type of anti-Title X regulatory action was imminent. Speculation peaked in May, prompting pro-choice organizations to weigh in with a letter of opposition to a domestic gag rule. Although the domestic gag rule regulations did not materialize, requests by conservative activists to HHS to limit access to reproductive health services did not go unheard.
Final HHS “Refusal Right” Regulation Jeopardizes Access to Health Services and Information

On December 19, 2008, the Department of Health and Human Services (HHS) issued the final and much-anticipated “conscience” regulation – an extremely controversial rule that undermines state laws and tramples on patients’ rights to reproductive health services. The regulation offers an interpretation of three existing federal laws (known as the Weldon federal refusal law, the Church amendments, and the Coats amendment) that give individuals and institutions the ability to refuse to provide abortion or sterilization services. The HHS interpretation significantly expands the rights of individuals and institutions to refuse to provide or to help provide health care services, information, and referrals that offend their religious beliefs or moral convictions. The regulation is set to go into effect on January 20, 2009. Under the new rule, the nearly 600,000 recipients of federal funds subject to the rule must fill out forms certifying compliance prior to October 1, 2009.

In issuing the new regulation, HHS claimed to be responding to concerns that intolerance toward health professionals with certain religious beliefs was discouraging some from entering the health care profession. In turn, opponents argued that claims of religious intolerance toward health workers were unsubstantiated and that laws already in place allow health care providers to refuse to provide abortion services if they clash with their religious beliefs.

In mid-July, a draft of the proposed rule was leaked to the press. The leaked draft cited state laws that guaranteed access to birth control as part of the problem they were seeking to address with the regulation. It also defined abortion to include most FDA-approved contraceptives thereby allowing providers with religious or moral objections to abortion to refuse to provide birth control services and information. On August 26, the proposed rule was published in the Federal Register and the public was given thirty days to comment. HHS received over 200,000 comments in opposition to the regulation. The National Partnership for Women & Families joined medical, legal, and women’s organizations, a dozen state attorneys general, more than two dozen Senators and over 100 House members, and members of the Equal Opportunity Employment Commission in urging HHS to abandon the rule.

The final rule issued on December 19 remained essentially the same as the proposed rule. HHS acknowledged some of the objections raised in the comments, but failed to rectify any of the problems identified. The final rule left the term “abortion” undefined, allowing individuals and institutions the freedom to classify birth control as abortion and therefore restrict access to birth control information and services. In this regard it also undermines state laws that ensure access to preventive care, including reproductive health services. It also significantly expands both “who” can deny services and the types of services that can be denied. Under the new regulation all levels of staff including volunteers, clerical and janitorial staff would have the right to refuse patient access not only to abortion services as in current law, but also to counseling and information about a broad range of health services. The regulation not only excuses health workers who refuse to dispense birth control pills, emergency contraception and other forms of contraception, but could also be interpreted so as to affect referrals and counseling on issues seemingly unrelated to abortion, such as the provision of health-care services to gays and lesbians or counseling to HIV-positive patients. This regulatory change fails to balance patient
needs against the desire of health care workers to refuse to provide services for moral or religious reasons.

The National Partnership is one of a broad-based coalition of organizations requesting that President-elect Obama’s Administration and Congress work together to reverse the new rule as quickly as possible.

**Efforts to Expand Medicaid Family Planning Services Lay Groundwork for Success in 2009**

Expanding access to family planning services through Medicaid, the largest source of public funding for family planning services, remained a top priority for advocates this year. By the end of 2008, 27 states had been granted permission (or waivers) by the Centers for Medicaid and Medicare Services to extend eligibility for Medicaid family planning services for many women who otherwise would not have been eligible for Medicaid coverage. Waivers allow states to extend their Medicaid programs outside of federal guidelines. Waivers, however, are limited in scope and duration, and states must go through a burdensome administrative process to obtain them.

The Unintended Pregnancy Reduction Act (S. 2916/H.R. 5795), introduced by Senator Hillary Clinton (D-NY) and Representative Nita Lowey (D-NY), sought to expand access to family planning services by eliminating the waiver process and requiring states to cover family planning services under Medicaid at the same income levels used to determine eligibility for pregnancy-related care. Advocates also pressed for the short-term solution of a streamlined process that would allow states to expand services with fewer administrative hurdles. Although neither of these proposed improvements moved forward, there were a number of small victories during the year.

In February 2008, the Centers for Medicare and Medicaid Services (CMS) issued proposed regulations on provisions in the Deficit Reduction Act of 2005 (DRA) that jeopardized women’s ability to obtain family planning services and supplies through Medicaid. Until passage of the DRA, Medicaid had guaranteed coverage for family planning services and supplies for all who participated in the program. In addition, prior to the DRA, “freedom of choice” protections in Medicaid guaranteed beneficiaries the right to seek family planning services and supplies from any qualified Medicaid provider, even if the beneficiary was enrolled in a managed care plan and was limited to “in-network” providers for other services. The DRA removed these guarantees by allowing states to offer stripped-down “benchmark” plans that did not require states to include family planning services to some populations and permitted states to eliminate “freedom of choice” protections for beneficiaries.

In March 2008, reproductive health advocates submitted comments urging that the final rule designate family planning services and supplies as a required preventive service in benchmark plans and that benchmark plans maintain the “freedom of choice” provision. On December 3, CMS issued final rules that essentially incorporated these suggestions. The final rule was revised to specify that states may not waive the freedom of choice protections for family planning providers. The text of the final regulation did not affirmatively require benchmark plans to include family planning services but suggested in the preamble that it would not be appropriate for states to exclude family planning coverage in their benchmark plans.
Roller Coaster Ride Continues for Legislative Fix to Address Skyrocketing Birth Control Prices for Students and Low-Income Women

Congress failed to enact legislation restoring incentives for drug manufacturers to provide low-cost prescription contraception to hundreds of clinics that serve low-income women or college health centers. But it wasn’t for lack of trying by pro-family planning supporters in Congress.

The obstacle to low prices was created by changes to the Medicaid prescription drug rebate law in 2006, enacted as part of the DRA. Under federal law, pharmaceutical companies are required to sell their products to state Medicaid programs at their “best” price – the lowest price they offer to any other customer. There has been a statutory exemption to this “best price” law which allowed pharmaceutical companies to sell drugs at very low, or “nominal” prices, without including those prices in the “best price” calculation. This language, known as the “nominal pricing exemption,” or NPE, had permitted pharmaceutical companies to offer deeply-discounted prescription birth control products to safety net clinics and university health centers without having to make them available to the full range of Medicaid providers.

Concerned that there was an overly-broad use of the NPE by manufacturers for marketing purposes beyond the original intent of Congress, the DRA narrowed the exemption to specific categories of safety net providers, but did not include family planning clinics or college or university health centers. CMS did not choose to exercise its authority to designate other worthwhile non-profit providers when it issued rules in December of 2006. As a result, birth control prices skyrocketed for over 3 million college students and roughly 750,000 low-income women. The cost of birth control for patients at the affected clinics has risen from $5-$10 to as much as $50 per month.

A stand-alone bill to restore the NPE for family planning and university health center clinics, the Prevention Through Affordable Access Act (S. 2347/H.R. 4054), was introduced in both chambers in 2007. Then-Senator Barack Obama (D-IL) introduced the Senate bill and Representatives Joe Crowley (D-NY) and Tim Ryan (D-OH) introduced the House bill. Although no action was taken on the bill, several attempts were made to attach the legislative fix to supplemental appropriations bills. In March, House supporters were thwarted in their attempt to include the measure in a draft version of the war supplemental spending bill. On May 22, the Senate approved an amendment (75-22) to the war supplemental bill (H.R. 2642) that would have restored the drug price discounts, but the supplemental spending measure ultimately approved by both chambers in June did not include the legislative fix. Consideration of a second supplemental spending bill presented another opportunity to enact the birth control pricing fix. The Senate included a provision to restore the drug price discounts, but a motion to allow consideration of the bill failed to get the 60 votes required to proceed. Bush had issued a veto threat on this second supplemental spending measure, citing the birth control pricing fix as one of his objections.

Although this year’s roller coaster ride ended without solving the problem, the good news is that a bi-partisan group of lawmakers in both chambers, including President-elect Obama, who sponsored a bill to remedy the problem, supported the many efforts to restore access to low-cost contraceptives at college clinics and those serving low-income women. Over 100 House
Members signed a letter of support urging congressional leaders to include the legislative fix in the first supplemental bill and that, along with the overwhelming vote on the Senate amendment to the supplemental bill, are good indicators that victory may be within reach in 2009. Senate appropriators also included a fix in their version of the FY 2009 Labor-HHS spending bill; that measure, like all other appropriations bills, is on the back burner until the next Congress.

All efforts in Congress to restore eligibility could gel at the beginning of the next Congress. Alternatively, CMS could take administrative action to modify the types of entities eligible for the NPE. One way or another, 2009 is expected to be a better year on the NPE front.

**CDC and Sexually Transmitted Infections**

*Increasing Rates of STIs Among Young People Prompted Renewed Commitment to Prevention*

A federal study released by the Centers for Disease Control and Prevention (CDC) on March 11, 2008 found that one in four young women in the U.S. between the ages of 14-19 was infected with one of the four most common sexually transmitted infections (STI) – Chlamydia, herpes simplex virus, trichomoniasis or human papillomavirus (HPV). The study also found that young African-American women were disproportionately impacted – with almost half (48%) having one of four infections.

The CDC study garnered headlines across the country and focused more attention on the issue in Congress than at any point in recent memory. In April 2008, the National Partnership for Women & Families, along with the American Social Health Association, sponsored two briefings for House and Senate staff featuring representatives from CDC and state health programs. Representative Stephanie Tubbs Jones (D-OH) and Senator Hillary Clinton (D-NY), introduced resolutions in their respective chambers marking April as STD Awareness month. Although these efforts didn’t result in tangible achievements such as increased federal funding, it provided an opening to build upon in the new Congress.

*Advocates Respond to HPV Vaccine Requirement for Immigrant Women*

Until several years ago, the human papillomavirus (HPV) was the least well known sexually transmitted infection in the U.S., despite the fact that most sexually active people become infected with genital HPV at some point in their lives. HPV includes more than 100 related viruses and more than 30 types can be transmitted via sexual contact. However, two things changed all that. First, researchers confirmed that persistent infections with certain types of genital HPV can cause cervical cancer. And second, the federal Food and Drug Administration approved Gardasil in 2006, a vaccine developed by Merck to prevent infection with the types of HPV that cause about 70 percent of cervical cancer cases and 90 percent of genital warts. The vaccine – actually a series of three shots over six months – is recommended for girls aged 9-12, with catch-up vaccination recommended for adolescents and women up to age 26.

Despite the enormous potential public health benefits of the vaccine, Merck was roundly criticized for heavy-handed efforts to press for state laws mandating the vaccine for girls aged 9-
11. Conservative activists anxious to exploit the HPV-cervical cancer link to promote abstinence-only education seized on Merck’s aggressive efforts to criticize both the vaccine itself and the public health advocates seeking to expand its availability. The vaccine came under further scrutiny in 2008 when conservatives attempted to use adverse reaction data to bolster their claim that the vaccine was unsafe. CDC reviewed the data and issued a report in the fall of 2008 explaining the data and reiterating that Gardasil was extremely safe.

Another controversy arose in the summer of 2008 when the HPV vaccine was added by the United States Citizen and Immigration Services (USCIS) to its list of mandatory vaccinations for immigrants. HPV’s addition to the list was automatic because it is recommended by the Advisory Committee for Immunization Practices (ACIP) within CDC. Immigration groups strongly objected to the change, concerned that the high cost of the vaccine would prove a barrier to entry. They also noted that the vaccine does not combat the type of infectious disease that the immigration requirements are intended to address, and that is recommended, but not required, for U.S. citizens. Immigration and public health advocates are urging the CDC and USCIS to work together to eliminate the HPV vaccine from the list of required vaccines for immigrant women. CDC officials are aware of the concerns and are working to see if some type of modification to the requirement is possible under current law.

**FDA Approves Expanded Uses for Gardasil to Include Preventing Certain Vulvar and Vaginal Cancers**

In September, 2008, the U.S. Food and Drug Administration approved Gardasil for the prevention of vaginal and vulvar cancer. Merck also had filed an application with the FDA to expand the approval to women up to age 45 but was told in June that the agency needed more time to make a decision about expanded use. Merck also has applied for approval of Gardasil use in men ages nine to 26 for prevention of external lesions caused by HPV strains. Action on that application could come in 2009.

**FDA Advisory Panel Recommends Approval of Less Costly Female Condom**

In December, an FDA advisory panel voted 15-0 to recommend approval of the new, less costly version of the female condom developed by the Female Health Company (FHC). When determining whether to recommend approval of the new product – called the FC2 female condom – the panel heard that the condom’s lower price could attract more women to the product and allow health organizations to increase distribution in an effort to curb the spread of HIV/AIDS. Approval of the less costly version also could boost U.S. sales – which accounted for 10% of the company’s 34.7 million unit sales in 2008.

In addition, most of the company’s U.S. sales are to development agencies such as USAID, which will not distribute the new female condom abroad without FDA approval. Supporters of FDA approval note that distribution by USAID would improve access to the condom for women in other countries. An older version of the female condom currently on the U.S. market was approved in 1993 to help prevent pregnancy and sexually transmitted infections but has not achieved widespread use in the U.S., mainly because of its higher price compared with male condoms. The new nitrile-based female condom, which costs less to produce than the older polyurethane version, already is available in countries outside the U.S.. Numerous women's
health advocates urged the panel to recommend approval of FC2, saying that the condom is a critical factor in helping women to prevent pregnancies and STIs.

International Family Planning

2008 witnessed some significant setbacks and some significant gains in the federal legislative arena for international family planning programs. Good news took the form of congressional support for historic funding increases in the State Department-Foreign Operations appropriations bill to support the family planning needs of millions of women and couples in some of the world’s poorest nations. Appropriators in both the House and Senate also included policy changes to allow a U.S. contribution to the United Nations Population Fund (UNFPA). These Committee-approved measures will be the starting point for negotiations over the FY 2009 spending bill in Congress in January.

At the same time, the five-year reauthorization bill for the President’s Emergency Plan for AIDS Relief (PEPFAR) provided a huge increase in funding, but failed to add any of the pro-family planning changes sought by public health advocates. All eyes will turn to the Obama Administration in January, which is expected to take immediate steps to lift the global gag rule and improve other policies that don’t require congressional action. Expectations are that President-elect Obama’s Administration will work in tandem with a more supportive Congress to ensure increases in funding and a shift in policy priorities.

House and Senate Boost Funding for International Family Planning Programs but Final Funding Levels on Hold

In mid-July, House and Senate appropriators approved fiscal 2009 funding bills for the State Department that included significant funding increases for both bilateral and multilateral family planning programs, as well as policy changes allowing a U.S. contribution to the UNFPA. The House measure boosted funding to $600 million – the largest total amount ever recommended for international family planning programs and the largest one-year increase in these programs on record. Of the total $600 million, $540 million is to be administered by USAID and $60 million is to be allotted for a U.S. contribution to UNFPA. The $600 million in the House bill marks a 28% increase above the current FY 2008 level and an 83% increase above the President’s budget request of only $327 million.

Senate appropriators included $520 million for international family planning programs, a 13% increase over FY 2008. Of that amount, $475 million is allocated for the bilateral family planning and reproductive health programs of USAID, with $45 million for the U.S. contribution to UNFPA. In addition, the Senate version included language to overturn the Mexico City Policy/Global Gag Rule, which renders ineligible for U.S. family planning assistance any foreign nongovernmental organization that provides abortion services, counsels or refers for abortion, or lobbies for abortion law reform with non-U.S. government funds. The House version of the bill is silent on the topic. Like virtually all appropriations measure, both bills failed to reach the floor of their respective chambers. As a result, the continuing resolution enacted in September contains funding for programs included in the State Department-Foreign Operations bill – albeit at FY 2008 levels through March 6, 2009.
House and Senate Appropriators Boost Funding for UNFPA for FY 2009 while Bush Administration Withholds Funding for Seventh Year in a Row

Both the House and Senate FY 2009 foreign aid spending bills included funding for the UNFPA – $45 million in the Senate bill and $60 million in the House version. Despite positive developments in Congress, the Bush Administration for the seventh year in a row made a formal determination that UNFPA is ineligible for the $39.7 million that Congress had set aside for it in FY 2008 under a federal anticoercion law known as Kemp-Kasten Amendment. The 1985 Kemp-Kasten Amendment prohibits U.S. foreign aid for any organization that the President determines “supports or participates in the management of a program of coercive abortion or involuntary sterilization.”

President Bush first blocked the U.S. contribution to UNFPA in 2002. The Bush Administration has interpreted the law to mean that UNFPA was ineligible for U.S. funding simply because it was working in China, despite findings clearing UNFPA of involvement in any practices related to coercive abortion or involuntary sterilization. The Bush Administration has withheld about $235 million from UNFPA since 2002. The determination to withhold the FY 2008 contribution was issued on June 26, 2008 with a veiled threat to expand the application of Kemp-Kasten to other U.S.-funded organizations working in China.

Both the House and Senate bills included similar amendments that would allow U.S. funds to be provided to UNFPA notwithstanding a negative Kemp-Kasten determination. These bills direct this assistance only to specific projects, such as safe childbirth and emergency obstetric care, contraceptives to prevent unintended pregnancy and the spread of STIs, prevention and treatment of obstetric fistula, combating harmful traditional practices, and the provision of maternal health services in disaster areas. The bills target UNFPA aid to more than 150 countries (and exclude China).

Global AIDS Bill Provides Big Funding Increase but Family Planning Deemed ‘Poison Pill’

Members of both parties and the White House joined forces to enact a five-year, $48 million reauthorization and expansion of PEPFAR (H.R. 5501), signed into law on July 30, 2008. The bill provides HIV/AIDS assistance for prevention, treatment and care programs, as well as funds for fighting tuberculosis and malaria over the next 5 years. The funding level was $18 billion more than initially proposed by the Bush Administration and $33 billion more than the current authorization level. While the additional funding was welcomed in all quarters, some problematic compromises were made to secure the funding increase, including some that doomed improvements that family planning advocates had long sought.

Initially, the PEPFAR reauthorization effort on the House side was led by House Foreign Affairs Chairman Tom Lantos (D-CA). Sadly, Lantos passed away before introduction of the bill, leaving Representative Howard Berman (D-CA) to pick up the mantle. Lantos’ draft of the reauthorization legislation eliminated many of the restrictions related to family planning and abstinence funding in the 2003 bill. However, promises by social conservatives to fight the Lantos improvements every step of the way, a threatened veto, and a White House decision to
support a boost in funding from their initial request of $30 billion to $50 billion led Democrats to back away from the provisions to strengthen HIV prevention efforts.

Instead, in an effort to ensure smooth passage of the bill, Berman forged an agreement with Representative Ileana Ros-Lehtinen (R-FL) and the Administration that included legislative language deemed acceptable by all parties and an agreement by all parties to oppose any further changes. Some of the so-called controversial changes would have expanded the role of family planning services within HIV/AIDS programs, for example, in working to prevent mother-to-child transmission. Social conservatives claimed this would have opened a back door to funding overseas abortions. The House bill even went so far as to include language aimed at limiting eligibility for PEPFAR funds to even those family planning programs in compliance with the gag rule – but the final law did not.

Rather than completely striking PEPFAR’s abstinence mandates, requiring that one-third of all HIV/AIDS prevention funding be spent on abstinence-until-marriage programs, the new bill alters the requirement to impose a new burdensome reporting requirement. If a country’s spending on abstinence and fidelity programs falls below half of funding for the prevention of sexual transmission of HIV, a report to Congress is required. In the field, advocates worry that what has been portrayed as an enhanced reporting requirement will be transformed into a de facto spending earmark for abstinence programs.

The House bill also left in place a requirement that non-governmental groups seeking federal funds have an explicit policy opposing prostitution and sex trafficking. This requirement has been criticized by women’s rights advocates and has led some countries, such as Brazil, to reject funding. Initially it had been applied to foreign-based NGOs, but in 2005 it was expanded to cover U.S.-based organizations as well, resulting in ongoing court challenges on First Amendment grounds. On August 8, 2008, a federal district court enjoined the enforcement of proposed HHS regulations to implement the pledge requirement, holding them an unconstitutional infringement on the free speech rights of the plaintiffs. On December 24, 2008, HHS published a final regulation that purportedly brought the rule in compliance with the court’s decision. However, this regulation continues to create barriers for domestic NGOs that work overseas. Advocates will be working with agency officials to modify or repeal this rule in the new Administration as well as mitigate the impact on international organizations.

The House model for bill passage was adopted by Senate Foreign Relations Committee then-Chair Joe Biden (D-DE), who agreed to work with Senator Richard Lugar (R-IN) and the Administration to ensure smooth passage of the bill in the Senate. As a result, the House version of the bill stayed largely the same and amendments that would have restored family planning programs to the list of programs with which PEPFAR should coordinate fell by the wayside. Instead, Senator Barbara Boxer (D-CA), the drafter of one such amendment, settled for a colloquy with Biden during the Committee mark-up of the bill in which the two legislators agreed that family planning organizations should continue to be key PEPFAR partners.

*Bush Administration Deals Blow to Overseas Contraceptive Services in Africa*

The Bush Administration dealt its final blow to international family planning programs in October 2008 when it issued a directive to the USAID instructing its staff to pressure at least six
African governments to withhold U.S.-funded contraceptive commodities from London-based Marie Stopes International (MSI), one of the world’s leading providers of family planning services in developing countries. This directive was based on the agency’s broad (and incorrect) application of the Kemp-Kasten amendment to MSI’s work in China with UNFPA, denying indirect support of MSI’s programs on the same rationale used to defund UNFPA. As a consequence, African governments are refusing to provide condoms, intrauterine devices and other contraceptives (including those donated by other governments) to MSI clinics, which has significantly decreased the ability of affected countries to meet national demand for contraceptives.

Other Legislative Action Impacting Reproductive Health

Legislation Enacted in 2008


*Prenatally and Postnatally Diagnosed Conditions Awareness Act (S. 1810/H.R.3112- PL 110-374)* amends the Public Health Service Act to increase the provision of scientifically sound information and support services for pregnant women with certain prenatally and postnatally diagnosed conditions, such as Down syndrome. Senators Ted Kennedy (D-MA) and Sam Brownback (R-KS) introduced the bill in the Senate and Representative James Sensenbrenner (R-WI) introduced the House version. The bill was signed into law on October 8, 2008.

*Anti-Choice Amendment to Indian Health Service Authorization Approved in Senate* would restrict the use of Indian Health Service (IHS) funds for abortion services. Senator David Vitter offered an anti-choice amendment (S.Amdt. 3896) to the Indian Health Care Improvement Act (S.1200). Vitter’s amendment passed by a vote of 52-42 in February. When the bill moved to the House Energy and Commerce Committee, IHS advocates ramped up their objections to a parallel amendment threatened by a Republican member of the Energy and Commerce Committee. Reproductive health advocates argued that it could be interpreted to expand the Hyde Amendment in current law. In addition, IHS advocates condemned the proposed change as an infringement of tribal sovereignty. The controversy was never resolved and the authorization bill was never considered by the Committee. It could resurface in the 111th Congress possibly with a different outcome.

Pro-Choice Legislation and Resolutions Introduced in 2008

*Equity in Prescription Insurance and Contraceptive Coverage Act (S. 3068/H.R. 2412)*, sponsored by Senator Olympia Snowe (R-ME), would require health plans that cover prescription drugs to provide equitable coverage for prescription contraceptive drugs, devices, and services. Representative Nita Lowey (D-NY) introduced the House bill in 2007.
**STD Awareness Month (S. Res 542/H Res 1311)** recognizes that the Centers for Disease Control and Prevention observes the month of April as National STD Awareness Month and urges Congress to focus greater attention on activities related to the prevention of STDs and screening and treatment for STDs. Senator Hillary Clinton (D-NY) and Representative Stephanie Tubbs Jones (D-OH) were the lead sponsors.

**Anti-Choice Legislation Introduced in 2008**

*Susan B. Anthony Pre-natal Nondiscrimination Act of 2008 (H.R. 7016)*, sponsored by Representative Trent Franks (R-AZ), would fine and/or imprison providers performing abortions for the purposes of sex-selection or race-selection. Franks claims his bill is an effort to address gender and racial inequality but his position on reproductive health issues suggests that this is merely the latest twist on legislation to restrict abortion access for low-income women.

*Child Custody Protection Act (S. 2543)* would prohibit anyone other than a parent from taking a young woman across state lines for an abortion without complying with the home state’s parental involvement law. Senator John Ensign (R-NV) introduced the bill on January 22, 2008.

*Ultrasound Informed Consent Act (S. 2075/H.R. 5032)* requires providers, before performing an abortion, to perform an ultrasound on the pregnant woman, explain the results, display the ultrasound images so the woman may view them, and provide a medical description of the ultrasound images. Senator Sam Brownback (R-KS) and Representative Jim Jordan (R-OH) introduced the legislation. The House bill was introduced in 2007.

*Life at Conception Act (S. 3111)* introduced by Senator Roger Wicker (R-MS), claims its intent is to implement equal protection under the Fourteenth Amendment to the Constitution by declaring that the right to life is vested in each human being beginning at the moment of fertilization or cloning.

*Pregnant Women Health and Safety Act (S. 2788)* requires a physician who performs an abortion to have admitting privileges at a local hospital and requires that clinics where abortions are performed be licensed by the state. Senator David Vitter (R-LA) introduced the legislation on March 31, 2008.
A Look Ahead

Buoyed by the election of a pro-choice President and the significant influx of Members of Congress who are supportive of reproductive health issues, we have high hopes that the anti-reproductive rights legacy of the past eight years will be reversed quickly and that a proactive reproductive health agenda will be a priority for the new Administration and Congress.

Clearly, optimism is warranted. President-elect Obama earned 100% ratings from pro-choice groups during his tenure in the Illinois State Senate and the U.S. Senate marking a radical departure from his predecessor. Our hope is that this longstanding, unequivocal support will translate into immediate action. President-elect Obama has been urged by reproductive health supporters to take swift executive action to release UNFPA funding, rescind the global gag rule, and overturn the provider conscience regulation. In addition, the President’s budget proposal for 2010 is scheduled to arrive on Congress’s doorstep early in the year. It is a blueprint that by definition will reflect the new Administration’s spending and policy priorities. Our hope is that Title X, the CDC’s STD program, international family planning programs, Medicaid and other maternal and child health programs – programs that desperately need additional resources – will receive significant funding increases, while abstinence-only programs will be zeroed out.

The budget document also is likely to provide some additional insight into President-elect Obama’s policy priorities – including health care reform. Depending on its parameters, health care reform has the potential to strongly impact and greatly improve women’s access to affordable, high quality reproductive health services, from family planning to prenatal care to abortion. The process and timetable for forging an agreement between Congress and the White House on these critical issues is far from clear, but reproductive health advocates are committed to ensuring that women’s health issues remain a priority.

President-elect Obama’s reproductive health priorities are certain to receive a warmer welcome on Capitol Hill than at any time over the past decade. The legislative branch will rest firmly in the hands of pro-choice leaders, with the exception of Senate Majority Leader Harry Reid (D-NV) who is anti-choice but staunchly supports pro-family planning policies. The number of pro-choice and pro-family planning supporters in the House and Senate has increased. As such, efforts to move legislation that falls under the general rubric of “prevention” are certain to be well-received in all quarters, while efforts to repeal abortion-related restrictions or expand abortion coverage still face an uphill battle.

Despite the much-improved political environment, reproductive health programs, like all public health programs, will continue to compete for limited federal resources. White House backing will be critical to any efforts to boost funding in annual appropriations bills. As in the 110th Congress, funding and policy decisions will be complicated by the continued leadership of mixed-record House Appropriations Chair, David Obey (D-WI). Always anxious to avoid legislative battles over reproductive health matters, Obey consistently has opposed efforts to cut abstinence-only funding, although he occasionally supported modest Title X increases and other pro-reproductive health policies. It is certainly possible that Obey’s past reticence to support positive changes could lessen with the increasing ranks of pro-choice and pro-family planning Democrats on the Committee, supportive House leadership, and a newly supportive White
House. Reproductive health gains are also more likely without the near-automatic veto threat that the Bush Administration issued for any bill containing reproductive health improvements.

On the authorizing side, reproductive health stalwart, Representative Henry Waxman (D-CA), is the new Chairman of the House Energy and Commerce Committee, which has jurisdiction over authorizing legislation for programs relating to Medicaid, abstinence and family planning. Waxman, who is a long an aggressive supporter of reproductive rights, should be aided by the addition of pro-choice members to the Committee roster.

In the Senate, Daniel Inouye’s (D-HI) elevation as Chairman of the Appropriations Committee is expected to have little impact on reproductive health issues. Like his predecessor Senator Robert Byrd (D-WV), Inouye is expected to heed the advice on reproductive health issues from pro-choice Senator Tom Harkin (D-IA) and mixed record Senator Arlen Specter (R-PA), the Ranking Republican. Senator Ted Kennedy (D-MA) will continue to chair the Health Education, Labor and Pensions Committee, although he has scaled back his activities to focus on health care reform. Pro-choice Senator Chris Dodd (D-CT) is expected to take a bigger leadership role.

Obama’s picks to head key federal agencies should help usher in a new stance toward reproductive health, restoring the role of scientific evidence in federal decision making. Collectively and separately, these appointments represent a 180-degree turn from the previous administration. Former South Dakota Senator Tom Daschle (D-SD), who has a pro-family planning record and a somewhat mixed record on choice, has been tapped to head HHS, while one of the Senate’s most vocal and effective backers of reproductive health, New York Senator Hillary Clinton (D-NY), has been nominated for the position of Secretary of State. With Clinton’s long history of leadership in this arena as First Lady and as a Senator, she is expected to take on the damaging policies that affect U.S.-funded international family planning and maternal and child health programs and press for policies that restore the leadership role of the United States.

The bottom line remains: supporters of reproductive health both inside and outside the government have a tremendous opportunity and responsibility in the coming year to not only to make significant headway in reversing some of the past administration’s worst policies, but also to advance pro-choice and pro-family planning initiatives on a national level.

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