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LEGAL RIGHT OF MINORS TO OBTAIN CONTRACEPTIVES

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LEGAL RIGHT OF MINORS TO OBTAIN CONTRACEPTIVES

Introduction

Minors have a constitutionally protected right of privacy which encompasses the right to receive contraceptives under a 1977 Supreme Court decision, Carey v. Population Services International.¹ Thus any statute which flatly denies their access to contraceptives is unconstitutional, based on this ruling; and such access is constitutionally guaranteed even in those states which have no statutory or case law which specifically permit it.

However, the extent, if any, to which this right can be constitutionally limited has not yet been considered by that Court. In particular, questions remain as to whether a government entity can condition the receipt of contraceptives by a minor on notification of and/or consent by the minor's parent(s) to the minor's receipt of the contraceptives.

This report provides information on federal and state statutory and case law on this topic.

Carey v. Population Services International

Carey v. Population Services International followed by some 12 years the landmark 1965 Supreme Court decision, Griswold v. Connecticut,² which struck down on constitutional grounds a Connecticut statute which barred the use of contraceptives by married couples as violative of the right of marital privacy. While this right is not explicitly mentioned in the Constitution, the Court

¹ 431 U.S. 678 (1977).

² 381 U.S. 479 (1965).

based its ruling on the 9th amendment, which provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Griswold Court found that the framers of the Constitution did not intend for the first eight amendments (which enumerate specifically protected rights) "to exhaust the basic and fundamental rights which the Constitution guaranteed to the people[;]"³ and that "[t]o hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment and give it no effect whatsoever"-- contrary to the explicit direction in its language that it not be construed to deny or disparage other rights retained by the people.⁴

Seven years after Griswold, in Eisenstadt v. Baird,⁵ the Supreme Court struck down a Massachusetts statute which prohibited the distribution of contraceptives to unmarried, but not to married persons. The Court held that providing dissimilar treatment for married and unmarried persons who are similarly situated in this context violates the fourteenth amendment's equal protection clause.

The Eisenstadt Court found it unnecessary to consider whether a state could ban the distribution of all contraceptives, reasoning that regardless of whether this was possible access or non-access to them must be the same for married and unmarried persons. If, under Griswold, the distribution of contraceptives to married persons could not be prohibited, a ban on their

³ Id. at 490.

⁴ Id. at 491-92 (emphasis added by the Court).

⁵ 405 U.S. 438 (1972).

distribution to unmarried persons would be equally impermissible, since the constitutionally protected right of privacy inheres in the individual and not in the marital couple. On the other hand, if Griswold did not bar a prohibition on the distribution of contraceptives, any such ban which was limited to unmarried persons would be underinclusive and invidiously discriminatory.

Carey v. Population Services International held that regulations which impose a burden on a decision as fundamental as whether to bear or beget a child can be justified only by compelling state interests, and must be narrowly drawn to express only those interests. Applying this standard, it invalidated a New York statute which, inter alia, made it a crime for any person to sell or distribute any nonprescription contraceptives to a minor under the age of 16.

New York argued that this prohibition was a permissible regulation of minors' morality in furtherance of the state's policy against promiscuous sexual intercourse among the young. However, the Court noted that it had already rejected the argument that sexual activity may be deterred by increasing the hazards attendant on it as a justification for restrictions on the freedom to choose whether to bear or beget a child, in Eisenstadt v. Baird and in Roe v. Wade,⁶ the decision which held a woman's right of personal privacy included the right to decide whether or not to terminate a pregnancy.⁷ Also, it found that substantial doubt existed as to whether limiting access to contraceptives would in fact substantially discourage early sexual behavior--

⁶ 410 U.S. 113 (1973).

⁷ The Court held that during the first trimester of pregnancy this decision was one for the woman and her physician, and during the second trimester the state could regulate abortions only to the extent needed to protect the woman's health. Only during the third trimester can the state limit or proscribe abortions regardless of the woman's desires.

New York having conceded that there was no evidence that teenage extramarital sexual activity increases in proportion to the availability of contraceptives. The Court held that this unsupported assertion was insufficient to justify the burden imposed by the challenged statute on the exercise of a fundamental right, since it could not be shown to be a rational means for accomplishing the desired result. The fact that minors could receive contraceptives from physicians was also found insufficient to save the statute, since the state asserted no medical necessity for distinguishing between prescription and nonprescription contraceptives in this content.

The Court also relied on its earlier decision in Planned Parenthood of Missouri v. Danforth,⁸ which held that states could not impose a blanket prohibition on the right of a minor to obtain an abortion, or a blanket requirement of parental consent to a minor's choice. It held that this decision foreclosed a fortiori its upholding the constitutionality of a blanket prohibition on the distribution of contraceptives to minors.

Minors and Abortions

The Supreme Court followed up its decision in Planned Parenthood of Missouri v. Danforth with Bellotti v. Baird,⁹ a 1979 plurality decision which held that state laws requiring parental consent for a minor to obtain an abortion are constitutionally permissible as long as the laws provide an alternative procedure whereby authorization for the abortion can be obtained. However, the case struck down a Massachusetts law which required a single,

⁸ 428 U.S. 52 (1976).

⁹ 443 U.S. 622 (1979). This decision is discussed at length in "The 'Squeal Rule' and a Minor's Right to Privacy," 12 Hofstra L. Rev. 497, 512-18 (1984).

pregnant woman under the age of 18 to obtain the consent of both of her parents before she could have an abortion. If either parent refused to consent, the minor could seek authorization for the abortion in a judicial proceeding, where consent would be given "for good cause shown." The Court concluded that the constitutional rights of children cannot be equated with those of adults, because of their peculiar vulnerability; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing;¹⁰ but held that the peculiar nature of the abortion decision, which the Court found to be very different from other important decisions a minor might face, necessitated different treatment where parental consent to abortions was concerned. Thus, if a pregnant minor chose to bypass her parents, or could not obtain their consent, she was entitled to seek authorization for her abortion from a court without being required to show that she had consulted with or sought the consent of her parents, and without notification of her parents that she intended to go to court¹¹—both of which were required by the invalidated Massachusetts statute.

While the plurality decision discussed a possible mature/immature minor distinction in this context, four Justices refused to join in this portion of the opinion because the distinction was not involved in the challenged statute.¹² Two years later, in H.L. v. Matheson,¹³ the Court upheld the constitutionality of a Utah statute which required parental notification before

¹⁰ 443 U.S. at 634.

¹¹ Id. at 647. This position was affirmed in Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416 (1983).

¹² See, e.g., Id. at 656 (Stevens, J., concurring).

¹³ 450 U.S. 397 (1981).

an unemancipated minor could obtain an abortion; however, it did not consider the question of whether the statute could validly be applied to emancipated or "mature" minors, since the minor plaintiff did not allege or offer evidence that she or any member of her class¹⁴ met either of these qualifications. The Court later characterized this decision as "upholding a parental notification requirement but not extending the holding to mature or emancipated minors or to immature minors showing such notification detrimental to their best interests," in Planned Parenthood Ass'n of Kansas City, Missouri, Inc. v. Ashcroft.¹⁵ On the same day that case was decided, the Court noted in Akron v. Akron Center for Reproductive Health, Inc.¹⁶ that "[a] majority of the Court ... has indicated that [the] state and parental interests [on which parental notice laws have been based] must give way to the constitutional right of a mature minor or of an immature minor whose best interests are contrary to parental involvement."¹⁷ It further noted, but in dicta, that a statute requiring that a minor's parents be notified that the minor is seeking an abortion would be unconstitutional in the case of a mature minor.¹⁸ The Court has not had a subsequent opportunity to definitively establish this point.

Parental Consent/Notification and Minors' Access to Contraceptives

In Planned Parenthood Ass'n of Utah v. Matheson,¹⁹ a federal district

¹⁴ The suit was brought as a class action on behalf of all pregnant, unmarried minors in the state.

¹⁵ 462 U.S. 472, 491 n. 17 (1983).

¹⁶ Supra n. 11.

¹⁷ Id. at 427-28, n. 10.

¹⁸ Id. at 441, n. 31.

¹⁹ 582 F.Supp. 1001 (D. Utah 1983).

court invalidated a Utah statute which required parents or guardians to be notified before a minor could receive contraceptives. That court relied in part on the dicta in Akron v. Akron Center for Reproductive Health, Inc., relating to parental notification and abortions, supra, and held that the same reasoning should apply to parental notification and contraceptives. It analogized this situation to that presented in Carey v. Population Services International, which held that minors could not be subject to a blanket prohibition on obtaining contraceptives in part because they could not be subject to such a prohibition on their obtaining abortions, under Planned Parenthood of Missouri v. Danforth. The court explained:

[T]he decision whether to use contraceptives is as intimate and personal as, and involves risks to the individual, which are comparable to those raised by the decision whether to have an abortion. The court, therefore, is persuaded that the statements in Akron and H.L. [v. Matheson, supra] concerning the constitutionality of parental notification laws in the abortion context support the conclusion that the state may not impose a blanket parental notification requirement on minors seeking to exercise their constitutionally protected right to decide whether to bear or to beget a child by using contraceptives.²⁰

It also found that the blanket notification requirement violated and was preempted by Title X of the federal Public Health Service Act, discussed below.

Federal Funding Requirements

The Family Planning Services and Population Research Act of 1970,²¹ Title X of the Public Health Service Act, provides federal funding for the

²⁰ Id. at 1009.

²¹ Pub. L. 91-572, 84 Stat. 1504, codified as amended at 42 U.S.C. §§ 300 to 300a-8).

establishment of voluntary family planning clinics. The Act's declaration of purposes states that it is intended "to assist in making comprehensive voluntary family planning services readily available to all persons desiring such services."²² Although the original enactment did not specifically deal with minors' access to these services, by 1975 Congress had become concerned over the fact that teenagers were not availing themselves of the services offered by these clinics;²³ and in 1978 the Act was amended to specifically encompass services for adolescents.²⁴

In 1981, Congress again amended the Act to provide that, "[t]o the extent practical, entities which receive grants or contracts under this subsection shall encourage family participation in projects assisted under this subsection."²⁵ Following this amendment, the Department of Health and Human Services [HHS] promulgated a regulation which would have required federally-funded family planning clinics to notify the parents of any minor who received prescription contraceptives from any such clinic.²⁶

These regulations were invalidated in two circuit court decisions which failed to reach the constitutional issue raised by the plaintiffs, namely whether the notification requirement unconstitutionally infringed upon minors' protected privacy rights.²⁷ Rather, those cases held that HHS lacked the

²² 42 U.S.C. § 300 nt.

²³ S. Rep. No. 29, 94th Cong., 1st Sess. at 55; see generally "Minor's Right to Privacy," supra n. 9 at 502.

²⁴ Pub. L. 95-613, § 1(a)(1), 92 Stat. 3093.

²⁵ Pub. L. 97-35, § 931(b)(1), 95 Stat. 357, 570.

²⁶ 42 C.F.R. §§ 59.2, 59.5(a)(12)(1983).

²⁷ Planned Parenthood Federation, Inc. v. Heckler, 712 F.2d 650 (D.C. Cir. 1983); State of New York v. Heckler, 719 F.2d 1191 (2d Cir. 1983).

statutory authority to mandate parental notification and that the regulations were contrary to the intent of Congress, which was merely to encourage parental involvement where appropriate. This same result was reached in several federal district court decisions.²⁸

The pertinent regulations have now been amended to provide that information as to who utilizes federally-funded family planning clinics will be kept confidential unless the recipient of the aid agrees to its disclosure.²⁹ This requirement applies to all such clinics throughout the United States and supersedes any conflicting state laws which would otherwise apply to this situation.

State Statutes Which Relate to the Right of Minors to Obtain Contraceptives

The following statutory survey provides an overview of the limited topic of state laws which specifically deal with the right of a minor to gain access to contraceptives. It does not include statutes which bear on the right (or lack thereof) of a minor to obtain an abortion, although abortion may be considered a form of contraception. Also, it does not include statutes which specifically deal with the prevention or treatment of venereal disease, although such prevention or treatment may entail the use of contraceptive devices. Note that only a few states have pertinent laws which apply universally, and several states have no laws whatsoever.

As is clear from the preceding discussion, however, minors are entitled to receive contraceptives and may be able to do so absent parental notification and/or consent, based on United States Supreme Court decisions. These cases

²⁸ E.g., Doe v. Pickett, 480 F.Supp. 1218 (S.D. W.Va. 1979)(pre-1981 amendment); Planned Parenthood Ass'n of Utah v. Matheson, supra n. 19.

²⁹ 42 C.F.R. § 59.12 (1985).

would control both in the absence of pertinent state statutes and to overrule conflicting statutes. Also, family planning clinics which receive federal funding under Title X of the Public Health Service Act are bound by the statutory requirements discussed above.

While this survey is reasonably complete,³⁰ it is possible that additional states have recently-enacted or obscurely-indexed statutes which are not reflected. Also, states may have promulgated regulations which bear on the subject, which regulations are not available for research.

Finally, these statutes are for the most part paraphrased, rather than quoted exactly, so the statutory texts should be consulted if additional information is required.

Alabama: Any minor may give effective consent for any legally authorized medical, health or mental health services to determine the presence of, or to treat, pregnancy or venereal disease, and the consent of no other person shall be deemed necessary (Ala. Code § 22-8-6).

Alaska: A minor may give consent for diagnosis, prevention or treatment of pregnancy (Alaska Stat. § 09.65.100).

Arizona: No pertinent provisions were found.

Arkansas: Any female, regardless of age or marital status, is authorized and empowered to consent to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed or directed by a duly licensed physician, when given in connection with pregnancy or childbirth, except for the unnatural interruption of a pregnancy (Ark. Stat. § 82-363).

³⁰ Statutory indices were, at a minimum, checked under "children," "minors," or "infants," as appropriate; "birth control," "family planning," and "contraceptives."

California: An unmarried minor may give consent to the furnishing of hospital, medical and surgical care related to the prevention or treatment of pregnancy, excluding sterilization (Cal. Civil Code § 34.5).

Family planning services shall be offered to all former, current, or potential recipients of childbearing age and provided to all such eligible individuals who voluntarily request such services. Such services shall be offered and provided without regard to marital status, age, or parenthood. Notwithstanding any other provisions of law, the furnishing of these family services shall not require the consent of anyone other than the person who is to receive them.

The law defines "former, current or potential recipient" to include all persons eligible for Medi-Cal benefits (a state program which provides medical care for public assistance recipients), all persons eligible for public social services for which federal reimbursement is available under the Social Security Act, and all persons in a family whose current social, economic and health conditions indicate that the family would likely become a recipient of financial assistance within the next 5 years (Welf. & Inst. Code § 14503).

Colorado: All medically acceptable contraceptive procedures, supplies, and information shall be readily and practicably available to each person desirous of the same regardless of sex, race, age, income, number of children, marital status, citizenship, or motive. However, no unmarried person under 18 years of age may consent to permanent sterilization procedures without the consent of a parent or guardian (Colo. Rev. Stat. § 25-6-102).

Except with regard to abortion, birth control procedures, supplies and information may be furnished by licensed physicians to any minor who is pregnant, or a parent, or married, or who has the consent of his parent or

legal guardian, or who has been referred for such services by another physician, a clergyman, a family planning clinic, a school or institution of higher education, or any state or local government agency or instrumentality, or who requests and is in need of birth control procedures, supplies, or information (§ 13-22-105).

Connecticut: No pertinent provisions were found.

Delaware: A minor 12 years of age or over who professes to be either pregnant or exposed to the chance of becoming pregnant may give written consent, except to abortion, to any licensed physician, hospital or public clinic for any diagnostic, preventive, lawful therapeutic procedures, medical or surgical care and treatment, including X rays, by any physician licensed for the practice of medicine or surgery or osteopathic medicine or surgery in the state, and by any hospital or public clinic, their qualified employees or agents while acting within the scope of their employment.

The physician, surgeon, or hospital to whom such consent is given may, in the sole exercise of his, her or its discretion, either provide or withhold from the parents or legal guardian or spouse of such minor information as to diagnosis, therapeutic procedures, care and treatment rendered or to be rendered the minor as the physician, surgeon or hospital deems to be advisable under the circumstances, having primary regard for the interests of the minor (Del. Code tit. 13, § 708).

District of Columbia: No pertinent provisions were found.

Florida: Maternal health and contraceptive information and services of a nonsurgical nature may be rendered to any minor by persons licensed to practice medicine, as well as by the state department of health and rehabilitative services through its family planning program, provided the minor (1) is

married; (2) is a parent; (3) is pregnant; (4) has the consent of a parent or legal guardian; or (5) may, in the opinion of the physician, suffer probable health hazards if such services are not provided (Fla. Stat. § 381.382(5)).

Georgia: Within the limitations of available funding, all agencies (including the State Department of Human Resources and county and district departments of family and children's services) are authorized to offer family planning services to any person requesting such services (Ga. Code § 49-7-3).

Also, any female regardless of age or marital status may consent to medical or surgical treatment for herself, when given in connection with pregnancy, the prevention thereof, or childbirth (§ 31-9-2(a)(5)).

Hawaii: A minor (defined as any person from the age of 14 to 17 inclusive) seeking family planning services shall have the same legal capacity to act (i.e., consent to the receipt of counseling and medical care designed to facilitate family planning) as a person of full legal age and capacity, the infancy of any minor and any contrary provisions of law notwithstanding. No consent by any other person or persons (including, but not limited to a spouse, parent, custodian, or guardian) is necessary in order to authorize the provision of such services to such minor (Hawaii Rev. Stat. §§ 577A-1, 577A-2).

Idaho: No pertinent provisions were found.

Illinois: Birth control services and information may be rendered by doctors licensed in Illinois to practice medicine in all of its branches to any minor (1) who is married; or (2) who is a parent; or (3) who is pregnant; or (4) who has the consent of his parent or legal guardian; or (5) as to whom the failure to provide such services would create a serious health hazard; or (6) is referred for such services by a physician, clergyman or a planned parenthood agency (Ill. Stat. chap. 111.5, § 4651).

Indiana: No pertinent provisions were found.

Iowa: The state division of the Social Services Department may offer, provide, or purchase family planning and birth control services to every person who is an eligible applicant or recipient of service or any financial assistance from the department of social services, or who is receiving federal supplementary security income (Iowa Code §234.21).

Kansas: The secretary of health and environment shall establish and maintain family planning centers which, upon request of any person who is over 18 years of age and who is married or who has been referred to the center by a person licensed to practice medicine and surgery and who resides in the state, may furnish and disseminate information concerning, and means and methods of planned parenthood (Kan. Stat. § 23-501).

Kentucky: Any physician, upon consultation by a minor as a patient, with the consent of such minor may make a diagnostic examination for pregnancy, and may advise, prescribe for and treat such minor regarding contraception, pregnancy or childbirth, excluding sterilization or abortion, all without the consent of or notification to the parent(s), guardian, or custodian of such minor patient. The treating professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, informing the parent or guardian would benefit the health of the minor patient (Ky. Rev. Stat. § 214.185).

Louisiana: No pertinent provisions were found.

Maine: Family planning services shall be readily and practically available to all persons desiring and needing such services (Me. Rev. Code tit. 22, § 1903.1). Such services may be furnished to any minor who is a parent or married or has the consent of his or her parent or legal guardian or who may

suffer, in the professional judgment of a physician, probable health hazards if such services are not provided (§ 1908).

Maryland: A minor shall have the same capacity to consent to medical treatment as an adult if the minor seeks treatment or advice concerning contraception not amounting to sterilization (Md. Health Gen. Code § 20-102).

Massachusetts: A registered physician may administer to or prescribe for any married person drugs or articles intended for the prevention of pregnancy or conception. A registered pharmacist actually engaged in the business of pharmacy may furnish such drugs or articles to any married person presenting a prescription from a registered physician.

A public health agency, a registered nurse, or a maternity health clinic operated by or in an accredited hospital may furnish information to any married person as to where professional advice regarding such drugs or articles may be lawfully obtained (Mass. Gen. Laws chap. 272, § 21A).

NOTE: This law was declared unconstitutional in Eisenstadt v. Baird, discussed pp. 2-3, supra.

Michigan: The state department of public health, and under its supervision a local health department, shall publicize the places where family services are available (Mich. Comp. Laws § 333.9131). The department of mental health may provide to any individual receiving mental health services from the department written or oral notice of the availability of family planning services and, upon request of the individual, offer education and information on family planning (§ 330.1938).

Minnesota: The commissioner of health may make special grants to cities, counties, groups of cities or counties, or nonprofit corporations to provide pre-pregnancy family planning services. No funds provided by these grants may

be used to support any family planning services for any unemancipated minor in any elementary or secondary school building.

Any person employed to provide family planning services who is paid in whole or in part from these funds who advises sterilization to any unemancipated minor shall, following such recommendation, so notify the minor's parent or guardian of the reasons for such action (Minn. Stat. § 145.925).

Exceptions to the above notification requirement occur when the minor is living apart from his or her parents and managing his or her own financial affairs, or when the minor has been married or has borne a child (§ 144.342).

Mississippi: Contraceptive supplies and information may be furnished by physicians to any minor who is a parent, or who is married, or who has the consent of his or her parent or legal guardian, or who has been referred for such service by another physician, a clergyman, a family planning clinic, a school or institution of higher learning, or any agency or instrumentality of the state or any of its subdivisions (Miss. Code § 41-42-7).

Missouri: Benefit payments for medical assistance shall be made on behalf of those eligible needy persons who are unable to provide for it in whole or in part for, inter alia, family planning as defined by federal rules and regulations³¹ (Mo. Stat. § 152).

Montana: A minor who professes or is found to be pregnant may consent to health services relative to the prevention, diagnosis, and treatment of this condition. Such consent obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional (Mont. Code § 41-1-402).

³¹ See generally 42 C.F.R. part 59 (1985).

Nebraska: Social services may be provided on behalf of public assistance recipients, including family planning services (Neb. Rev. Stat. § 68-1202). Those eligible to receive these services include dependent children and families, blind persons, and disabled persons as defined by state law; and former and potential recipients as defined in federal regulations (§ 68-1203).

Nevada: A minor may not consent to his sterilization (Nev. Rev. Stat. § 120.030(4)).

As part of the state's health and welfare programs, the welfare division of the state welfare administration is authorized to conduct a family planning service in any county of the state, and to establish a policy of referral of welfare recipients for birth control (§ 422.235).

New Hampshire: The town clerk shall distribute with each certificate of filing of notice of intention to marry, a list of family planning agencies and services that are available in the state (N.H. Rev. Stat. § 457:28-a).

New Jersey: No pertinent provisions were found.

New Mexico: It is the purpose of the New Mexico Family Planning Act (N.M. Stat. §§ 24-8-1 to 24-8-8) to assure that comprehensive family planning services are accessible on a voluntary basis to all who want and need them (§ 24-8-3(B)). Neither the state, its local government units nor any health facility furnishing family planning services shall subject any person to any standard or requirement as a prerequisite to the receipt of any requested family planning service except for a requirement of referral to a physician when the requested service is something other than information about family planning or nonprescription items; any requirement imposed by law or regulation as a prerequisite to the receipt of a family planning service; or payment for

the service when payment is required in the ordinary course of providing the particular service to the person involved (§ 24-8-5).

New York: It is a class A misdemeanor for any person to sell or distribute any instrument or article, or any recipe, drug or medicine for the prevention of conception to a minor under the age of 16 years; the sale or distribution of such to a person other than a minor under the age of 16 years is authorized only by a licensed pharmacist but the advertisement or display of said articles, within or without the premises of such pharmacy, is prohibited (N.Y. Educ. Law § 6811(8)).

NOTE: This law was declared unconstitutional in Carey v. Population Services International, discussed supra pp. 1-4.

North Carolina: Any minor may give effective consent to a licensed physician for medical health services for the prevention, diagnosis and treatment of pregnancy, not including abortion or sterilization (N.C. Gen. Stat. §.90-21.5(a)).

North Dakota: No pertinent provisions were found.

Ohio: The county administration for aid to dependent children shall refer the mother of any needy child receiving aid to dependent children, if such mother is living with the dependent child, to any private or public agency, medical doctor, clinic, or other person or organization which can advise her on methods of controlling the size and space of her family, consistent with the mother's religious and moral views. The county administration may procure for such mothers any pills or devices needed and desired by such mothers for the control of conception (Ohio Rev. Code § 5107.10).

Oklahoma: For purposes of Family Planning Centers established by the State Department of Health, the term "family planning" is defined to encompass the

spacing of children and infertility or sterility in husbands and/or wives (Okla. Stat. tit. 63, §§ 2071, 2072).

Any minor who is or has been pregnant may consent to health services for the prevention, diagnosis and treatment of this condition. Any health professional who assumes the responsibility of providing such services also assumes the obligation to provide counseling for the minor by a health professional. If the minor is found not to be pregnant, the health professional shall not reveal any information whatsoever to the spouse, parent or legal guardian without the consent of the minor (§ 2602).

Any minor in need of emergency services for conditions which will endanger health or life if delay would result by obtaining consent from a spouse, parent, or legal guardian, may self-consent for such services; however, "emergency services" is defined so as to exclude the prescribing of any medicine or device for the prevention of pregnancy (ibid.).

Oregon: Any physician may provide birth control information and services to any person without regard to the age of such person (Or. Rev. Stat. § 109.640).

The State Department of Human Resources and every county health department shall offer family planning and birth control services within the limits of available funds. The Director of Human Resources may designate which divisions shall initiate and conduct discussions of family planning with each person who might have an interest in and benefit from such service (§ 435.205).

Pennsylvania: No pertinent provisions were found.

Rhode Island: No pertinent provisions were found.

South Carolina: All authorized offices, officials, or individuals empowered to issue a marriage license shall, at the time of issuance thereof,

provide to applicants for marriage licenses, family planning information supplied to the issuing officials by the Department of Health and Environmental Control (S.C. Code § 20-1-240).

The South Carolina Department of Health and Environmental Control may establish policies whereby duly registered nurses may provide specified health care services, including family planning services, under the direction of a physician licensed to practice medicine in the state and under the guidance of a registered pharmacist (§ 40-33-30).

South Dakota: A minor may be treated by a licensed physician before the minor's parent's or guardian's consent is obtained if a parent or guardian is not immediately available and if, in the opinion of the treating physician, exercising competent medical judgment, the attempt to secure the consent would result in delay of treatment which would threaten the minor's life or health; however, this section does not apply to sterilization or to any device or medication for the control of birth (S.D. Codified Laws § 20-9-4.2).

Tennessee: Contraceptive supplies and information may be furnished by physicians to any minor who is pregnant, or a parent, or married, or who has the consent of his or her parent or legal guardian, or who has been referred for such service by another physician, a clergyman, a family planning clinic, a school or institution of higher learning, or any agency or instrumentality of the state or any subdivision thereof, or who requests and is in need of birth control procedures, supplies, or information (Tenn. Code § 68-34-107).

Texas: No pertinent provisions were found.

Utah: No public funds shall be paid to provide contraceptive services to an unmarried minor without the prior written consent of the minor's parent or guardian (Utah Code § 76-7-322).

NOTE: This law was struck down in Planned Parenthood Ass'n of Utah v. Matheson, discussed supra pp. 6-7.

Vermont: No pertinent provisions were found.

Virginia: A minor shall be deemed an adult for the purpose of consenting to medical or health services needed in the case of birth control, pregnancy or family planning except for the purposes of sexual sterilization (Va. Code § 54-325.2).

Every person who is empowered to issue a marriage license shall, at the time of issuance thereof, distribute to the applicants for the license, birth control information and a list of family planning clinics located in the county or city of the issuing office (§ 20-14.2).

The State Mental Health and Mental Retardation Board shall authorize the establishment of family planning clinics in the state hospitals for the purpose of advising, counseling and educating patients about birth control. All patients shall be eligible to attend the family planning clinics or to receive medical and educational services on a voluntary basis. Consent for the participation of patients not capable of giving legal consent shall be obtained as provided by law (§ 37.1-23.1).

Washington: The term "medical assistance" as provided under state public assistance programs is defined to include physicians' services, including prescribed medication and instruction on birth control devices (Wash. Rev. Code (§ 74.09.520)).

West Virginia: A local board of health is authorized to establish and operate one or more family planning and child spacing clinics under the supervision of a licensed physician for the purpose of disseminating information, conducting medical examinations and distributing family planning

and child spacing appliances, devices, drugs, approved methods and medication without charge to indigent and medically indigent persons on request and with the approval of said licensed physician (W.Va. Code § 16-2B-2).

Wisconsin: The State Department of Health and Social Services is charged with providing the delivery of family planning services throughout the state under Wis. Stat. § 146.80. The statute does not discuss who shall be entitled to receive these services.

Wyoming: The Wyoming department of public health and the Wyoming department of public welfare and their local subdivisions are empowered to provide and pay for family planning and birth control information and services for every person who might have interest in, and benefit from, such information and services; provided, however, that any medical service shall be performed by a licensed physician (Wyo. Stat. § 35-14-101).

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September 24, 1986

APPENDIX

Currency of Cited Statutes

Alabama Code Annotated, 1986 Supplement.
Alaska Statutes Annotated, Sept. 1985 Supplement.
Arizona Revised Statutes Annotated, 1985 Supplement.
Arkansas Statutes Annotated, 1985 Supplement.
California Civil and Welfare and Institutions Codes Annotated, 1986 Supplement.
Colorado Revised Statutes Annotated, 1984 Supplement.
Connecticut General Laws Annotated, 1986.
Delaware Code Annotated, 1984 Supplement.
District of Columbia Code Annotated, 1986 Supplement.
Florida Statutes Annotated, 1986 Supplement.
Georgia Code Annotated, 1986 Supplement.
Hawaii Revised Statutes Annotated, 1984 Supplement.
Idaho Code Annotated, 1986 Supplement.
Illinois Statutes Annotated, 1986 Supplement.
Indiana Statutes Annotated, 1986 Supplement.
Iowa Code Annotated, 1986 Supplement.
Kansas Statutes Annotated, 1985 Supplement.
Kentucky Revised Statutes Annotated, 1986 Supplement.
Louisiana Revised Statutes Annotated, 1986 Supplement.
Maine Revised Statutes Annotated, 1985 Supplement.
Maryland Health-General Code Annotated, 1985 Supplement.
Massachusetts General Laws Annotated, 1986 Supplement.
Michigan Compiled Laws Annotated, 1986 Supplement.
Minnesota Statutes, 1986 Supplement.
Mississippi Code Annotated, 1985 Supplement.
Missouri Statutes Annotated, 1986 Supplement.
Montana Code Annotated, 1983.
Nebraska Revised Statutes Annotated, 1984 Supplement.
Nevada Revised Statutes Annotated, 1986.
New Hampshire Revised Statutes Annotated, 1983 Supplement.
New Jersey Statutes Annotated, 1986 Supplement.
New Mexico Statutes Annotated, 1985 Supplement.
New York Education Law Annotated, 1986 Supplement.
North Carolina General Statutes Annotated, Nov. 1985 Supplement.
North Dakota Centennial Code Annotated, 1985 Supplement.
Ohio Revised Code Annotated, 1985 Supplement.
Oklahoma Statutes Annotated, 1985 Supplement.
Oregon Revised Statutes Annotated, 1984.
Pennsylvania Statutes Annotated, 1986.
Rhode Island General Laws Annotated, 1985 Supplement.
South Carolina Code Annotated, 1985 Supplement.
Tennessee Code Annotated, 1985 Supplement.
Texas Family Code Annotated, 1986 Supplement.
Utah Code Annotated, 1986 Supplement.
Vermont Statutes Annotated, 1984 Supplement.
Virginia Code Annotated, 1986 Supplement.
Washington Revised Code Annotated, 1986 Supplement.

West Virginia Code Annotated, 1986 Supplement.
Wisconsin Statutes Annotated, 1985 Supplement.
Wyoming Statutes Annotated, 1985 Supplement.