



Emerging Issues in Reproductive Law & Policy

Introduction

New technological and medical advances that impact human reproduction frequently spark moral and ethical controversy. Federal and state policy approaches tend to reflect these concerns. This fact sheet summarizes the policy debates and legal quandaries that surround some major scientific advancements, social issues, and medical practices relating to reproductive health, rights, and justice.

Vaginal Birth After Cesarean (VBAC)

- Vaginal Birth After Cesarean, commonly known as VBAC, is the term used when a woman with one or more cesarean scars gives birth by vaginal delivery.¹
- Historically, it was believed that once a woman gave birth by cesarean, all subsequent births would require a cesarean as well. In the 1980s, after changes in obstetrical practice took hold and research revealed that VBAC is a safe option for women with low-risk pregnancies, the number of VBACs increased, reaching a peak rate of 28% in 1996.² However, since the American College of Obstetricians and Gynecologists issued stricter VBAC guidelines in 1999, an increasing number of physicians and hospitals have refused to support women's decisions to attempt a VBAC.³ Nearly 40% of hospitals in the country now have VBAC-restrictive policies in place.⁴
 - Florida's Agency for Health Care Administration is attempting to ban VBAC in the state's birth centers.⁵ Advocates are preparing to file suit if the policy goes into effect, arguing that the ban is beyond the scope of the state health agency's role.⁶
- With the U.S. cesarean rate at an all-time high of 32% and a VBAC rate of only 8%, a growing number of women must either consent to a subsequent cesarean against their wishes or decide to deliver outside a hospital setting.⁷ This runs counter to long-standing constitutional principles about the right to bodily integrity and the right to refuse unwanted medical treatment.
- Some women travel hundreds of miles in order to have a vaginal delivery at a hospital that permits them to try VBAC.⁸
- Of women who attempt VBAC, between 60-80% are successful in having a vaginal delivery.⁹
- In March 2010, the National Institutes of Health (NIH) convened a conference to address the availability of VBAC.¹⁰ The independent panel's final statement affirmed that attempting vaginal delivery is a reasonable option for many women with prior cesareans and urged that current VBAC guidelines be revised to reflect this.¹¹ Furthermore, the panel acknowledged that elective repeat cesarean is not a risk-free delivery;¹² it also called for additional research to understand the various factors that influence decision-making for women who have had cesareans.¹³
 - Nevertheless, despite support for VBAC as a choice that should be available to pregnant women, the panel completely omitted any language about informed consent and patient autonomy from the final NIH consensus statement.¹⁴ This outcome is particularly troubling because, according to one birthing rights advocate, "the panel refused to take a position on whether a pregnant woman has the same constitutional right to informed refusal as any other adult in the U.S."¹⁵
 - In July 2010, the American College of Obstetricians and Gynecologists (ACOG) did revise their guidelines on VBAC and stated that VBAC is a safe and appropriate choice for most women who have had a prior cesarean delivery.¹⁶ However, these changes are not likely to lead to more VBAC access because ACOG kept their strict recommendations on VBAC emergency procedures that many hospitals are unable to meet.¹⁷

Fertility/Reproductive Tourism

- Fertility tourism refers to the practice of hopeful parents traveling from their home country for the purpose of finding fertility treatment elsewhere.¹⁸ Such individuals may travel abroad seeking in-vitro fertilization treatments or gestational surrogacy because it appears to be easier to find a willing surrogate and is much less expensive in certain countries outside the U.S.¹⁹ These factors have led to recent growth in the trend of reproductive tourism.
- India, where surrogacy was legalized in 2002 but remains unregulated, is a leading destination for fertility tourism; it is estimated that the Indian surrogacy business makes \$445 million per year.²⁰ Surrogates in India are generally paid from \$5,000-\$7,000 for their services.²¹ Although this is significantly less than the average compensation for surrogates in the U.S., it far exceeds average wages for Indian women, a fact which has led some advocates to support gestational surrogacy as an opportunity for women to lift themselves and their families out of poverty.²²
- Ethical concerns remain, however, particularly because fertility tourism is a largely unregulated practice, leaving the door open for possible exploitation. Surrogacy recruits, as they are called, are required to stay at the clinics so that their behavior and activities can be monitored throughout pregnancy.²³
- Global surrogacy is also becoming a popular practice in Guatemala, where international adoption has become more difficult following years of scandals related to child kidnappings.²⁴ The fact that Guatemala has the greatest gender inequality in the Western hemisphere, according to the United Nations, reinforces concerns that desperately poor women are being exploited as the popularity of fertility tourism continues to grow.²⁵

Telemedicine and Abortion Access

With 87% of U.S. counties lacking even a single abortion provider, access to abortion care is limited or virtually non-existent for many women.²⁶ In order to remedy the problem of limited abortion access, some clinics have started providing videoconferencing between doctors and patients as a way to make abortion services more accessible to those who are without a provider nearby, especially women in remote areas.²⁷ The nature of medical abortion—available to women up to nine weeks gestation²⁸—makes it possible for a physician to counsel a patient over videoconference from across the state; when it is time for the abortion itself, an on-site nurse can facilitate delivery of the appropriate drugs to the woman.²⁹

- Planned Parenthood clinics in Iowa have been providing abortion care using teleconferencing since July 2008; no serious complications have been reported with the approximately 1,500 abortions performed this way through June 2010.³⁰
- The Iowa clinics are thought to be the only ones in the U.S. using the concept of telemedicine to provide abortion care, but providers around the country are exploring opportunities to replicate Planned Parenthood's example and make abortion services more widely available.³¹
- Anti-choice opponents filed a complaint with the Iowa Board of Medicine in spring 2010, which the Board denied early in 2011³². Media attention on the Iowa clinics has increased awareness—both positive and negative—to the possibilities of telemedicine for expanding abortion access.³³
- Concerned with the rise of telemedicine access to abortion, a growing number of states, such as Arizona, Kansas and Nebraska, have passed laws preventing abortion via teleconferencing, requiring a physician to be physically present when an abortion is "performed, induced, or attempted by instrument, device, medicine, drug or other

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substance”³⁴ Abortion rights advocates claim the bill would place an undue burden on access to early abortions.³⁵

Outside the U.S., the organization Women on Web has pioneered telemedicine for abortion care, providing medical abortion to women less than nine weeks pregnant who live in countries without access to safe abortion.³⁶ Women submit responses to the organization’s online questionnaire, the results of which are then referred to a doctor; if there are no medical contraindications, the organization will deliver a package containing mifepristone, misoprostol, and a pregnancy test by courier or mail.³⁷ Recipients are asked to make a minimum donation, but all requests are honored, with approximately 10-15% receiving a medical abortion for free.³⁸ The website, which has functioned since April 2006, is available in English, Spanish, Portuguese, French, and Polish.³⁹

Human Papillomavirus (HPV) & Gardasil

On June 8, 2006, the FDA approved Merck’s HPV vaccine, Gardasil, for use in girls and women age nine to 26.⁴⁰ The vaccine targets the most common HPV strains, which cause about 70% of cervical cancer cases and 90% of genital warts.⁴¹ HPV is among the most common STIs in the U.S.⁴² There are over six million new infections every year in the U.S.⁴³ Some doctors think it is almost as common as the common cold.⁴⁴ The virus is transmitted through skin-to-skin contact and can be spread through genital contact other than sexual intercourse, although those instances are not common.⁴⁵ Research shows that 99.7% of cervical cancers are caused by HPV.⁴⁶

- **Cost**—Gardasil costs about \$375 total for the three required doses.⁴⁷ Over 120 private health insurance companies cover all or part of the cost,⁴⁸ and for those without insurance, Merck has added Gardasil to its Patient Assistance Program for adults who cannot otherwise afford the vaccine.⁴⁹
- **Federal Coverage**—The federal program Vaccines for Children (VFC) provides free vaccines, including Gardasil, to children and teens under 19 who are uninsured, Medicaid-eligible, American Indian, or Alaska Native.⁵⁰
- **State Coverage**—Legislators in at least 41 states and the District of Columbia have introduced legislation to require, fund, or educate the public about the HPV vaccine and at least 20 states have enacted the legislation.⁵¹ New Hampshire and South Dakota provide the vaccine at no cost to girls under 18, and Washington is currently spending \$10 million to voluntarily vaccinate 94,000 girls in the next two years.⁵² Virginia and D.C. have mandated a school requirement for the vaccine but allow parents to opt out of the requirement.⁵³ As of October 2010, 19 states had introduced HPV-related legislation or resolutions in 2009-2010. As of April 2011, 3 states have proposed HPV related legislation.⁵⁴
- Opponents argue that Gardasil promotes promiscuity because abstinence still provides the best protection against HPV. Some reject mandatory Gardasil vaccinations for students in public schools, believing parents should control these types of decisions.⁵⁵
- Some women’s health advocates oppose state-mandated HPV vaccination so soon after Gardasil’s FDA approval. They argue that the health impacts of Gardasil should be studied more before the vaccine is required (instead of simply optional).⁵⁶
- The American Cancer Society and the Federal Advisory Committee on Immunization Practices both recommend the vaccine be given regularly to girls aged 11-12.⁵⁷ Gardasil is also indicated for both boys and men, age 9-26.⁵⁸
- Merck and Co. conducted clinical trials of Gardasil to include women ages 27-45. ⁵⁹ In April 2011, the FDA completed its review and did not grant Merck’s bid to extend use of Gardasil to older women.⁶⁰ The FDA concluded that Gardasil has not been shown to prevent

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HPV-related cervical cancers in women over the age of 26 and the drug's label has been updated to reflect that decision.⁶¹

- In July 2008, the U.S. Citizenship and Immigration Services mandated that all immigrant women and girls coming to the U.S. receive the Gardasil vaccine.⁶² However, after a coalition of immigrant rights and reproductive justice organizations mounted a campaign highlighting the harmful and discriminatory aspects of the mandate, this rule was reversed in December 2009.⁶³

Stem Cell Research

Stem cells are undifferentiated cells that have the potential to develop into a variety of specialized cells and tissues.⁶⁴ Researchers hope that stem cell research will eventually result in artificial tissue and/or organ generation, which could provide treatments for various diseases.⁶⁵ Adult stem cells, obtained from the blood, bone marrow, brain, pancreas, and fat of adult bodies, thus far have the potential to develop into only a limited number of related cell types.⁶⁶ On the other hand, embryonic stem cells can become any type of human cell.⁶⁷ Researchers obtain embryonic stem cells from unused embryos donated by patients undergoing in vitro fertilization (IVF) treatment.⁶⁸ A new technique called Somatic Cell Nuclear Transfer (SCNT) would create clonal embryos that could be used to harvest stem cells, but scientists have not yet achieved working cell lines.⁶⁹

- **In March of 2009, President Obama removed barriers to responsible scientific research involving human stem cells.**⁷⁰ He reversed President Bush's eight-year restriction on federal funding for stem cell research.⁷¹ Accordingly, the National Institutes of Health (NIH) issued new guidelines for conducting research in July 2009.⁷² Soon after, President Obama's executive order was challenged and plaintiffs sought to enjoin the NIH from funding embryonic stem cell research, stating it violated the 1996 Dickey-Wicker Amendment.⁷³ The Dickey-Wicker Amendment bans funding for research "in which a human embryo or embryos are destroyed."⁷⁴ In August 2010, the District Court of D.C. granted the preliminary injunction, which stopped the NIH from funding embryonic stem cell research.⁷⁵ In April 2011, the Federal Court of Appeals for the D.C. Circuit overturned the District Court's ruling, stating the Dickey-Wicker Amendment merely limits federal funds from being used on the destruction of embryos but does not prohibit federal funds from being used for research on the stem cells derived from embryos that have already been destroyed.⁷⁶ The case was remanded back to the District Court and, in June 2011, the District Court began its hearing of the case.⁷⁷ Experts speculate that the case will move up to the Supreme Court.⁷⁸
- **State regulation and funding for stem cell research varies widely.**⁷⁹ As of January 2008, 12 states had authorized funding for stem cell research.⁸⁰ States such as CA, CT, MA, NJ, and IL encourage embryonic stem cell research, regardless of the source of the embryos.⁸¹ In 2004, California voters approved Proposition 71 which provides \$3 billion in state funding of stem-cell research over ten years.⁸² South Dakota, on the other hand, strictly prohibits all research on embryonic stem cells.⁸³ Many states simply forbid use of state funds for cloning and/or stem cell research.⁸⁴
- **Those who believe life begins at conception often oppose embryonic stem cell research.** Some opponents believe that the excess embryos from IVF procedures should not be used (even if they are to be otherwise destroyed), while others believe that research done on subsequently obtained stem cells is immoral.⁸⁵
- **Research using adult stem cells has earned near-universal support.**⁸⁶ Many researchers, however, prefer embryonic cells because of their developmental flexibility.⁸⁷

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- **Those who support stem cell research, including embryonic stem cell research, contend that it has the potential to result in valuable medical treatments.**⁸⁸ Researchers hope embryonic stem cell research will aid tissue and/or organ generation and improve the treatment of various diseases.⁸⁹
- **Somatic cell nuclear transfer (SCNT), sometimes called “research cloning,” involves inserting the nucleus of an adult body cell into a denuded egg.**⁹⁰ SCNT would use a patient’s cells and an unfertilized egg to create stem cells.⁹¹ It would not require an embryo⁹² and the cells produced are the patient’s genetic match, reducing the chance that the immune system will reject a transplant.⁹³ However, SCNT would still require human eggs.⁹⁴ Many women’s health advocates have expressed concerns about SCNT because of the medical risks of egg donation, recommending more research and stringent regulation.⁹⁵ Some fear unregulated SCNT will lead to reproductive cloning and inheritable genetic engineering.⁹⁶
- On June 28, 2010, the NIH announced that 13 additional human embryonic stem cell lines were approved for federal funding and added to the NIH Stem Cell Registry.⁹⁷

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