



# Legislative Briefs

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## EMERGENCY CONTRACEPTION FOR RAPE VICTIMS

2007 Wisconsin Act 102, passed by the legislature and signed by Governor Doyle on March 13, 2008, requires all hospitals to provide information and access to emergency contraception to victims of sexual assault. Plan B, an oral synthetic hormone, is the most common type of emergency contraception and is often referred to as the "morning after pill." Similar legislation has been introduced since the 2001-02 session.

Access to emergency contraception has been a heavily debated issue involving the balance between protecting health care providers' strongly held religious and moral beliefs on the one hand, and providing a uniform standard of care and upholding patient rights on the other. Act 102 is effective March 28, 2008.

### 2007 WISCONSIN ACT 102

2007 Wisconsin Act 102 was introduced on May 31, 2007, as Assembly Bill 377 by Representatives Musser and Pocan, and cosponsored by Senators Robson and Taylor. Act 102 defines emergency contraception as:

[A] drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device that is approved by the federal Food and Drug Administration and that prevents a pregnancy after sexual intercourse. [It] does not include a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device of any nature that is prescribed to terminate the pregnancy of a female.

Act 102 requires a hospital to do all of the following if it provides emergency services to a victim of sexual assault:

- Provide the victim medically and factually accurate and unbiased written and oral

information about emergency contraception and its use and efficacy.

- Orally inform the victim of her options to receive emergency contraception at the hospital and to report the sexual assault to a law enforcement agency, and any available options to receive an examination to gather evidence regarding the sexual assault.
- Immediately provide the victim, upon her request, with emergency contraception in accordance with instructions approved by the federal Food and Drug Administration. If the medication is taken in more than one dosage, the hospital must provide all subsequent dosages to the victim for later self administration.

One exception to the law is if a sexual assault victim is pregnant, as indicated by a test for pregnancy. In these cases, a hospital is not required to provide emergency contraception. The Department of Health and Family Services is required under the act to monitor hospitals for compliance and respond to complaints about violations of requirements. Violators of the law are subject to an administrative forfeiture.

On December 11, 2007, Assembly Substitute Amendment 1 to Assembly Bill 377 was adopted to address technical changes to the administrative forfeiture provision made by 2007 Wisconsin Act 20, the biennial budget act. The substitute amendment passed the assembly on January 23, 2008, by a vote of 61 to 35. The senate concurred on February 28, 2008, 25 to 6.

### ISSUES OF ACCESS

**Definition of pregnancy.** The ultimate point of contention in the debate over emergency contraception is what constitutes pregnancy. The concept of pregnancy under some theologies describes conception as beginning

at the moment of fertilization, when the egg becomes fertilized. This differs from the medical concept of pregnancy, which describes conception as beginning at implantation, when the fertilized ovum implants in the uterine lining. Health care professionals who refuse to dispense emergency contraception often do so out of a religious belief that because the medication may interfere with the implantation of a fertilized egg, it is a type of abortion pill.

**Religious freedom.** Pro-Life Wisconsin, an educational and legislative pro-life organization, registered against Assembly Bill 377 and argued that the administration of emergency contraception may cause an abortion. In addition, the organization argued that mandating the treatment of emergency contraception for sexual assault victims conflicts with the Wisconsin Constitution, which protects the rights of conscience, and the First Amendment to the U.S. Constitution, which guarantees the right to freely exercise one's religious convictions. Opponents of the bill also expressed fear that a mandate could potentially close down hospitals in the state, many of which are faith-based, by causing health care professionals to leave if they are forced to act against their moral judgment.

In a letter to the legislature, the Wisconsin Catholic Conference stated they would support legislation that provides for a "conscience clause" that would give health care providers the right to refuse to perform certain services based on a violation of personal beliefs or values. Several amendments with exceptions based on conscience were offered to Assembly Bill 377. The Committee on Judiciary and Ethics adopted an amendment introduced by Representative Gundrum that would have eliminated the requirement for hospitals or individuals to comply with the law if compliance is contrary to hospital policy or an individual's beliefs based on moral or religious grounds. Three amendments were offered to the substitute amendment on December 11,

2007, including two that would include a conscience-based exemption. None of the amendments were adopted.

**Patient rights.** Supporters of the legislation argue that emergency contraception is a medically accepted means of preventing pregnancy and does not constitute an abortion. Planned Parenthood of Wisconsin and the Compassionate Care for Rape Victims (CCRV) Coalition, a group specifically formed to secure access to emergency contraception for rape, incest, and domestic violence victims, were among the bill's proponents, asserting that victims of sexual assault should have access to the best available treatment. Proponents of the bill stressed the importance of giving victims of sexual assault medically and factually accurate and unbiased information and the choice to prevent an unintended pregnancy. Supporters also pointed out that, although the American Medical Association's medically accepted standard of care includes administering emergency contraception, a study conducted by CCRV in 2006 found that only one-third of Wisconsin hospitals unconditionally provide emergency contraception to rape victims.

#### **OTHER STATES**

According to the National Conference of State Legislatures, eight states have programs designed to increase access to emergency contraception. Minnesota recently passed a law effective August 1, 2007, that requires an emergency room to provide emergency contraception, prophylactic antibiotics, and information to a victim of sexual assault following the assault (Section 145.4712, Minnesota Statutes).

#### **FOR MORE INFORMATION**

The text of 2007 Wisconsin Act 102 is available at: [www.legis.wi.gov/2007/data/acts/07Act102.pdf](http://www.legis.wi.gov/2007/data/acts/07Act102.pdf)

Additional information on Emergency Contraception Laws is available at: <http://ncsl.org/programs/health/ecleg.htm>