

ABORTION:
BACKGROUND REFERENCE DOCUMENT
FOR MINNESOTA LEGISLATORS

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PREFACE

The paper which follows is a revision of a background reference document on abortion completed last year by the House Research Department. The purpose of this revision is to update and consolidate the material presented earlier. This paper is shorter than the earlier version and I believe easier to use. It is presented as a reference tool for Minnesota Legislators on the subject of abortion. The paper answers many questions commonly asked by legislators in an attempt to provide straight-forward unbiased information on the subject. There is no attempt to draw conclusions or suggest policy direction.

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TABLE OF CONTENTS

Page

I. Background

A. Definitions.....	1
B. Demographics.....	3
Reported Induced Abortions by Method By Complications and Residence.....	4
Reported Induced Abortions by Method by Weeks of Gestation.....	5
An Overview of Abortions in Minnesota.....	7

Table

The Minnesota Abortion Surveillance - Selected Tables

1	Abortions by Age.....	11
2	Abortions by Race/Ethnic Group.....	12
3	Abortions by Weeks of Gestation.....	13
4	Abortions by Prior Abortions by Age.....	14
5	Abortions by Prior Live Births by Age.....	15
6	Abortions by Age by Marital Status.....	16
7	Abortions by Marital Status by Contraceptive Use.....	17
8.	Abortions by Quarter.....	18

U. S. Abortion Data

1	Demographic Profile of U.S. Abortion Patients, 1972-1976..	20
2	Number of Legal Abortions by State.....	21
3	Abortion Ratios by Age.....	22
4	Abortions by Race.....	23
5	Abortions by Marital Status.....	24
6	Abortions by Previous Live Births.....	25
7	Abortions by Type of Procedure.....	26
8	Abortions by Weeks of Gestation.....	27
9	Abortions by Previous Induced Abortion.....	28

II. Legal Status of Abortion

A. U.S. Supreme Court Rulings.....	32
B. Proposed Constitutional Changes.....	37
C. State Law.....	38
Abortion Challenges in Minnesota.....	42

III. Public Financing of Abortion

A. Federal Policy.....	49
1. Law.....	50
2. Regulations.....	52
3. Rulings.....	53
B. State Policy.....	56
1. Law.....	58
2. Regulations.....	60
3. Rulings.....	63
C. Impact of Current Financing Policy.....	66
1. Health Impact.....	66
2. Cost Impact.....	66

I. Background

A. Definitions

B. Demographics

A. Definitions

WHAT IS ABORTION?

Minnesota Statutes define abortion as "an act, procedure or use of any instrument medicine or drug which is supplied or prescribed for or administered to a pregnant woman which results in the termination of pregnancy." (145.411, Subd. 5) Since this definition is limited to induced abortions, it does not include spontaneous abortions, or miscarriages.

WHAT ARE SOME COMMON ABORTION METHODS?

LENGTH OF PREGNANCY (from first day of last period)	METHOD	
5 to 17 days from missed period	MENSTRUAL EXTRACTION (Endometrial Aspiration) Contents of uterus removed by suction apparatus	
6 to 12 weeks	VACUUM ASPIRATION (Suction Curettage) Contents of uterus removed by suction apparatus. Performed in clinic, hospital or doctor's office. Local or general anesthesia.	D AND C (Dilation and Curettage) Contents of uterus scraped out. Performed in clinic, hospital, or doctor's office. Local or general anesthesia.
12 to 14 weeks	VACUUM ASPIRATION and D AND C occasionally performed. Risks are higher during these weeks. Should be done in hospital. General anesthesia.	
15 to 16 weeks	No safe method in use.	
16 weeks and over	SALINE INJECTION (Salting Out) Some amniotic fluid replaced by salt solution causing miscarriage. Performed in hospital. Local anesthesia.	HYSTEROTOMY (Mini-caesarean) Uterine contents removed by major abdominal surgery. Performed in hospital. General anesthesia.

DEFINITIONS OF ABORTION METHODS

- Combination: The classification used to indicate two or more abortion methods used simultaneously or sequentially. Generally suction curettage followed by sharp curettage.
- Curettage: The induction of a bleeding from the endometrium by administration and withdrawal of any progestational agent. The scraping or suction of the uterine walls to remove the placental membrane and the fetus.
- Menstrual Extraction: (M. Regulation, M. Induction): The evacuation of the uterine contents by vacuum curettage, usually before the 14th day after a missed menstrual period, and before a diagnosis of pregnancy is reliable.
- Prostaglandin: A naturally occurring hormone used medically to produce uterine membrane depolarization and contractions which result in initiation of labor.
- Saline: The technique of injecting a sterile salt solution into the amniotic sac to replace the amniotic fluid, resulting in initiation of labor usually within 30 hours.
- Suction Curettage
w/Laminaria The insertion into the cervix of laminaria tents (sterile dried marine plant stems) which absorb body fluids and expand, gradually dilating the cervix, prior to conventional suction curettage.

B. Demographics

IS AN ABORTION LIKELY TO HARM A WOMAN'S HEALTH?

As with any medical procedure the likelihood of morbidity or mortality resulting from abortion varies with the patient's health, the practitioner's skill, and the technique chosen. As the following tables indicate, some methods appear related to greater complication rates than others. However, the severity of complications is not clearly indicated and the methods with more complications also appear to be those used later in a pregnancy. It is generally acknowledged that the risk to the woman increases with the length of pregnancy. In general, abortion is a relatively safe procedure. These tables, supplied by the Minnesota Health Department, display only voluntarily reported data on legal abortions.

REPORTED INDUCED ABORTIONS
BY METHOD BY COMPLICATIONS AND RESIDENCE

MINNESOTA, 1977

Method**	Total Reported Abortions				Minnesota Resident Abortions			
	Proce- dures	%	Compli- cations	Rate/ 1000*	Proce- dures	%	Compli- cations	Rate/ 1000*
Suction Curettage	13,620	87.7	33	2.42	11,777	90.3	31	2.63
Suction (D & E) w/Laminaria	1,466	9.4	8	5.46	875	6.7	5	5.71
Prostaglandin	298	1.9	1	3.36	243	1.9	0	0
Combination	62	0.4	0	0	61	0.5	0	0
Sharp Curettage	0	0	0	0	0	0	0	0
Hysterectomy Hysterotomy	0	0	0	0	0	0	0	0
Menstrual Extraction(-)***	55	0.4	0	0	50	0.4	0	0
Menstrual Extraction(+)***	31	0.2	0	0	30	0.2	0	0
TOTAL	15,532	100.0	42	2.70	13,036	100.0	36	2.76

Reported complications include the categories hemorrhage (> 500 ml), pelvic infection, fever, cervical injury, uterine perforation, retained tissue and other procedure related conditions.

* Rate is reported complications per 1,000 abortion procedures.

** See definitions of methods on page 2.

*** (-) Negative tissue pathology (not pregnant)
(+) Positive tissue pathology (pregnancy confirmed)

REPORTED INDUCED ABORTIONS
BY METHOD BY WEEKS OF GESTATION

MINNESOTA RESIDENTS, 1977

Method**	Reported Resident Abortions	Gestation in Weeks* (LMP)						Gestation in Weeks (Optional Grouping)		
		<9	9-10	11-12	13-15	16-20	21+	<15***	15-19	20+
Suction Curettage	11,777	4,730	4,078	2,246	708	14	1	11,738	37	2
Suction (D & E) w/Laminaria	875	1	10	28	308	525	3	176	669	30
Combination	61	21	9	6	6	18	1	40	20	1
Prostaglandin	243	5	2	1	5	193	37	12	157	74
Sharp	0	0	0	0	0	0	0	0	0	0
Hysterectomy	0	0	0	0	0	0	0	0	0	0
Hysterotomy	0	0	0	0	0	0	0	0	0	0
Saline	0	0	0	0	0	0	0	0	0	0
Menstrual Ext -	50	47	2	1	0	0	0	50	0	0
Menstrual Ext +	30	30	0	0	0	0	0	30	0	0
TOTAL	13,036	4,834	4,101	2,282	1,027	750	42	12,046	883	107

* Weeks of gestation as reported by the physician using uterine size and/or LMP indicated by the patient.

** See definitions of procedures on page 2.

*** The optional grouping of gestation weeks details the abortions within the first trimester post conception (<15 weeks post LMP = <13 weeks post conception).

WHAT IS THE DEMOGRAPHIC PROFILE OF THE TYPICAL ABORTION PATIENT IN MINNESOTA?

1977 Profile

Age	18 years	10.4%
Race	White	84.8
Marital Status	Never married	68.9
Gestation	<9 weeks	37.1
Facility Type	Clinic	90.2
Abortion Method	Suction Curettage	90.3

This profile was compiled by the Minnesota Center for Health Statistics - Minnesota Department of Health. Since 1974, the center has gathered data voluntarily supplied by various Minnesota abortion providers. The Minnesota Abortion Surveillance currently monitors approximately twenty-five of such providers. The following table presents an overview of the surveillance from 1975 to 1977. (At the writing of this report, 1977 data is the latest available.)

AN OVERVIEW OF ABORTIONS IN MINNESOTA

SURVEILLANCE - 1975-1977

<u>Numbers</u>	1975	1976	1977	Change 1976-77
Total Reported Abortions	10,565	14,124	15,532	+10.0%
Minnesota Resident Abortions	8,924	11,109	13,036	+17.3%
Total Monthly Average	966*	1,177	1,294	+ 9.9%
Resident Monthly Average	819*	926	1,086	+17.3%
<u>Gestational Age</u>				
Proportion <9 weeks	27.7%	35.8%	37.1%	+ 3.6%
Proportion <13 weeks	80.9%	85.2%	86.0%	+ 0.9%
Proportion >16 weeks	11.1%	7.3%	6.1%	-16.4%
<u>Patient's Age</u>				
Proportion <Age 16	3.8%	4.0%	3.2%	-20.0%
Proportion <Age 20	40.1%	41.1%	38.1%	- 7.3%
Proportion >Age 40	1.9%	1.3%	1.5%	+15.4%
<u>Contraception</u>				
Proportion "Never Used"	32.6%	30.9%	29.2%	- 5.5%
Proportion "Not Used Currently"	48.8%	51.3%	48.5%	- 5.5%
Proportion "In Use Now"	18.7%	17.1%	18.9%	+10.5%
<u>Complications</u>				
Total Per 1,000 Procedures	5.58	3.75	2.70	-28.0%
Resident Per 1,000 Procedures	5.71	4.05	2.76	-31.9%
Resident--Suction Curettage	3.09	3.02	2.63	-12.9%
Resident--All Other Methods	16.11	10.51	3.97	-62.2%

* July through December 1975 (Average)

THE MINNESOTA ABORTION SURVEILLANCE

SELECTED TABLES

- Table 1: Abortions by Age
- Table 2: Abortions by Race/Ethnic Group
- Table 3: Abortions by Weeks of Gestation
- Table 4: Abortions by Prior Abortions by Age
- Table 5: Abortions by Prior Live Births by Age
- Table 6: Abortions by Age by Marital Status
- Table 7: Abortions by Marital Status by
Contraceptive Use
- Table 8: Abortions by Quarter

Table 1

REPORTED INDUCED ABORTIONS
BY AGE AND RESIDENCE

MINNESOTA, 1977

Age	Total Reported Abortions			Minnesota Resident Abortions			
	Number	Percentage of Teens	Percentage of Total	Number	Percentage of Teens	Percentage of Residents	Resident* Percentage
<12	0	0	0	0	0	0	0
12	3	0.1	0.0	3	0.1	0.0	100.0
13	15	0.3	0.1	12	0.2	0.1	80.0
14	119	2.0	0.8	95	1.9	0.7	79.8
15	400	6.7	2.6	308	6.2	2.4	77.0
16	891	14.9	5.7	729	14.7	5.6	81.8
17	1,336	22.3	8.6	1,127	22.7	8.6	84.4
18	1,635	27.3	10.5	1,361	27.4	10.4	83.2
19	<u>1,598</u>	<u>26.6</u>	<u>10.3</u>	<u>1,332</u>	<u>26.8</u>	<u>10.2</u>	<u>83.4</u>
10-19	5,997	100.0	38.6	4,967	100.0	38.1	82.8
20-29	7,614	-	49.0	6,529	-	50.1	85.7
30-39	1,512	-	9.7	1,333	-	10.2	88.2
40+	240	-	1.5	195	-	1.5	81.3
Unknown	<u>169</u>	<u>-</u>	<u>1.1</u>	<u>12</u>	<u>-</u>	<u>0.1</u>	<u>7.1</u>
TOTAL	15,532	-	100.0	13,036	-	100.0	83.9

* Resident Percentage = $\frac{\text{Minnesota Resident Abortions}}{\text{Total Reported Abortions}} \times 100$

Table 2
 REPORTED INDUCED ABORTIONS
 BY RACE/ETHNIC GROUP AND RESIDENCE

MINNESOTA, 1977

Race	Total Reported Abortions		Minnesota Resident Abortions		Resident Percentage*
	Number	Percentage	Number	Percentage	
White	13,180	84.9	11,060	84.8	83.9
Black	382	2.5	358	2.7	93.7
American Indian	87	0.6	74	0.6	85.1
Hispanic	29	0.2	27	0.2	93.1
Other	156	1.0	127	1.0	81.4
Unknown	<u>1,698</u>	<u>10.9</u>	<u>1,390</u>	<u>10.7</u>	<u>81.9</u>
TOTAL	15,532	100.0	13,036	100.0	83.9

* Resident Percentage = $\frac{\text{Minnesota Resident Abortions (race X)}}{\text{Total Reported Abortions (race X)}} \times 100$

Table 3

REPORTED INDUCED ABORTIONS
BY AGE BY WEEKS OF GESTATION

MINNESOTA RESIDENTS, 1977

Age	Reported Abortions	Gestation in Weeks*						Gestation in Weeks (Optional Grouping)**		
		<9	9-10	11-12	13-15	16-20	21+	<15	15-19	20+
<15	110	34	22	31	9	13	1	94	15	1
15-19	4,857	1,402	1,511	1,029	524	372	19	4,353	399	105
20-24	4,528	1,818	1,484	714	291	209	12	4,252	249	27
25-29	2,001	918	609	279	109	80	6	1,891	97	13
30-34	909	397	278	146	53	32	3	867	36	6
35-39	424	185	135	52	24	28	0	390	33	1
40-44	175	72	50	25	14	13	1	160	14	1
45+	20	5	6	4	3	2	0	18	2	0
Unknown	12	3	6	2	0	1	0	11	1	0
TOTAL	13,036	4,834	4,101	2,282	1,027	750	42	12,036	846	154

* Gestation, in number of weeks, as reported by the physician using uterine size and/or LMP indicated by the patient.

** The optional grouping of gestation weeks details the abortions bounding the first trimester post conception (<15 weeks post LMP = <13 weeks post conception).

Table 4

REPORTED INDUCED ABORTIONS
BY AGE BY PRIOR ABORTIONS AND RESIDENCE

MINNESOTA, 1977

Age Group	Total Reported Abortions			Minnesota Resident Abortions			Resident* Percentage Per Age Group
	Prior** Abortions	%	Rate/ 100***	Prior** Abortions	%	Rate/ 100***	
<15	4	0.2	2.9	4	0.2	3.6	100.0
15-19	603	24.0	10.3	545	24.2	11.2	90.4
20-24	1,107	44.0	20.6	969	43.0	21.4	87.5
25-29	500	19.9	22.3	458	20.3	22.9	91.6
30-34	184	7.3	18.0	171	7.6	18.8	92.9
35-39	85	3.4	17.4	76	3.4	17.9	89.4
40-44	25	1.0	11.6	23	1.0	13.1	92.0
45+	2	0.1	8.0	2	0.1	10.0	100.0
Unknown	<u>4</u>	<u>0.2</u>	<u>2.4</u>	<u>3</u>	<u>0.1</u>	<u>25.0</u>	<u>75.0</u>
TOTAL	2,514	100.0	16.2	2,251	100.0	17.3	89.5

* Resident Percentage = $\frac{\text{Minnesota Resident Abortions}}{\text{Total Reported Abortions}} \times 100$

** Number of women reporting at least one prior abortion.

*** Rate is number of women in this age group with at least one prior abortion per 100 women of this age reported in the surveillance.

Table 5

REPORTED INDUCED ABORTIONS
BY AGE BY PRIOR LIVE BIRTHS AND RESIDENCE

MINNESOTA, 1977

Age Group	Total Reported Abortions			Minnesota Resident Abortions			Resident* Percentage Per Age Group
	Prior** Live Births	%	Rate/ 100***	Prior** Live Births	%	Rate/ 100***	
<15	1	0.0	0.7	1	0.0	0.9	100.0
15-19	402	9.2	6.9	356	9.2	7.3	88.6
20-24	1,309	29.8	24.4	1,177	30.4	26.0	89.9
25-29	1,215	27.7	54.1	1,074	27.7	53.7	88.4
30-34	790	18.0	77.2	701	18.1	77.1	88.7
35-39	444	10.1	90.8	384	9.9	90.6	86.5
40-44	203	4.6	94.4	164	4.2	93.7	80.8
45+	23	0.5	92.0	18	0.5	90.0	78.3
Unknown	<u>2</u>	<u>0.0</u>	<u>1.2</u>	<u>2</u>	<u>0.1</u>	<u>16.7</u>	<u>100.0</u>
TOTAL	4,389	100.0	28.3	3,877	100.0	29.7	88.3

* Resident Percentage = $\frac{\text{Minnesota Resident Abortions}}{\text{Total Reported Abortions}} \times 100$

** Number of women who reported at least one prior live birth.

*** Rate is number of women with at least one prior live birth per 100 women of this age reported in the surveillance.

Table 6

REPORTED INDUCED ABORTIONS
BY AGE AND MARITAL STATUS

MINNESOTA RESIDENTS, 1977

Age Group	Reported Resident Abortions	Marital Status					
		Never Married	Currently Married	Divorced	Separated	Widowed	Unknown
<15	110	107	0	0	0	0	3
15-19	4,857	4,578	97	27	20	0	135
20-24	4,528	3,307	585	305	164	11	156
25-29	2,001	782	566	430	149	13	61
30-34	909	162	406	237	67	11	26
35-39	424	31	253	102	21	10	7
40+	195	6	141	31	6	5	6
Unknown	<u>12</u>	<u>11</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
TOTAL	13,036	8,984	2,048	1,132	427	50	395

Table 7

REPORTED INDUCED ABORTIONS
MARITAL STATUS BY REPORTED CONTRACEPTIVE USE

MINNESOTA RESIDENTS, 1977

Marital Status	Reported Resident Abortions	Reported Contraceptive Use**							
		Never Used		Not In Use		Was Using		Unknown	
		Number	%*	Number	%*	Number	%*	Number	%*
Never Married	8,984	3,445	38.3	4,010	44.6	1,269	14.1	260	2.9
Currently Married	2,048	134	6.5	1,119	54.6	723	35.3	72	3.5
Divorced	1,132	67	5.9	731	64.6	295	26.1	39	3.4
Separated	427	24	5.6	282	66.0	107	25.1	14	3.3
Widowed	50	9	18.0	27	54.0	13	26.0	1	2.0
Unknown	395	123	31.1	149	37.7	54	13.7	69	17.5
TOTAL	13,036	3,802	29.2	6,318	48.5	2,461	18.9	455	3.5

* Percent is read horizontally to equal 100%.

** Responses from collection form were:

Never used - I've never used any form of birth control.

Not in use - I've used some type of birth control, but not when I became pregnant.

Was using - I was using contraception when I became pregnant.

Table 8

REPORTED INDUCED ABORTIONS
BY QUARTER AND RESIDENCE

MINNESOTA, 1977

Quarter	Total Reported Abortions		Minnesota Resident Abortions		Resident Percentage*
	Number	Percentage	Number	Percentage	
Jan - Mar	3,969	25.6	3,303	25.3	83.2
Apr - June	3,945	25.4	3,358	25.8	85.1
Jul - Sept	3,940	25.4	3,320	25.5	84.3
Oct - Dec	<u>3,678</u>	<u>23.7</u>	<u>3,055</u>	<u>23.4</u>	<u>83.1</u>
TOTAL	15,532	100.0	13,036	100.0	83.9

* Resident Percentage = $\frac{\text{Minnesota Resident Abortions (quarter X)}}{\text{Total Reported Abortions (quarter X)}} \times 100$

U. S. ABORTION DATA

Since 1969, the Center for Disease Control, U.S. Department of Health Education and Welfare, has been compiling, analyzing and distributing data on abortions in the United States. The following tables are prepared and provided by the Center. (1976 U.S. data is the latest available.)

CENTER FOR DISEASE CONTROL¹
ABORTION SURVEILLANCE 1976¹

Selected Tables

- Table 1: Demographic Profile of U.S. Abortion Patients, 1972-1976
- Table 2: Number of Legal Abortions by State
- Table 3: Abortion Ratios by Age
- Table 4: Abortions by Race
- Table 5: Abortions by Marital Status
- Table 6: Abortions by Previous Live Births
- Table 7: Abortions by Type of Procedure
- Table 8: Abortions by Weeks of Gestation
- Table 9: Abortions by Previous Induced Abortion

¹ Center for Disease Control: Abortion Surveillance 1976, Issued August 1978.

Table 1
 SUMMARY TABLE
 CHARACTERISTICS OF WOMEN RECEIVING ABORTIONS
 UNITED STATES, 1972-1976

CHARACTERISTICS	PERCENT DISTRIBUTION ¹				
	1972	1973	1974	1975	1976
<u>Residence</u>					
Abortion in-state	56.2	74.8	86.6	89.2	90.0
Abortion out-of-state	43.8	25.2	13.4	10.8	10.0
<u>Age</u>					
≤ 19	32.6	32.7	32.7	33.1	32.1
20-24	32.5	32.0	31.8	31.9	33.3
≥ 25	34.9	35.3	35.6	35.0	34.6
<u>Race</u>					
White	77.0	72.5	69.7	67.8	66.6
Black and others	23.0	27.5	30.3	32.2	33.4
<u>Marital Status</u>					
Married	29.7	27.4	27.4	26.1	24.6
Unmarried	70.3	72.6	72.6	73.9	75.4
<u>Number of Living Children</u>					
0	49.4	48.6	47.8	47.1	47.7
1	18.2	18.8	19.6	20.2	20.7
2	13.3	14.2	14.8	15.5	15.4
3	8.7	8.7	8.7	8.7	8.3
4	5.0	4.8	4.5	4.4	4.1
≥ 5	5.4	4.9	4.5	4.2	3.8
<u>Type of Procedure</u>					
Curettage	88.6	88.4	89.7	90.9	92.8
Suction	65.2	74.9	77.5	82.6	82.6
Sharp	23.4	13.5	12.3	8.4	10.2
Intrauterine instillation	10.4	10.4	7.8	6.2	6.0
Hysterotomy/Hysterectomy	0.6	0.7	0.6	0.4	0.2
Other	0.5	0.6	1.9	2.4	0.9
<u>Weeks of Gestation</u>					
≤ 8	34.0	36.1	42.6	44.6	47.0
9-10	30.7	29.4	28.7	28.4	28.0
11-12	17.5	17.9	15.4	14.9	14.4
13-15	8.4	6.9	5.5	5.0	4.5
16-20	8.2	8.0	6.5	6.1	5.1
≥ 21	1.3	1.7	1.2	1.0	0.9

¹Excludes unknowns

Table 2

REPORTED NUMBER OF LEGAL ABORTIONS AND ABORTION RATIOS AND RATES,
BY STATE OF OCCURRENCE, 1976

State	Abortions ¹	Live Births ¹	Ratios ²	Females 15-44 ³	Rate ⁴
Alabama	7,278 ⁵	57,707 ⁶	126	814,400	9
Alaska	1,213	7,912	153	91,200	13
Arizona	5,202	40,028	130	498,200	10
Arkansas	3,286	33,381	98	447,900	7
California	142,593	332,105	429	4,946,800	29
Colorado	11,539	40,978	282	617,600	19
Connecticut	13,447	34,946 ⁶	385	700,600	19
Delaware	2,519	8,291 ⁶	304	135,800	19
Dist. of Col.	31,407	9,637	*	168,100	187
Florida	35,220	104,613	337	1,689,800	21
Georgia	25,586	79,282	323	1,148,500	22
Hawaii	5,163	16,292	317	190,100	27
Idaho	968 ⁵	17,322	56	184,000	5
Illinois	66,356	170,181	390	2,527,200	26
Indiana	8,610	80,648	107	1,211,100	7
Iowa	5,435 ⁵	41,134 ⁶	132	628,900	9
Kansas	9,154	35,278	259	508,900	18
Kentucky	8,616 ⁵	56,860 ⁶	152	758,500	11
Louisiana	6,350	69,678	91	868,200	7
Maine	1,942 ⁵	14,603 ⁶	133	228,100	9
Maryland	20,641	52,672	392	972,700	21
Massachusetts	32,801	67,700	485	1,311,000	25
Michigan	42,489 ⁵	130,135 ⁶	326	2,116,200	20
Minnesota	14,124	56,600	250	916,900	15
Mississippi	1,510	42,983	35	505,900	3
Missouri	12,881	68,783	187	1,054,200	12
Montana	1,803	12,355 ⁷	146	167,100	11
Nebraska	3,977	23,767	167	341,300	12
Nevada	2,382	9,906	240	138,400	17
New Hampshire	1,958	11,186 ⁷	175	186,600	10
New Jersey	29,572 ⁸	90,549	327	1,598,500	18
New Mexico	5,008 ⁵	22,108 ⁶	227	265,000	19
New York	147,860	235,176	629	4,006,800	37
(City)	(102,016) ⁹	(105,491)	(967)		
(Upstate)	(45,844)	(129,685)	(354)		
N. Carolina	23,561	80,549	293	1,238,200	19
N. Dakota	1,752	11,398 ⁶	154	137,400	13
Ohio	37,192	155,215	240	2,434,900	15
Oklahoma	7,551 ⁵	43,655	173	602,700	13
Oregon	12,590	34,840	361	529,400	24
Pennsylvania	52,261	148,004	353	2,564,100	20
Rhode Island	3,863	10,786	358	198,900	19
S. Carolina	5,702	47,651	120	642,200	9
S. Dakota	1,561	11,655	134	145,000	11
Tennessee	16,967	62,514	271	954,300	18
Texas	20,493 ⁵	218,447	231	2,830,600	18
Utah	2,542	35,310	72	283,400	9
Vermont	2,322	6,753	344	109,700	21
Virginia	22,635	69,972	323	1,143,400	20
Washington	22,790	49,994 ⁶	456	826,700	28
West Virginia	979 ⁵	28,586	34	390,000	3
Wisconsin	14,243	65,012 ⁶	219	1,046,000	14
Wyoming	373 ⁵	6,784 ⁶	55	87,600	4
Total	988,267	3,161,921	313	48,109,000	21

¹Abortion and resident live birth data from central health agency unless otherwise noted

²Abortions per 1,000 live births

³Estimated by Family Planning Evaluation Division, CDC, based on published and unpublished data from the Bureau of the Census

⁴Abortions per 1,000 females aged 15-44

⁵Reported from hospitals and/or facilities in state

⁶Live birth data from Monthly Vital Statistics Report, Provisional Statistics, Annual Summary for the United States, 1976, Vol. 25, No. 13, December 12, 1977

⁷Occurrence live birth data from central health agency

⁸Reported from state health department and hospitals and/or facilities in state. Only health department data are used elsewhere in this report unless otherwise noted.

⁹Data from New York City Health Department

*Greater than 1,000 abortions per 1,000 live births

Table 3

REPORTED LEGAL ABORTIONS BY AGE AND STATE OF OCCURRENCE,
SELECTED STATES,* 1976

State	< 15		15-19		20-24		25-29		30-34		35-39		≥ 40		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Alaska	17	1.4	356	29.3	440	36.3	224	18.5	94	7.7	48	4.0	14	1.2	20	1.6	1,213	100.0
Arizona	50	1.0	1,635	31.4	1,899	36.5	897	17.2	356	6.8	171	3.3	52	1.0	142	2.7	5,202	100.0
Arkansas	70	2.1	1,235	37.6	1,009	30.7	500	15.2	259	7.9	158	4.8	55	1.7	0	0.0	3,286	100.0
California	1,868	1.3	47,654	33.4	45,815	32.1	26,380	18.5	12,776	9.0	6,117	4.3	1,954	1.4	29	0.0	142,593	100.0
Colorado	138	1.2	3,900	33.8	3,954	34.3	2,103	18.2	814	7.1	425	3.7	132	1.1	73	0.6	11,539	100.0
Connecticut	141	1.0	4,134	30.7	4,433	33.0	2,376	17.7	1,230	9.1	666	5.0	254	1.9	213	1.6	13,447	100.0
Dist. of Col.	599	1.9	8,535	27.2	10,906	34.7	6,505	20.7	3,044	9.7	1,355	4.3	440	1.4	23	0.1	31,407	100.0
Georgia	485	1.9	7,582	29.6	8,386	32.8	4,677	18.3	2,333	9.1	1,010	3.9	358	1.4	755	3.0	25,586	100.0
Hawaii	53	1.0	1,142	22.1	1,760	34.1	1,153	22.3	642	12.4	264	5.1	148	2.9	1	0.0	5,163	100.0
Illinois	391	0.6	16,046	24.2	22,110	33.3	12,589	19.0	6,626	10.0	3,697	5.6	1,564	2.4	3,333	5.0	66,356	100.0
Indiana	143	1.7	2,916	33.9	2,795	32.5	1,456	16.9	716	8.3	357	4.1	176	2.0	51	0.6	8,610	100.0
Kansas	212	2.3	3,662	40.0	2,728	29.8	1,285	14.0	647	7.1	383	4.2	182	2.0	55	0.6	9,154	100.0
Kentucky ¹	282	3.3	3,025	35.1	3,051	35.4	1,237	14.4	569	6.6	339	3.9	111	1.3	2	0.0	8,616	100.0
Louisiana	102	1.6	1,912	30.1	2,153	33.9	1,215	19.1	585	9.2	269	4.2	92	1.4	22	0.3	6,350	100.0
Maryland	404	2.0	7,754	37.6	6,528	31.6	3,364	16.3	1,529	7.4	749	3.6	313	1.5	0	0.0	20,641	100.0
Minnesota	155	1.1	5,350	37.9	4,369	30.9	1,946	13.8	788	5.6	413	2.9	172	1.2	931	6.6	14,124	100.0
Mississippi	35	2.3	483	32.0	503	33.3	265	17.5	116	7.7	68	4.5	33	2.2	7	0.5	1,510	100.0
Missouri	193	1.5	3,901	30.3	4,400	34.2	2,327	18.1	1,104	8.6	670	5.2	265	2.1	21	0.2	12,881	100.0
Montana	17	0.9	632	35.1	638	35.4	310	17.2	123	6.8	58	3.2	25	1.4	0	0.0	1,803	100.0
Nebraska	74	1.9	1,554	39.1	1,337	33.6	535	13.5	261	6.6	136	3.4	76	1.9	4	0.1	3,977	100.0
Nevada	34	1.4	752	31.6	786	33.0	444	18.6	203	8.5	93	3.9	22	0.9	48	2.0	2,382	100.0
New Hampshire ²	21	1.1	702	35.9	646	33.0	337	17.2	149	7.6	54	2.8	19	1.0	30	1.5	1,958	100.0
New Jersey	195	1.5	3,100	24.3	3,890	30.4	2,622	20.5	1,622	12.7	968	7.6	371	2.9	15	0.1	12,783	100.0
New York	1,479	1.0	36,567	24.7	46,935	31.7	31,605	21.4	17,929	12.1	9,290	6.3	3,344	2.3	711	0.5	147,860	100.0
(City)	(930)	(0.9)	(22,080)	(21.6)	(32,403)	(31.8)	(23,914)	(23.4)	(13,448)	(13.2)	(6,614)	(6.5)	(2,160)	(2.1)	(467)	(0.5)	(102,016)	(100.0)
(Upstate)	(549)	(1.2)	(14,487)	(31.6)	(14,532)	(31.7)	(7,691)	(16.8)	(4,481)	(9.8)	(2,676)	(5.8)	(1,184)	(2.6)	(244)	(0.5)	(45,844)	(100.0)
N. Carolina	426	1.8	8,109	34.4	7,775	33.0	3,941	16.7	1,844	7.8	1,027	4.4	407	1.7	32	0.1	23,561	100.0
Ohio	314	0.8	10,664	28.7	13,110	35.2	6,692	18.0	2,848	7.7	1,690	4.5	750	2.0	1,124	3.0	37,192	100.0
Oregon	165	1.3	4,491	35.7	4,360	34.6	2,218	17.8	827	6.6	373	3.0	142	1.1	14	0.1	12,590	100.0
Pennsylvania	925	1.8	17,149	32.8	17,487	33.5	8,567	16.4	4,213	8.1	2,272	4.3	913	1.7	735	1.4	52,261	100.0
Rhode Island	28	0.7	1,107	28.7	1,295	33.5	743	19.2	375	9.7	211	5.5	83	2.1	21	0.5	3,863	100.0
S. Carolina	87	1.5	1,882	33.0	1,951	34.2	870	15.3	398	7.0	186	3.3	84	1.5	244	4.3	5,702	100.0
S. Dakota	16	1.0	546	35.0	540	34.6	232	14.9	87	5.6	52	3.3	34	2.2	54	3.5	1,561	100.0
Tennessee	267	1.6	5,852	34.5	5,755	33.9	2,851	16.8	1,293	7.6	632	3.7	197	1.2	120	0.7	16,967	100.0
Utah	29	1.1	744	29.3	911	35.8	450	17.7	216	8.5	93	3.7	44	1.7	55	2.2	2,542	100.0
Vermont	18	0.8	749	32.3	863	37.2	402	17.3	160	6.9	90	3.9	37	1.6	3	0.1	2,322	100.0
Virginia	413	1.8	7,729	34.1	7,615	33.6	3,713	16.4	1,814	8.0	949	4.2	382	1.7	20	0.1	22,635	100.0
Washington	265	1.2	8,183	35.9	7,518	33.0	3,860	16.9	1,728	7.6	906	4.0	330	1.4	0	0.0	22,790	100.0
Total	10,111	1.3	231,734	30.4	250,651	32.9	140,891	18.5	70,318	9.2	36,239	4.8	13,575	1.8	8,908	1.2	762,427	100.0

¹Based on distribution of data from hospitals and/or facilities reporting approximately 56% of total abortions

²Detailed data from late reports not available, but are distributed based on non-late reports

*All states with data available (36)

Table 4

REPORTED LEGAL ABORTIONS BY RACE AND
STATE OF OCCURRENCE, SELECTED STATES,* 1976

State	White		Black & Other		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%
Alaska	970	80.0	237	19.5	6	0.5	1,213	100.0
Arizona	3,867	74.3	800	15.4	535	10.3	5,202	100.0
Arkansas	2,606	79.3	680	20.7	0	0.0	3,286	100.0
California	99,464	69.8	36,486	25.6	6,643	4.7	142,593	100.0
Colorado	7,557	65.5	649	5.6	3,333	28.9	11,539	100.0
Dist. of Col.	13,158	41.9	17,791	56.6	458	1.5	31,407	100.0
Georgia	13,742	53.7	9,028	35.3	2,816	11.0	25,586	100.0
Hawaii	1,676	32.5	3,146	60.9	341	6.6	5,163	100.0
Illinois	34,133	51.4	29,735	44.8	2,488	3.7	66,356	100.0
Indiana	6,512	75.6	1,926	22.4	172	2.0	8,610	100.0
Kansas	7,170	78.3	1,710	18.7	274	3.0	9,154	100.0
Kentucky ¹	7,469	86.7	1,010	11.7	137	1.6	8,616	100.0
Louisiana	3,209	50.5	2,904	45.7	237	3.7	6,350	100.0
Maryland	12,226	59.2	8,201	39.7	214	1.0	20,641	100.0
Minnesota	11,450	81.1	622	4.4	2,052	14.5	14,124	100.0
Mississippi	976	64.6	515	34.1	19	1.3	1,510	100.0
Missouri	8,401	65.2	4,448	34.5	32	0.2	12,881	100.0
Montana	1,708	94.7	95	5.3	0	0.0	1,803	100.0
Nebraska	3,567	89.7	343	8.6	67	1.7	3,977	100.0
Nevada	2,016	84.6	333	14.0	33	1.4	2,382	100.0
New Hampshire ²	1,704	87.0	244	12.5	10	0.5	1,958	100.0
New Jersey	4,392	34.4	5,443	42.6	2,948	23.1	12,783	100.0
New York	92,526	62.6	54,684	37.0	650	0.4	147,860	100.0
(City)	(54,936)	(53.9)	(47,080)	(46.1)	(0)	(0.0)	(102,016)	(100.0)
(Upstate)	(37,590)	(82.0)	(7,604)	(16.6)	(650)	(1.4)	(45,844)	(100.0)
N. Carolina	14,958	63.5	8,326	35.3	277	1.2	23,561	100.0
Ohio	22,089	59.4	8,962	24.1	6,141	16.5	37,192	100.0
Oregon	11,961	95.0	484	3.8	145	1.2	12,590	100.0
Rhode Island	3,264	84.5	455	11.8	144	3.7	3,863	100.0
S. Carolina	3,092	54.2	2,491	43.7	119	2.1	5,702	100.0
S. Dakota	1,305	83.6	220	14.1	36	2.3	1,561	100.0
Tennessee	10,840	63.9	3,259	19.2	2,868	16.9	16,967	100.0
Utah	2,231	87.8	282	11.1	29	1.1	2,542	100.0
Vermont	2,277	98.1	36	1.6	9	0.4	2,322	100.0
Virginia	13,796	60.9	8,679	38.3	160	0.7	22,635	100.0
Total	426,312	63.3	214,224	31.8	33,393	5.0	673,929	100.0

¹Based on distribution of data from hospitals and/or facilities reporting approximately 56% of total abortions

²Detailed data from late reports not available, but are distributed based on non-late reports

*All states with data available (33)

Table 5

REPORTED LEGAL ABORTIONS BY MARITAL STATUS
AND STATE OF OCCURRENCE, SELECTED STATES,* 1976

State	Married		Unmarried ¹		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%
Alaska	327	27.0	865	71.3	21	1.7	1,213	100.0
Arizona	1,101	21.2	3,883	74.6	218	4.2	5,202	100.0
Arkansas	889	27.1	2,397	72.9	0	0.0	3,286	100.0
California	30,275	21.2	106,567	74.7	5,751	4.0	142,593	100.0
Colorado	2,689	23.3	7,042	61.0	1,808	15.7	11,539	100.0
Dist. of Col.	6,264	19.9	23,788	75.7	1,355	4.3	31,407	100.0
Georgia	7,126	27.9	18,040	70.5	420	1.6	25,586	100.0
Hawaii	1,955	37.9	3,208	62.1	0	0.0	5,163	100.0
Illinois	14,563	21.9	50,261	75.7	1,532	2.3	66,356	100.0
Indiana	2,185	25.4	6,248	72.6	177	2.1	8,610	100.0
Kansas	1,938	21.2	7,207	78.7	9	0.1	9,154	100.0
Kentucky ²	1,935	22.5	6,656	77.3	25	0.3	8,616	100.0
Louisiana	1,369	21.6	4,934	77.7	47	0.7	6,350	100.0
Maryland	4,151	20.1	16,293	78.9	197	1.0	20,641	100.0
Minnesota	2,059	14.6	11,043	78.2	1,022	7.2	14,124	100.0
Mississippi	494	32.7	1,008	66.8	8	0.5	1,510	100.0
Missouri	2,577	20.0	10,134	78.7	170	1.3	12,881	100.0
Montana	396	22.0	1,407	78.0	0	0.0	1,803	100.0
Nebraska	744	18.7	3,226	81.1	7	0.2	3,977	100.0
Nevada	581	24.4	1,723	72.3	78	3.3	2,382	100.0
New Hampshire ³	395	20.2	1,519	77.6	44	2.2	1,958	100.0
New Jersey	3,846	30.1	8,907	69.7	30	0.2	12,783	100.0
New York	42,324	28.6	105,536	71.4	0	0.0	147,860	100.0
(City)	(29,057)	(28.5)	(72,959)	(71.5)	(0)	(0.0)	(102,016)	(100.0)
(Upstate)	(13,267)	(28.9)	(32,577)	(71.1)	(0)	(0.0)	(45,844)	(100.0)
N. Carolina	6,422	27.3	16,800	71.3	339	1.4	23,561	100.0
Ohio	9,407	25.3	26,630	71.6	1,155	3.1	37,192	100.0
Oregon	2,615	20.8	9,873	78.4	102	0.8	12,590	100.0
Rhode Island ⁴	1,210	31.3	2,615	67.7	38	1.0	3,863	100.0
S. Carolina	1,213	21.3	4,357	76.4	132	2.3	5,702	100.0
S. Dakota	302	19.3	1,180	75.6	79	5.1	1,561	100.0
Tennessee	3,454	20.4	11,358	66.9	2,155	12.7	16,967	100.0
Utah	514	20.2	2,004	78.8	24	0.9	2,542	100.0
Vermont	458	19.7	1,775	76.4	89	3.8	2,322	100.0
Virginia	5,677	25.1	16,918	74.7	40	0.2	22,635	100.0
Washington	5,649	24.8	16,962	74.4	179	0.8	22,790	100.0
Total	167,104	24.0	512,364	73.5	17,251	2.5	696,719	100.0

¹Includes widowed, separated, divorced, and never married

²Based on distribution of data from hospitals and/or facilities reporting approximately 56% of total abortions

³Detailed data from late reports not available, but are distributed based on non-late reports

⁴Married includes separated

*All states with data available (34)

Table 6

LEGAL ABORTION RATIOS BY NUMBER OF PREVIOUS LIVE BIRTHS*
SELECTED STATES,** 1976

State	0	1	2	3	4	≥ 5	Total
Alaska	255	89	117	104	55	55	153
Arizona	189	83	108	100	95	65	130
California	353	345	536	807	-- ¹	853 ¹	429
Georgia	400	205	341	368	348	218	323
Hawaii	733	9	18	20	7	12	317
Illinois	514	260	381	397	366	291	390
Indiana	135	56	100	128	136	285	107
Kansas	401	136	205	227	234	142	259
Maryland ²	510	243	385	410	345	253	392
Minnesota	436	92	137	161	175	113	250
Mississippi	51	23	34	26	23	15	35
Missouri	224	113	200	245	269	227	187
Montana	230	64	114	130	108	88	146
Nebraska	263	69	127	156	204	142	167
Nevada	325	147	228	239	183	122	240
New York	634	390	702	1,066	1,335	1,293	629
(City)	(738)	(720)	(1,276)	(1,924)	(2,444)	(2,389)	(967)
(Upstate)	(542)	(141)	(290)	(384)	(378)	(310)	(354)
N. Carolina	398	201	268	241	216	177	293
Rhode Island	417	217	417	517	507	472	358
S. Carolina	152	73	113	137	153	132	120
S. Dakota	208	69	101	130	80	76	134
Tennessee	321	178	298	341	338	268	271
Vermont	579	113	228	241	238	229	344
Virginia	407	190	328	382	432	329	323
Total	393	230	371	493	455	537	351

¹Live births reported as ≥ 4

²Live births are based on 1975 distribution of live births by live birth order from central health agency.

*Calculated as the number of legal abortions to women with X number of living children per 1,000 live births to women with X number of previous live births. For source of data, see Table 13 for abortions by number of living children and Table 2 for total 1976 live births. ("Unknown" number of living children for each state is redistributed according to distribution of known.) Live births by live birth order are from central health agencies unless otherwise noted.

**Excludes all states reporting more than 15% of abortions as number of living children "unknown"

Table 7

REPORTED LEGAL ABORTIONS BY TYPE OF PROCEDURE AND STATE OF OCCURRENCE
SELECTED STATES,* 1976

State	Suction Curettage		Sharp Curettage		Intrauterine Saline Instillation ¹		Intrauterine Prostaglandin Instillation ²		Hysterotomy		Hysterectomy		Other ³		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Alaska	1,048	86.4	125	10.3	15	1.2	0	0.0	0	0.0	4	0.3	20	1.6	1	0.1	1,213	100.0
Arizona	4,613	88.7	33	0.6	376	7.2	34	0.7	3	0.1	7	0.1	2	0.0	134	2.6	5,202	100.0
California	82,378	57.8	47,182	33.1	9,401	6.6	--	--	188	0.1	324	0.2	3,078 ⁴	2.2	42	0.0	142,593	100.0
Colorado	10,011	86.8	98	0.8	1,194	10.3	--	--	11	0.1	54	0.5	93	0.8	78	0.7	11,539	100.0
Connecticut	12,507	93.0	75	0.6	579 ⁵	4.3	-- ⁵	--	3	0.0	5	0.0	39	0.3	239	1.8	13,447	100.0
Dist. of Col.	22,824	72.7	7,188	22.9	1,141	3.6	--	--	6	0.0	2	0.0	186	0.6	60	0.2	31,407	100.0
Georgia	24,232	94.7	196	0.8	324	1.3	619	2.4	33	0.1	113	0.4	69 ⁴	0.3	0	0.0	25,586	100.0
Hawaii	4,269	82.7	477	9.2	3	0.1	387	7.5	7	0.1	3	0.1	3	0.1	14	0.3	5,163	100.0
Illinois	61,302	92.4	722	1.1	166	0.3	1,229	1.9	25	0.0	26	0.0	148	0.2	2,738	4.1	66,356	100.0
Indiana	8,156	94.7	409	4.8	1	0.0	--	--	+	+	16 ⁶	0.2	28	0.3	0	0.0	8,610	100.0
Kansas	3,361	36.7	4,850	53.0	892	9.7	3	0.0	3	0.0	30	0.3	4	0.0	11	0.1	9,154	100.0
Louisiana	6,327	99.6	3	0.0	--	--	--	--	2	0.0	1	0.0	--	--	17	0.3	6,350	100.0
Maryland	18,765	90.9	185	0.9	735	3.6	196	0.9	38	0.2	58	0.3	663	3.2	1	0.0	20,641	100.0
Massachusetts	30,096	91.8	738	2.2	149	0.5	1,457	4.4	--	--	--	--	361	1.1	0	0.0	32,801	100.0
Minnesota	13,710	97.1	3	0.0	0	0.0	410	2.9	+	+	1 ⁶	0.0	0	0.0	0	0.0	14,124	100.0
Mississippi	1,391	92.1	54	3.6	14	0.9	11	0.7	6	0.4	31	2.1	2	0.1	1	0.1	1,510	100.0
Missouri	11,754	91.3	938	7.3	4	0.0	151	1.2	1	0.0	11	0.1	0	0.0	22	0.2	12,881	100.0
Montana	1,697	94.1	19	1.1	1	0.1	--	--	2	0.1	--	--	84	4.7	0	0.0	1,803	100.0
Nebraska	3,663	92.1	21	0.5	286	7.2	--	--	1	0.0	2	0.1	2	0.1	2	0.1	3,977	100.0
Nevada	2,206	92.6	80	3.4	52	2.2	--	--	1	0.0	3	0.1	12	0.5	28	1.2	2,382	100.0
New Hampshire ⁷	1,882	96.1	57	2.9	--	--	--	--	3	0.2	1	0.1	15	0.8	0	0.0	1,958	100.0
New Jersey	9,758	76.3	1,874	14.7	1,077	8.4	0	0.0	+	+	27 ⁶	0.2	47 ⁸	0.4	-- ⁸	--	12,783	100.0
New York	125,824	85.1	4,518	3.1	12,782	8.6	1,182	0.8	164	0.1	82	0.1	491	0.3	2,817	1.9	147,860	100.0
(City)	(88,307)	(86.6)	(3,600)	(3.5)	(8,339)	(8.2)	(1,182)	(1.2)	(83)	(0.1)	(51)	(0.0)	(454) ⁸	(0.4)	(--) ⁸	(--)	(102,016)	(100.0)
(Upstate)	(37,517)	(81.8)	(918)	(2.0)	(4,443)	(9.7)	(--)	(--)	(81)	(0.2)	(31)	(0.1)	(37)	(0.1)	(2,817)	(6.1)	(45,844)	(100.0)
N. Carolina	19,187	81.4	1,902	8.1	1,613	6.8	555	2.4	77	0.3	128	0.5	85	0.4	14	0.1	23,561	100.0
Ohio	32,109	86.3	2,489	6.7	2,230	6.0	--	--	29	0.1	6	0.0	329 ⁸	0.9	-- ⁸	--	37,192	100.0
Oregon	11,316	89.9	136	1.1	804	6.4	--	--	15	0.1	66	0.5	250	2.0	3	0.0	12,590	100.0
Pennsylvania	45,973	88.0	2,023	3.9	2,924	5.6	--	--	77	0.1	67	0.1	589	1.1	608	1.2	52,261	100.0
Rhode Island	3,373	87.3	20	0.5	408	10.6	0	0.0	2	0.1	4	0.1	0	0.0	56	1.4	3,863	100.0
S. Carolina	5,274	92.5	98	1.7	67	1.2	--	--	11	0.2	34	0.8	172	3.0	46	0.8	5,702	100.0
S. Dakota	1,173	75.1	155	9.9	201	12.9	--	--	--	--	--	--	6	0.4	26	1.7	1,561	100.0
Tennessee	16,367	96.5	40	0.2	392	2.3	27	0.2	6	0.0	18	0.1	4	0.0	113	0.7	16,967	100.0
Utah	2,399	94.4	1	0.0	94 ⁵	3.7	-- ⁵	--	1	0.0	0	0.0	2	0.1	45	1.8	2,542	100.0
Vermont	2,243	96.6	61	2.6	4	0.2	0	0.0	0	0.0	1	0.0	0	0.0	13	0.6	2,322	100.0
Washington	21,213	93.1	244	1.1	1,164	5.1	120	0.5	+	+	22 ⁶	0.1	27	0.1	0	0.0	22,790	100.0
Total	622,401	81.8	77,014	10.1	39,093	5.1	6,381	0.8	+	+	1,862 ⁶	0.2	6,811	0.9	7,129	0.9	760,691	100.0

¹Includes Intrauterine Prostaglandin Instillation for certain states. See footnote 5.

²Includes Intrauterine Prostaglandin Instillation if reported as a specific category. See footnote 3.

³Includes Intrauterine Prostaglandin Instillation only if not reported as a specific category or with other instillation procedures

⁴Includes combination procedures

⁵Intrauterine Prostaglandin Instillation included with Intrauterine Saline Instillation

⁶Hysterotomy/Hysterectomy

⁷Detailed data from late reports not available, but are distributed based on non-late reports

⁸Reported as other and unknown

--Not reported

*All states with data available (34)

Table 8

REPORTED LEGAL ABORTIONS BY WEEKS OF GESTATION*
AND STATE OF OCCURRENCE, SELECTED STATES,** 1976

State	≤ 8		9-10		11-12		13-15		16-20		≥ 21		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Alaska ¹	378	31.2	525	43.3	245	20.2	16	1.3	18	1.5	0	0.0	31	2.6	1,213	100.0
Arizona	1,868	35.9	1,495	28.7	1,021	19.6	187	3.6	410	7.9	2	0.0	219	4.2	5,202	100.0
Arkansas	1,711	52.1	735	22.4	421	12.8	12	0.4	405	12.3	2	0.1	0	0.0	3,286	100.0
California	52,249	36.6	39,537	27.7	23,120	16.2	12,604	8.8	8,276	5.8	1,644	1.2	5,163	3.6	142,593	100.0
Colorado	2,805	24.3	2,899	25.1	1,787	15.5	971	8.4	848	7.3	278	2.4	1,951	16.9	11,539	100.0
Connecticut ¹	6,445	47.9	4,277	31.8	1,682	12.5	132	1.0	522	3.9	41	0.3	348	2.6	13,447	100.0
Dist. of Col.	19,624 ²	62.5	6,041 ²	19.2	2,439 ²	7.8	1,100	3.5	999 ²	3.2	17 ²	0.1	1,187	3.8	31,407	100.0
Georgia	11,457	44.8	9,075	35.5	3,740	14.6	236	0.9	848	3.3	120	0.5	110	0.4	25,586	100.0
Hawaii	1,817	35.2	1,578	30.6	875	16.9	432	8.4	297	5.8	88	1.7	76	1.5	5,163	100.0
Illinois	41,613	62.7	13,790	20.8	6,145	9.3	383	0.6	1,386	2.1	34	0.1	3,005	4.5	66,356	100.0
Indiana	5,174 ²	60.1	2,573 ²	29.9	750 ²	8.7	95 ²	1.1	16	0.2	2	0.0	0	0.0	8,610	100.0
Kansas	3,358	36.7	2,118	23.1	1,668	18.2	1,066	11.6	796	8.7	123	1.3	25	0.3	9,154	100.0
Kentucky ³	2,446	28.4	3,010	34.9	3,160	36.7	0	0.0	0	0.0	0	0.0	0	0.0	8,616	100.0
Louisiana	4,257	67.0	1,213	19.1	773	12.2	45	0.7	16	0.3	5	0.1	41	0.6	6,350	100.0
Maryland	9,721	47.1	5,591 ²	27.1	3,047 ²	14.8	684 ²	3.3	1,409 ²	6.8	187	0.9	2	0.0	20,641	100.0
Massachusetts	17,201	52.4	9,307	28.4	3,599	11.0	798	2.4	1,707	5.2	177	0.5	12	0.0	32,801	100.0
Minnesota	4,733	33.5	4,710	33.3	2,331	16.5	1,039	7.4	1,289	9.1	22	0.2	0	0.0	14,124	100.0
Mississippi	583	38.6	538	35.6	238	15.8	40	2.6	22	1.5	2	0.1	87	5.8	1,510	100.0
Missouri	4,227	32.8	3,966	30.8	4,051	31.4	491	3.8	111	0.9	10	0.1	25	0.2	12,881	100.0
Montana	641	35.6	549	30.4	303	16.8	68	3.8	36	2.0	1	0.1	205	11.4	1,803	100.0
Nebraska	923	23.2	1,253	31.5	1,020	25.6	422	10.6	261	6.6	38	1.0	60	1.5	3,977	100.0
Nevada	1,717	72.1	323	13.6	183	7.7	37	1.6	78	3.3	3	0.1	41	1.7	2,382	100.0
New Hampshire ⁴	728	37.2	734	37.5	424	21.7	18	0.9	2	0.1	0	0.0	52	2.7	1,958	100.0
New Jersey	7,282	57.0	2,876	22.5	1,370	10.7	77	0.6	931	7.3	127	1.0	120	0.9	12,783	100.0
New York	62,941	42.6	41,312	27.9	21,709	14.7	6,691	4.5	9,034	6.1	2,995	2.0	3,178	2.1	147,860	100.0
(City)	(44,790) ²	(43.9)	(28,508) ²	(27.9)	(15,536) ²	(15.2)	(3,914)	(3.8)	(5,626)	(5.5)	(1,936)	(1.9)	(1,706)	(1.7)	(102,016)	(100.0)
(Upstate)	(18,151)	(39.6)	(12,804)	(27.9)	(6,173)	(13.5)	(2,777)	(6.1)	(3,408)	(7.4)	(1,059)	(2.3)	(1,472)	(3.2)	(45,844)	(100.0)
N. Carolina	8,219	34.9	7,342	31.2	3,716	15.8	1,521	6.5	1,393	5.9	219	0.9	1,151	4.9	23,561	100.0
Ohio	21,230	57.1	3,832	10.3	997	2.7	775	2.1	724 ²	1.9	288 ²	0.8	9,346	25.1	37,192	100.0
Oregon	5,335	42.4	4,109	32.6	1,955	15.5	336 ²	2.7	689 ²	5.5	68	0.5	98	0.8	12,590	100.0
Pennsylvania	23,675	45.3	16,477	31.5	6,362	12.2	1,739	3.3	2,849	5.5	228	0.4	931	1.8	52,261	100.0
Rhode Island	1,084	28.1	1,680	43.5	593	15.4	187	4.8	309	8.0	10	0.3	0	0.0	3,863	100.0
S. Carolina	1,927	33.8	1,690	29.6	1,016	17.8	272	4.8	145	2.5	32	0.6	620	10.9	5,702	100.0
S. Dakota ¹	523	33.5	312	20.0	260	16.7	165	10.6	182	11.7	110	7.0	9	0.6	1,561	100.0
Tennessee	5,936	35.0	5,397	31.8	3,265	19.2	897	5.3	299	1.8	92	0.5	1,081	6.4	16,967	100.0
Utah	1,053	41.4	787	31.0	456	17.9	95	3.7	112	4.4	1	0.0	38	1.5	2,542	100.0
Vermont	1,134	48.8	791	34.1	341	14.7	50	2.2	5	0.2	0	0.0	1	0.0	2,322	100.0
Virginia	10,388	45.9	6,831	30.2	3,089	13.6	470	2.1	1,545	6.8	127	0.6	185	0.8	22,635	100.0
Washington	13,720	60.2	5,405	23.7	2,009	8.8	475	2.1	975	4.3	136	0.6	70	0.3	22,790	100.0
Total	360,123	45.3	214,678	27.0	110,160	13.9	34,626	4.4	38,944	4.9	7,229	0.9	29,468	3.7	795,228	100.0

¹Weeks of gestation based on physician's estimate

²Reallocation of reported abortions into comparable categories based on percentage distribution of abortions by single weeks of gestation reported from 24 states

³Based on distribution of data from hospitals and/or facilities reporting approximately 56% of total abortions

⁴Detailed data from late reports not available, but are distributed based on non-late reports

*Weeks from last menstrual period

**All states with data available (37)

Table 9

REPORTED LEGAL ABORTIONS BY NUMBER OF
PREVIOUS INDUCED ABORTIONS, SELECTED STATES,* 1976

State	0		1		2		≥ 3		Unknown		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Alaska	916	75.5	231	19.0	45	3.7	21	1.7	0	0.0	1,213	100.0
Arizona	4,182	80.4	825	15.9	166	3.2	29	0.6	0	0.0	5,202	100.0
Colorado	7,694	66.7	1,551	13.4	247	2.1	79	0.7	1,968	17.1	11,539	100.0
Dist. of Col.	19,648	62.6	7,148	22.8	1,755	5.6	441	1.4	2,415	7.7	31,407	100.0
Georgia	18,557	72.5	4,135	16.2	597	2.3	140	0.5	2,157	8.4	25,586	100.0
Illinois	50,529	76.1	12,141	18.3	2,149	3.2	582	0.9	955	1.4	66,356	100.0
Indiana	6,768	78.6	1,025	11.9	100	1.2	12	0.1	705	8.2	8,610	100.0
Kansas	7,504	82.0	1,139	12.4	133	1.5	38	0.4	340	3.7	9,154	100.0
Kentucky ¹	7,141	82.9	1,316	15.3	137	1.6	20	0.2	2	0.0	8,616	100.0
Maryland	16,005	77.5	3,775	18.3	681	3.3	150	0.7	30	0.1	20,641	100.0
Massachusetts	17,136	52.2	3,641	11.1	990	3.0	235	0.7	10,799	32.9	32,801	100.0
Minnesota	12,326	87.3	1,584	11.2	174	1.2	40	0.3	0	0.0	14,124	100.0
Mississippi	1,337	88.5	142	9.4	18	1.2	1	0.1	12	0.8	1,510	100.0
Missouri	10,618	82.4	1,781	13.8	258	2.0	50	0.4	174	1.4	12,881	100.0
Montana	1,557	86.4	173	9.6	26	1.4	2	0.1	45	2.5	1,803	100.0
Nebraska	3,767	94.7	190	4.8	19	0.5	1	0.0	0	0.0	3,977	100.0
Nevada	1,819	76.4	446	18.7	83	3.5	34	1.4	0	0.0	2,382	100.0
New Hampshire ²	355	18.1	171	8.7	26	1.3	8	0.4	1,398	71.4	1,958	100.0
New Jersey	7,112	55.6	1,533	12.0	325	2.5	107	0.8	3,706	29.0	12,783	100.0
New York Upstate	40,181	87.6	4,713	10.3	754	1.6	196	0.4	0	0.0	45,844	100.0
N. Carolina	18,906	80.2	2,930	12.4	397	1.7	71	0.3	1,257	5.3	23,561	100.0
Ohio	15,409	41.4	5,892	15.8	---	---	961 ³	2.6	14,930	40.1	37,192	100.0
Rhode Island	2,888	74.8	577	14.9	92	2.4	14	0.4	292	7.6	3,863	100.0
S. Dakota	1,230	78.8	180	11.5	23	1.5	4	0.3	124	7.9	1,561	100.0
Tennessee	11,800	69.5	2,097	12.4	280	1.7	60	0.4	2,730	16.1	16,967	100.0
Utah	1,017	40.0	349	13.7	40	1.6	6	0.2	1,130	44.5	2,542	100.0
Total	286,402	70.9	59,685	14.8	9,515	2.4	3,302	0.8	45,169	11.2	404,073	100.0

¹Based on distribution of data from hospitals and/or facilities reporting approximately 56% of total abortions

²Detailed data from late reports not available, but are distributed based on non-late reports

³Reported as ≥ 2

*All states with data available (26)

II. Legal Status of Abortion

- A. U.S. Supreme Court Rulings
- B. Proposed Constitutional Changes
- C. State Law

WHAT WAS ABORTION'S EARLY LEGAL STATUS?

As did most early American laws, abortion laws had their foundation in English common law. Under English common law, abortion was not an indictable offense if performed before "quickening" - the first recognizable movement of a fetus, usually occurring between the 16th and 18th weeks of pregnancy. Legal scholars today are uncertain whether abortion was a crime even after "quickening". It is generally believed that if abortion was a punishable crime under common law, it was most likely a lesser offense, possibly a misdemeanor.

The first state to enact abortion legislation was Connecticut. In 1821, it became a crime in Connecticut to abort a fetus after quickening. In 1828, the state of New York enacted legislation which distinguished between therapeutic and non-therapeutic abortions. The same New York legislation made abortion of an unquickened fetus a misdemeanor while abortion after quickening became second-degree manslaughter. After the Civil War, legislation which dealt severely with abortion after quickening began to replace common law in most states. By the late 19th century, the quickening distinction was removed from most state statutes and the degree of offense and the penalties for abortion were increased. By the late 1950's, most states banned all abortions except those necessary to preserve the life of the mother. Restrictive abortion laws were the norm until the late 1960's, when some states began to liberalize their abortion statutes.

A. U.S. SUPREME COURT RULINGS

Within only four years of the first court decision invalidating a state abortion statute,¹ the Supreme Court in 1973, called into question the constitutionality of most state criminal abortion statutes. Beginning with the 1973 rulings, the Supreme Court proceeded to further define the legal status of abortion with major decisions handed down in 1976, 1977 and 1979. These decisions are outlined below.

Major U.S. Supreme Court Abortion Rulings

1973 Roe v. Wade²

- (1) The Court ruled that any state law that permits abortion only to save the life of the mother is unconstitutional because the 14th Amendment's right of privacy encompasses a woman's decision to have an abortion.
- (2) The decision to have an abortion during the first trimester of pregnancy should be left to the woman and her physician.
- (3) The state may regulate abortions performed during the second trimester of pregnancy in ways reasonably related to maternal health.
- (4) During the last trimester of pregnancy, the state "may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgement, for the preservation of the life or health of the mother."

¹ People v. Belous, 71 Cal. 2d 954, 458 P 2d. 194 (1969) Cert. denied, 397 U.S. 915 (1970).

² Roe v. Wade, 410 U.S. 113 (1973).

1973 Doe v. Bolton¹ (companion case to Roe v. Wade)

- (1) Those sections of a Georgia abortion law which required approval by a hospital committee, concurrence of three physicians, and performance of the abortion in an accredited hospital, were held unconstitutional by the Supreme Court.

The rejection of the Georgia law was particularly significant because the statute was based on the American Law Institute's Model Penal Code, and hence was similar to legislation in one quarter of the states. Together Doe v. Bolton and Roe v. Wade represented a major policy move from almost total prohibition of abortion under state law to the constitutional protection of the woman's right to choose an abortion.

1976 Planned Parenthood of Central Missouri v. Danforth²

- (1) The Court ruled that it was not the "proper function of the legislature or the courts to place viability, which is essentially a medical concept, at a specific point in the gestation period." Thus the Court rejected a calendar week definition of viability.
- (2) A state's requirement of a prior written consent for the abortion from the woman was not unconstitutional. However, the Court also held that the state could not constitutionally require the consent of the spouse as a condition for abortion during the first trimester.

¹ Doe v. Bolton, 410 U.S. 179 (1973).

² Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976).

- (3) According to the Court, the state does not have the constitutional authority to give a third party an absolute veto over an abortion decision. Therefore, parental consent for an unmarried minor's abortion can not be required by the state.
- (4) A state statute prohibiting the use of saline amniocentesis tests as an abortion method after the first trimester, "fails as a reasonable regulation for the protection of maternal health." The state therefore, failed to conform to the standards set out in Roe v. Wade.
- (5) The court concluded that "record keeping and reporting requirements that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible."

1977 Beal v. Doe
Maier v. Roe
Poelker v. Doe

These cases are outlined in Part III, Public Financing of Abortion, which follows.

1979 Colautti v. Franklin¹

- (1) The Court found unconstitutional, a Pennsylvania law which required a doctor performing an abortion to choose the method most likely to save the life of a potentially viable fetus. Under the Pennsylvania law, a physician who did not try to save such a fetus could be subject to criminal charges.

¹ Colautti v. Franklin, 47 U.S.L.W. 4094.

The majority opinion held that the law was unconstitutionally vague and that it tried to second guess the physician in what is essentially a medical decision. The majority referred to the Pennsylvania law as "little more than a trap for those who act in good faith" and further it could have a "profound chilling effect on the willingness of physicians to perform abortions near the point of viability in the manner indicated by their best medical judgment."

While Minnesota does not have a law like the Pennsylvania law ruled on in Colautti, Minnesota Statutes 145.423, subdivision 2, states that "[w]hen an abortion is performed after the twentieth week of pregnancy, a physician, other than the physician performing the abortion, shall be immediately accessible to take all reasonable measures consistent with good medical practice, including the compilation of appropriate medical records, to preserve the life and health of any live birth that is the result of the abortion." This Minnesota law has been challenged in the U.S. District Court of Minnesota. (See Hodgson v. Flakne under section C, State Law, which follows.)

AS ABORTION LAWS CHANGED, HOW DID THE NUMBER OF LEGAL ABORTIONS CHANGE?

CHRONOLOGICAL RECORD OF THE STATUS OF ABORTION LAW CHANGES,
ABORTION REPORTING, AND ABORTION RATIOS IN THE UNITED STATES

1969-1976*

	1969	1970	1971	1972	1973	1974	1975	1976
Cumulative No. of states with reform abortion laws enacted since 1967	9	16	16	17	.. ¹	.. ¹	.. ¹	.. ¹
No. of states from which statewide abortion data are reported ²	8	17	18	20	25	36	38	40
Additional states from which abortion data are reported from individual hospitals or facilities	2	7	7	8	26	15	13	11
Total No. of states from which partial or complete abortion data are reported ²	10	24	25	28	51	51	51	51
Total No. of abortions reported to CDC	22,670	193,491	485,816	586,760	615,831	763,476 ⁴	854,853 ⁵	988,267
National abortion ratio (abortions per 1,000 live births ³)	6.3	51.9	136.6	180.1	196.3	241.6	271.9	312.0

¹On January 22, 1973, the U.S. Court ruled that the Texas and Georgia abortion laws were unconstitutional, thereby nullifying all restrictive abortion laws. Interpretation of, and legislative response to, the Supreme Court decision varied from state to state.

²Beginning 1970 includes District of Columbia

³Live birth data are total United States births by year as reported by the National Center for Health Statistics, Monthly Vital Statistics Reports.

⁴Does not include 17,348 abortions for 1974 reported to the CDC after publication of the 1974 Abortion Surveillance Report. Statistics on these 17,348 abortions are not incorporated into the current report, except in Table 3.

⁵Does not include 9,826 abortions for 1975 reported to the CDC after publication of the 1975 Abortion Surveillance Report. Statistics on these 9,826 abortions are not incorporated into the current report, except in Table 3.

B. PROPOSED CONSTITUTIONAL CHANGES

SINCE RESTRICTIVE ABORTION LAWS WERE FOUND UNCONSTITUTIONAL, THERE HAVE BEEN EFFORTS MADE TO AMEND THE CONSTITUTION. WHAT SHAPE HAVE THESE EFFORTS TAKEN?

Article V of the Constitution specifies two methods for proposing constitutional amendments; passage by 2/3 of both houses of Congress and the calling of a constitutional convention.

The two principal types of amendments being considered by Congress are the "right to life" amendments, which would guarantee to the fetus a "right to life" or similar constitutional protection and the "states' rights" amendments which would give the state absolute discretion in the matter of abortion.

C. State Law

WHAT IS THE CURRENT LEGAL STATUS OF ABORTION IN MINNESOTA?

(For the current legal status of public financing of abortion in Minnesota, see Part III of this paper.)

MINNESOTA STATUTES, CHAPTER 145

145.411 REGULATION OF ABORTIONS; DEFINITIONS. Subdivision 1. **Terms.** As used in sections 145.411 to 145.416, the terms defined in this section have the meaning given to them.

Subd. 2. **Viable.** "Viable" means able to live outside the womb even though artificial aid may be required. During the second half of its gestation period a fetus shall be considered potentially "viable".

Subd. 3. **Hospital.** "Hospital" means an institution licensed by the state commissioner of health; adequately and properly staffed and equipped; providing services, facilities and beds for the reception and care of one or more non-related persons for a continuous period longer than 24 hours for diagnosis, treatment or care of illness, injury or pregnancy; and regularly providing clinical laboratory services, diagnostic x-ray services and treatment facilities for surgery, obstetrical care or other definitive medical treatment of similar extent. "Hospital" shall not include diagnostic or treatment centers, physicians' offices or clinics, or other facilities for the foster care of children licensed by the commissioner of welfare.

Subd. 4. **Abortion facility.** "Abortion facility" means those places properly recognized and licensed by the state commissioner of health under lawful rules and regulations promulgated by the commissioner for the performance of abortions.

Subd. 5. **Abortion.** "Abortion" includes an act, procedure or use of any instrument, medicine or drug which is supplied or prescribed for or administered to a pregnant woman which results in the termination of pregnancy.

[1974 c 177 s 1; 1977 c 305 s 45]

145.412 CRIMINAL ACTS. Subdivision 1. It shall be unlawful to wilfully perform an abortion unless the abortion is performed:

(1) by a physician licensed to practice medicine pursuant to chapter 147, or a physician in training under the supervision of a licensed physician;

(2) in a hospital or abortion facility if the abortion is performed after the first trimester;

(3) in a manner consistent with the lawful rules and regulations promulgated by the state commissioner of health; and

(4) with the consent of the woman submitting to the abortion after a full explanation of the procedure and effect of the abortion.

Subd. 2. It shall be unlawful to perform an abortion upon a woman who is unconscious except if the woman has been rendered unconscious for the purpose of having an abortion or if the abortion is necessary to save the life of the woman.

Subd. 3. It shall be unlawful to perform an abortion when the fetus is potentially viable unless:

(1) the abortion is performed in a hospital;

(2) the attending physician certifies in writing that in his best medical judgment the abortion is necessary to preserve the life or health of the pregnant woman; and

(3) to the extent consistent with sound medical practice the abortion is performed under circumstances which will reasonably assure the live birth and survival of the fetus.

Subd. 4. A person who performs an abortion in violation of this section is guilty of a felony.

[1974 c 177 s 2; 1977 c 305 s 45]

145.413 RECORDING AND REPORTING HEALTH DATA. Subdivision 1. The state commissioner of health shall promulgate regulations to effect a reporting system on terminated pregnancies in order that statistical data is obtained that will relate to maternal health. The regulations and reporting system shall not interfere with the right of a pregnant woman to seek an abortion before the fetus is potentially viable. No such report, or any part thereof, shall be disclosed, in any manner, by any official or clerk or other employee or person having access thereto, and all such information shall be confidential.

Subd. 2. If any woman who has had an abortion dies from any cause within 30 days of the abortion or from any cause potentially related to the abortion within 90 days of the abortion, that fact shall be reported to the state commissioner of health.

Subd. 3. A physician who performs an abortion and who fails to comply with subdivision 1 and transmit the required information to the state commissioner of health within 30 days after the abortion is guilty of a misdemeanor.
[1974 c 177 s 3; 1977 c 305 s 45]

145.414 ABORTION NOT MANDATORY. No person and no hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion for any reason.
[1974 c 177 s 4]

145.415 LIVE FETUS AFTER ABORTION, TREATMENT. Subdivision 1. A potentially viable fetus which is live born following an attempted abortion shall be fully recognized as a human person under the law.

Subd. 2. If an abortion of a potentially viable fetus results in a live birth, the responsible medical personnel shall take all reasonable measures, in keeping with good medical practice, to preserve the life and health of the live born person.

Subd. 3. (1) Unless the abortion is performed to save the life of the woman or child, or, (2) unless one or both of the parents of the unborn child agrees within 30 days of the birth to accept the parental rights and responsibilities for the child if it survives the abortion, whenever an abortion of a potentially viable fetus results in a live birth, the child shall be an abandoned ward of the state and the parents shall have no parental rights or obligations as if the parental rights had been terminated pursuant to section 260.221. The child shall be provided for pursuant to sections 256.12, subdivision 14 and 256.72 to 256.87.
[1974 c 177 s 5]

145.416 LICENSING AND REGULATION OF FACILITIES. The state commissioner of health shall license and promulgate regulations for facilities as defined in section 145.411, subdivision 4, which are organized for purposes of delivering abortion services.
[1974 c 177 s 6; 1977 c 305 s 45]

145.42 ABORTIONS; NON-LIABILITY FOR REFUSAL TO PERFORM. Subdivision 1. No physician, nurse, or other person who refuses to perform or assist in the performance of an abortion, and no hospital that refuses to permit the performance of an abortion upon its premises, shall be liable to any person for damages allegedly arising from the refusal.

Subd. 2. No physician, nurse, or other person who refuses to perform or assist in the performance of an abortion shall, because of that refusal, be dismissed, suspended, demoted, or otherwise prejudiced or damaged by a hospital with which he is affiliated or by which he is employed.
[1971 c 693 s 1,2]

145.421 HUMAN CONCEPTUS, EXPERIMENTATION, RESEARCH OR SALE; DEFINITIONS. Subdivision 1. **Terms.** As used in this section and section 145.422, the terms defined in this section shall have the meanings given them.

Subd. 2. **Human conceptus.** "Human conceptus" means any human organism, conceived either in the human body or produced in an artificial environment other than the human body, from fertilization through the first 265 days thereafter.

Subd. 3. **Living.** "Living", as defined for the sole purpose of this section and section 145.422, means the presence of evidence of life, such as movement, heart or

145.422 PROVISIONS RELATING TO PUBLIC HEALTH

2348

respiratory activity, the presence of electroencephalographic or electrocardiographic activity.

[1973 c 562 s 1]

145.422 EXPERIMENTATION OR SALE. Subdivision 1. Whoever uses or permits the use of a living human conceptus for any type of scientific, laboratory research or other experimentation except to protect the life or health of the conceptus, or except as herein provided, shall be guilty of a gross misdemeanor.

Subd. 2. The use of a living human conceptus for research or experimentation which verifiable scientific evidence has shown to be harmless to the conceptus shall be permitted.

Subd. 3. Whoever shall buy or sell a living human conceptus shall be guilty of a gross misdemeanor, provided that nothing herein shall prohibit the buying and selling of a cell culture line or lines taken from a non-living human conceptus.

[1973 c 562 s 2]

145.423 ABORTION; LIVE BIRTHS. Subdivision 1. A live child born as a result of an abortion shall be fully recognized as a human person, and accorded immediate protection under the law. All reasonable measures consistent with good medical practice, including the compilation of appropriate medical records, shall be taken to preserve the life and health of the child.

Subd. 2. When an abortion is performed after the twentieth week of pregnancy, a physician, other than the physician performing the abortion, shall be immediately accessible to take all reasonable measures consistent with good medical practice, including the compilation of appropriate medical records, to preserve the life and health of any live birth that is the result of the abortion.

Subd. 3. If a child described in subdivision 1 dies after birth, the body shall be disposed of in accordance with the provisions of sections 145.14 to 145.163.

[1976 c 170 s 1]

DO MINNESOTA STATUTES ALLOW MINORS TO CONSENT TO ABORTION?

Minors can consent to an abortion under Minnesota Statutes 1978, Sections 144.341 - 144.347.

CONSENT OF MINORS FOR

HEALTH SERVICES

144.341 LIVING APART FROM PARENTS AND MANAGING FINANCIAL AFFAIRS, CONSENT FOR SELF. Notwithstanding any other provision of law, any minor who is living separate and apart from his parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is managing his own financial affairs, regardless of the source or extent of his income, may give effective consent to medical, dental, mental and other health services for himself, and the consent of no other person is required.

[1971 c 544 s 1]

144.342 MARRIAGE OR GIVING BIRTH, CONSENT FOR HEALTH SERVICE FOR SELF OR CHILD. Any minor who has been married or has borne a child may give effective consent to medical, dental, mental and other health services for his or her child, and for himself or herself, and the consent of no other person is required.

[1971 c 544 s 2]

144.343 PREGNANCY, VENEREAL DISEASE AND ALCOHOL OR DRUG ABUSE. Any minor may give effective consent for medical, dental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required.

[1971 c 544 s 3]

144.344 EMERGENCY TREATMENT. Medical, dental, mental and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional's judgment, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.

[1971 c 544 s 4]

144.345 REPRESENTATIONS TO PERSONS RENDERING SERVICE. The consent of a minor who represents that he may give effective consent for the purpose of receiving medical, dental, mental or other health services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.

[1971 c 544 s 5]

144.346 INFORMATION TO PARENTS. The 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, failure to inform the parent or guardian would seriously jeopardize the health of the minor patient.

[1971 c 544 s 6]

144.347 FINANCIAL RESPONSIBILITY. A minor so consenting for such health services shall thereby assume financial responsibility for the cost of said services.

[1971 c 544 s 7]

ABORTION CHALLENGES IN MINNESOTA

1974 Nybert v. City of Virginia¹

This case is outlined in Part III, Public Financing of Abortion which follows.

1976 Hodgson v. Lawson²

(1) This case, which was decided in the Eighth Circuit Court of Appeals, challenged the constitutionality of Minnesota's 1974 abortion statute.

(2) The Court of Appeals held that the Minnesota Statute which defined the term "viable" was unconstitutional because of the use of the term "potentially viable". (The law states that "[v]iable means able to live outside the womb even though artificial aid may be required. During the second half of its gestation period a fetus shall be considered potentially viable.") It was reasoned that the inclusion of "potentially viable" had the effect of establishing a presumption that viability occurred at the end of the twentieth week. This was therefore, inconsistent with the Supreme Court's ruling in Roe v. Wade, which set the earliest point of viability at twenty-four weeks. (Minnesota Statutes 1978, 145.411, Subdivision 2.)

(3) The court found that Minnesota's requirement that abortion be performed in a hospital was permissible since it is the type of state regulation authorized in Roe v. Wade.³ (Minnesota Statutes 1978, 145.412, Subdivision 3.)

¹ Nybert v. City of Virginia, 495 F 2d. 1342 (8th Circuit 1974)

² Hodgson v. Lawson, 542 F 2d. 1350 (8th Circuit 1976)

³ Roe v. Wade, 410 U.S. 113 (1973)

(4) The court held that Minnesota's requirement that a woman give her fully informed consent prior to an abortion, was constitutional. (Minnesota Statutes 1978, 145.412, Subdivision 1.)

(5) Minnesota's statute which would prohibit a physician from aborting a woman, if she was anesthetized for a different procedure but had authorized a contingent abortion, was found unconstitutional by the court. (Minnesota Statutes 1978, 145.412, Subdivision 2.)

(6) Minnesota's record-keeping provisions were found constitutional. (Minnesota Statutes 1978, 145.413.)

While two requirements of Minnesota's abortion statutes were declared unconstitutional by the Circuit Court in Hodgson, those requirements still remain on the books. (See Minnesota Statutes 1978, Sections 145.411, Subdivision 2 and 145.412, Subdivision 2.) Even though these requirements remain in the statutes, they are legally invalid.

1977 Planned Parenthood of Minnesota v. Citizens for Community Action¹

(1) The Eighth Circuit Court of Appeals held that the U.S. District Court for Minnesota was correct in issuing a preliminary injunction against the enforcement of a St. Paul ordinance which placed a moratorium on abortion facilities pending further study. The court agreed that Planned Parenthood of Minnesota would suffer "irreparable injury" because of the moratorium on its operation. (The moratorium was on the construction or reconstruction of abortion facilities and Planned Parenthood had purchased a building for the purposes of reconstructing it as an abortion facility.) The court held that the moratorium served to abridge the constitutional rights of women to obtain abortions.

¹ Planned Parenthood of Minnesota v. Citizens for Community Action, 558 F 2d. 861 (1977)

1977 Mower County Welfare Department v. State¹
Dakota County Welfare Department v. State²

These cases are outlined in Part III, Public Financing of Abortion which follows.

1978 Minnesota Medical Association v. State³

This case is outlined in Part III, Public Financing of Abortion, which follows.

1978 Hodgson v. Flakne⁴

(1) This case, which was heard before a three judge panel in U.S. District Court, challenged the validity of a Minnesota requirement that a second physician be present at abortions performed after the twentieth week of pregnancy in order to take "all reasonable measures..... to preserve the life and health of any live birth." (M.S. 1978, 145.423, subdivision 2.)

(2) The plaintiffs (Hodgson et al.) reasoned that this law, which imposes a somewhat similar physician responsibility as that Pennsylvania law recently struckdown by the U.S. Supreme Court in Colautti v. Franklin,⁵ would require the second physician to attempt to save the life of any live fetus, regardless of its "viability." The plaintiffs argued that "live birth" should not be considered synonymous with "viability", since viability implies an ability to survive which may or may not be the case in live birth situations.

¹ Mower County Welfare Department v. State, 261 NW 2d 578.

² Dakota County Welfare Department v. State, 261 NW 2d 565.

³ Minnesota Medical Association v. State, 274 NW 2d 84.

⁴ Hodgson v. Flakne, 463 F. Supp. 67 (D. Minn. 1978).

⁵ Colautti v. Franklin, 47 USLW 4094 (1979).

The defendants on the other hand, argued that "viability" and "live birth" were synonymous. The significance of whether a "live birth" can precede "viability" is apparent in light of the U.S. Supreme Court's ruling in Maier v. Roe¹ (outlined in Part III of this paper) which stated that women are protected from "unduly burdensome" abortion regulations prior to viability. If "live birth" is construed to not be synonymous with "viability" (i.e., it may precede viability), the Minnesota requirement could be interpreted as imposing an additional "burden" prior to viability and the validity of the requirement could be challenged.

(3) The three judge panel abstained from acting on the case and left "the parties to resort to the Minnesota state courts, since the state statute at issue has not been previously construed by the state courts and is subject to a construction that might well avoid the necessity for federal constitutional adjudication." The distinction, if any, between "live birth" and "viability" and the requirement of a second physician remain unresolved in the courts.

1979 Hodgson v. Board of County Commissioners²

This case is outlined in Part III, Public Financing of Abortion, which follows.

¹ Maier v. Roe, 97 S. Ct. 2376 (1977).

² This case is scheduled to be heard in late April 1979 before the U.S. District Court of Minnesota.

III. Public Financing of Abortion

- A. Federal Policy
 - 1. Law
 - 2. Regulations
 - 3. U.S. Supreme Court Rulings

- B. State Policy
 - 1. Law
 - 2. Regulations
 - 3. Lower Court Rulings

- C. Impact of Current Financing Policy
 - 1. Health Impact
 - 2. Cost Impact

A. Federal Policy

In October 1976, Congress adopted the "Hyde Amendment" to the Labor-HEW Appropriation Act. This amendment restricted medicaid funding for all abortions "except where the life of the mother would be endangered if the fetus were carried to term."¹ Prior to the implementation of this amendment, a Federal District Court issued an injunction barring HEW from enforcing it.² However in June of 1977, the U.S. Supreme Court ruled that neither the Constitution nor Title XIX of the Social Security Act required states to pay medicaid benefits for non therapeutic abortions.³ (Discussed later.) In light of the Court's ruling, the injunction was dissolved on August 4, 1977. On December 7, 1977, Congress enacted Public Law 95-205 which included the "Hyde Amendment's" restriction of medicaid abortions, but also allowed federal funding for abortions in those cases necessitated by rape or incest, and when "severe and long-lasting physical health damage to the mother" would otherwise result.

The Department of Health, Education and Welfare subsequently prepared and issued regulations to implement Public Law 95-205.⁴ These regulations became effective on August 21, 1978. Public Law 95-205 and the HEW regulations are reproduced on the following pages.

¹ Sec. 209, Pub. L. 94-439.

² McRae v. Mathews, 421 F. Supp. 533 (E.D.N.Y. 1976).

³ Beal v. Doe, 97 S. Ct. 2366 (1977).

⁴ 42 CFR Part 50.

1. Current Federal Law: Medicaid Funding of Abortion

PUBLIC LAW 95-205 [H.J.Res. 662]; Dec. 9, 1977

CONTINUING APPROPRIATIONS, 1978

Joint Resolution making further continuing appropriations for the fiscal year 1978, and for other purposes.

Continuing appropriations, 1978.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1978, namely:

District of Columbia.

SEC. 101. Such amounts as may be necessary for continuing projects or activities which were conducted in the fiscal year 1977, and for which appropriations, funds, or other authority would be available in the District of Columbia Appropriations Act, 1978 (H.R. 9005) as passed the House of Representatives or the Senate, but at a rate of operations not in excess of the current rate: *Provided*, That the Advisory Neighborhood Commissions shall be continued at an annual rate of not to exceed \$500,000: *Provided further*, That the rate of operations for the Disaster Loan Fund of the Small Business Administration contained in said Act shall be the rate as passed the Senate.

Departments of Labor, and Health, Education, and Welfare.

Such amounts as may be necessary for projects or activities provided for in the Departments of Labor, and Health, Education, and Welfare, and Related Agencies Appropriation Act, 1978 (H.R. 7555), at a rate of operations, and to the extent and in the manner, provided for in such Act, notwithstanding the provisions of Sec. 106 of this joint resolution: *Provided*, That none of the funds provided for in this paragraph shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians.

Abortions.

Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

Regulations.

The Secretary shall promptly issue regulations and establish procedures to ensure that the provisions of this section are rigorously enforced.

Funds, availability.

SEC. 102. Appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from December 1, 1977, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) September 30, 1978, whichever first occurs.

SEC. 103. Appropriations and funds made available or authority granted pursuant to this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in 31 U.S.C. 665(d)(2), but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

Dec. 9 CONTINUING APPROPRIATIONS

P.L. 95-205

SEC. 104. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any project or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 105. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 106. No appropriation or fund made available or authority granted pursuant to this joint resolution shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1977.

SEC. 107. All obligations incurred in anticipation of the appropriations and authority provided in this joint resolution are hereby ratified and confirmed if otherwise in accordance with the provisions of this joint resolution.

Approved December 9, 1977.

2. Current Federal Regulation: Medicaid Funding of Abortion

31868

RULES AND REGULATIONS

[4110-85]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 50—POLICIES OF GENERAL APPLICABILITY

Abortions and Related Medical Services in Federally Assisted Programs of the Public Health Service

AGENCY: Public Health Service.

ACTION: Final rules.

SUMMARY: The Department is amending final regulations governing Federal financial participation in expenditures for abortions funded through various HEW programs. These regulations were published on February 2, 1978, and republished on February 3, 1978, in the **FEDERAL REGISTER**.

Two sets of amended regulations are being published. One set applies to programs administered under title XIX of the Social Security Act, and another to programs and projects supported with funds appropriated to the Department of Health, Education, and Welfare and administered by the Public Health Service. A third set of regulations governing programs administered under title XX of the Social Security Act, which incorporates the title XIX regulations by cross-reference, is also amended by this action.

In addition, the Department is responding to written public comments timely received in response to an invitation to comment which was published in the preamble to the final regulations. These amendments and responses fulfill the Department's commitment in that preamble to respond in the **FEDERAL REGISTER** to written comments received on or before March 20, 1978, and to amend the regulations where appropriate.

EFFECTIVE DATE: The amended regulations will be effective on August 21, 1978. Prior to this date, programs and projects will be held accountable to the regulations which are presently in effect.

FOR FURTHER INFORMATION CONTACT:

Marilyn L. Martin, room 722H, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201, 202-245-7581.

SUPPLEMENTARY INFORMATION: For a preamble statement, which is being issued jointly by the Public Health Service and the Health Care Financing Administration, concerning conditions governing Federal funding of abortions, see the amendments to 42 CFR Part 449, appearing in this issue at page 31868.

Subpart C of Part 50 is amended to read as set forth below:

1. Section 50.304 is revised to read as follows:

§ 50.304 Life of the mother would be endangered.

Federal financial participation is available in expenditures for an abortion when a physician has found, and so certified in writing to the program or project, that on the basis of his/her professional judgment, the life of the mother would be endangered if the fetus were carried to term. The certification must contain the name and address of the patient.

2. Section 50.305 is revised to read as follows:

§ 50.305 Severe and long-lasting damage to physical health.

Federal financial participation is available in expenditures for an abortion when two physicians have found, and so certified in writing to the program or project, that on the basis of their professional judgment, severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term. The certification must contain the name and address of the patient. At least one of the two physicians must also certify that he/she is not an "interested physician" as defined in the next succeeding sentence. For purposes herein, an "interested physician" is one: (a) Whose income is directly or indirectly affected by the fee paid for the performance of the abortion; or (b) who is the spouse of, or another relative who lives with, a physician whose income is directly or indirectly affected by the fee paid for the performance of the abortion.

3. Section 50.306 is revised to read as follows:

§ 50.306 Rape and incest.

Federal financial participation is available in expenditures for medical procedures performed upon a victim of rape or incest if the program or project has received signed documentation from a law enforcement agency or public health service stating:

(a) That the person upon whom the medical procedure was performed was reported to have been the victim of an incident of rape or incest;

(b) The date on which the incident occurred;

(c) The date on which the report was made, which must have been within 60 days of the date on which the incident occurred;

(d) The name and address of the victim and the name and address of the person making the report (if different from the victim); and

(e) That the report included the signature of the person who reported the incident.

Federal financial participation is also available in expenditures for abortions for victims of rape or incest under the circumstances described in §§ 50.304 and 50.305 without regard to the requirements of the preceding sentence.

(Sec. 101, Pub. L. 95-205, 91 Stat. 1461, December 9, 1977.)

Dated: July 10, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 14, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-20262 Filed 7-20-78; 8:45 am]

3. U.S. Supreme Court Rulings: Public Financing of Abortion

In 1977, the U.S. Supreme Court handed down three decisions which dealt with public financing of abortion. The restriction on certain medicaid abortion funding and the restriction on the availability of abortions in public hospitals were held constitutional by the Court. These rulings are outlined below:

1977 Beal v. Doe¹

(1) This case considered Pennsylvania's medicaid regulations which provided that funding for abortion was not available, unless it was certified by a physician as medically necessary.

(2) The Court ruled that the Pennsylvania regulation was not inconsistent with the federal statutes. The Court held that "[n]othing in the [federal] statute suggests that participating states are required to fund every medical procedure that falls within the delineated categories of medical care." And "[a]lthough serious statutory questions might be presented if a state medicaid plan excluded necessary medical treatment from its coverage, it is hardly inconsistent with the objectives of the act for a state to refuse to fund unnecessary - though perhaps desirable - services." Therefore, states do not have to fund nontherapeutic abortions.

(3) The Court also stated, "[w]e made clear, however, that the federal statute leaves a state free to provide such coverage if it so desires."

¹ Beal v. Doe, 97 S. Ct. 2366 (1977).

1977 Maher v. Roe¹

(1) This case considered a Connecticut regulation, similar to the Pennsylvania regulation affirmed in Beal v. Doe, which also allowed medicaid funding only for those abortions deemed "medically necessary." In Beal v. Doe, the Court considered whether the Pennsylvania regulation was consistent with the statutory law. In MaHer v. Roe, the Court considered the constitutionality of the regulation. The Court considered the central issue in MaHer to be whether the regulation "impinges upon a fundamental right."

(2) Opponents of the Connecticut regulation claimed that it served to limit the rights of poor women to choose abortion. They argued that if a poor woman's access to a medicaid abortion was restricted, her fundamental right to choose an abortion was therefore unconstitutionally impinged.

(3) The Court, however, ruled that it never held "that financial need alone identifies a suspect class for purposes of equal protection analysis." Further, it held that "[t]he Connecticut regulation places no obstacles - absolute or otherwise - in the pregnant woman's path to an abortion." And "[t]he state may have made childbirth a more attractive alternative, thereby influencing the woman's decision, but it has imposed no restriction on access to abortions that was not already there." Thus the Connecticut restriction on medicaid abortion funding was held constitutional - no fundamental rights were impinged by it.

¹ MaHer v. Roe, 97 S. Ct. 2376 (1977).

1977 Poelker v. Doe¹

(1) This case considered a directive from the mayor of St. Louis, Missouri permitting abortions in St. Louis city hospitals only when there was a serious threat to the life or health of the mother.

(2) The issue again was the potential violation of a woman's fundamental right to choose a nontherapeutic abortion. The Court held that the restriction of the availability of abortions in public hospitals was not unconstitutional. The Court stated that "the Constitution does not forbid a state or city, pursuant to democratic processes, from expressing a preference for normal childbirth as St. Louis has done. . ." St. Louis could therefore "provide publicly financed hospital services for childbirths without providing corresponding services for nontherapeutic abortions."

¹ Poelker v. Doe, 97 S. Ct. 2391 (1977).

B. State Policy

In March 1978, the Minnesota Legislature enacted Chapter 508, Minnesota Laws 1978. On March 21, 1978, this act was signed into law by Governor Perpich. Minnesota Statutes 256B.02, Subdivision 8, now restricts all medicaid abortion funding except in the following three circumstances:

(1) When two physicians indicate in a signed written statement that the abortion is necessary to prevent the death of the mother; or

(2) When the pregnancy is a result of criminal sexual conduct and the incident is reported within 48 hours to a valid law enforcement agency; or

(3) When the pregnancy is a result of incest, but only if the incident and relative are reported to a valid law enforcement agency prior to the abortion.

On May 1, 1978, the Minnesota Department of Public Welfare adopted DPW 47 (12MCAR § 2.047), regulations implementing the limitations on medicaid funding for abortion imposed by Chapter 508. The regulations include additional instructions in regard to the reporting of rape and incest to a law enforcement agency.

DIFFERENCE BETWEEN STATE AND FEDERAL POLICY

It should be noted that this funding policy, as enacted by the Minnesota Legislature and regulated by the Minnesota Department of Public Welfare, is more restrictive than that enacted by Congress. Public Law 95-205 permits federal medicaid funding "in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term." The Minnesota policy allows no such exception in its funding restrictions. A recent case, scheduled in late April before the U.S. District Court of Minnesota, challenges Minnesota's funding policy as a violation of the Federal Medicaid Act. This case, Hodgson v. Board of County Commissioners, is discussed later in this section.

Minnesota Statutes 1978, Section 256B.02 and DPW 47 are reproduced on the following pages.

1. Current State Law: Medicaid Funding of Abortion

3589

MEDICAL ASSISTANCE FOR NEEDY PERSONS 256B.02

CHAPTER 256B

MEDICAL ASSISTANCE FOR NEEDY PERSONS

Sec.
 256B.01 Policy.
 256B.011 Policy for childbirth and abortion funding.
 256B.02 Definitions.
 256B.03 Payments to vendors.
 256B.04 Duties of state agency.
 256B.041 Centralized disbursement of medical assistance payments.
 256B.042 Third party liability.
 256B.05 Administration by county agencies.
 256B.06 Eligibility requirements.
 256B.061 Eligibility.
 256B.062 Continued eligibility.
 256B.063 Cost sharing.
 256B.064 Ineligible provider.
 256B.065 Social security amendments.
 256B.07 Exceptions in determining resources.
 256B.08 Application.
 256B.09 Investigations.
 256B.12 Legal representation.
 256B.121 Treble damages.
 256B.13 Subpoenas.
 256B.14 Relative's responsibility.
 256B.15 Claims against estates.
 256B.17 Transfers of property.
 256B.18 Methods of administration.
 256B.19 Division of cost.
 256B.20 County appropriations.
 256B.21 Change of residence.
 256B.22 Compliance with social security act.
 256B.23 Use of federal funds.
 256B.24 Prohibitions.

Sec.
 256B.25 Payments to licensed facilities.
 256B.26 Agreements with other state departments.
 256B.27 Medical assistance; cost reports.
 256B.30 Health care facility report.
 256B.35 Personal allowance, persons in skilled nursing homes or intermediate care facilities.
 256B.36 Personal allowance, handicapped or mentally retarded recipients of medical assistance.
 256B.37 Private insurance policies.
 256B.39 Avoidance of duplicate payments.
 256B.40 Subsidy for abortions prohibited.
 NURSING HOME RATES
 256B.41 Intent.
 256B.42 Definitions.
 256B.43 Fixed assets; depreciation.
 256B.44 Interest expense.
 256B.45 Investment allowance.
 256B.46 Incentive allowance.
 256B.47 Rate limits.
 256B.48 Conditions for participation.
 256B.51 Nursing homes; cost of home care.
 DENTAL CARE FOR SENIOR CITIZENS
 256B.56 Purpose.
 256B.57 Pilot programs; establishment.
 256B.58 Administration.
 256B.59 Service contracts; review.
 256B.60 Eligibility for benefits.
 256B.61 Services and payment.
 256B.62 Financial requirements.
 256B.63 Outside funding.

256B.01 POLICY. Medical assistance for needy persons whose resources are not adequate to meet the cost of such care is hereby declared to be a matter of state concern. To provide such care, a statewide program of medical assistance, with free choice of vendor, is hereby established.
 [Ex1967 c 16 s 1]

256B.011 POLICY FOR CHILDBIRTH AND ABORTION FUNDING. Between normal childbirth and abortion it is the policy of the state of Minnesota that normal childbirth is to be given preference, encouragement and support by law and by state action, it being in the best interests of the well being and common good of Minnesota citizens.
 [1978 c 508 s 1]

256B.02 DEFINITIONS. Subdivision 1. "Reside" means to have an established place of abode in one state or county and not to have an established place of abode in another state or county.

Subd. 2. "Excluded time" means any period of time an applicant spends in a hospital, sanatorium, nursing home, or other institution for the hospitalization or care of human beings, as defined in sections 144.50 or 144A.01.

Subd. 3. "County of financial responsibility" means the county in which the applicant resides at the time of making application.

Subd. 4. "Medical institution" means any licensed medical facility that receives a license from the Minnesota health department or department of public welfare or appropriate licensing authority of this state, any other state, or a Canadian province.

Subd. 5. "State agency" means the commissioner of public welfare.

Subd. 6. "County agency" means a county welfare board operating under and pursuant to the provisions of chapter 393.

Subd. 7. "Vendor of medical care" means any person or persons furnishing, within the scope of his respective license, any or all of the following goods or services: medical, surgical, hospital, optical, visual, dental and nursing services; drugs and medical supplies; appliances; laboratory, diagnostic, and therapeutic services; nursing home and convalescent care; screening and health assessment services provided by public health nurses; health care services provided at the residence of the patient if

256B.02 MEDICAL ASSISTANCE FOR NEEDY PERSONS

3590

the services are performed by a public health nurse and the nurse indicates in a statement submitted under oath that the services were actually provided; and such other medical services or supplies provided or prescribed by persons authorized by state law to give such services and supplies.

Subd. 8. "Medical assistance" or "medical care" means payment of part or all of the cost of the following care and services for eligible individuals whose income and resources are insufficient to meet all of such cost:

- (1) Inpatient hospital services.
- (2) Skilled nursing home services.
- (3) Physicians' services.
- (4) Outpatient hospital or clinic services.
- (5) Home health care services.
- (6) Private duty nursing services.
- (7) Physical therapy and related services.
- (8) Dental services.
- (9) Laboratory and x-ray services.
- (10) The following if prescribed by a licensed practitioner: drugs, eyeglasses, dentures, and prosthetic devices.
- (11) Diagnostic, screening, and preventive services.
- (12) Health care pre-payment plan premiums and insurance premiums if paid directly to a vendor and supplementary medical insurance benefits under Title XVIII of the Social Security Act.
- (13) Abortion services, but only if one of the following conditions is met:
 - (a) The abortion is a medical necessity. "Medical necessity" means (1) the signed written statement of two physicians indicating the abortion is medically necessary to prevent the death of the mother, and (2) the patient has given her consent to the abortion in writing unless the patient is physically or legally incapable of providing informed consent to the procedure, in which case consent will be given as otherwise provided by law;
 - (b) The pregnancy is the result of criminal sexual conduct as defined in section 609.342, clauses (c), (d), (e)(i), and (f), and the incident is reported within 48 hours after the incident occurs to a valid law enforcement agency for investigation, unless the victim is physically unable to report the criminal sexual conduct, in which case the report shall be made within 48 hours after the victim becomes physically able to report the criminal sexual conduct; or
 - (c) The pregnancy is the result of incest, but only if the incident and relative are reported to a valid law enforcement agency for investigation prior to the abortion.
- (14) Transportation costs incurred solely for obtaining emergency medical care or transportation costs incurred by non-ambulatory persons in obtaining emergency or non-emergency medical care when paid directly to an ambulance company, common carrier, or other recognized providers of transportation services. For the purpose of this clause, a person who is incapable of transport by taxicab or bus shall be considered to be non-ambulatory.
- (15) To the extent authorized by rule of the state agency, costs of bus or taxicab transportation incurred by any ambulatory eligible person for obtaining non-emergency medical care.
- (16) Any other medical or remedial care licensed and recognized under state law.

Subd. 9. "Private health care coverage" means any plan regulated by chapters 62A, 62C or 64A. Private health care coverage also includes any self-insurance plan providing health care benefits.

Subd. 10. "Automobile accident coverage" means any plan, or that portion of a plan, regulated under chapter 65B, which provides benefits for medical expenses incurred in an automobile accident.

[Ex1967 c 16 s 2; 1969 c 395 s 1; 1973 c 717 s 17; 1975 c 247 s 9; 1975 c 384 s 1; 1975 c 437 art 2 s 3; 1976 c 173 s 56; 1976 c 236 s 1; 1976 c 312 s 1; 1978 c 508 s 2; 1978 c 560 s 10]

2. Current State Regulation: Medical Assistance Funding of Abortion

DEPARTMENT OF PUBLIC WELFARE
MEDICAL ASSISTANCE DIVISION
Rule 47
Governing the Medical Assistance Program

E. Services under the medical assistance program.

1. The following services are not covered under the MA program:

t. Abortion services unless specifically provided in subsection E.2.t. of this rule.

E. 2.

t. The cost of abortion services shall be paid only when the conditions under (1), (2), or (3) are met:

(1) The abortion is necessary to prevent the death of the mother. The cost of the abortion shall be covered only if the following documentation accompanies the provider's invoice to the state agency:

(a) The signed written statement of two physicians that it was their professional judgment that the abortion was necessary to prevent the death of the mother; and

(b) The signed written statement of the recipient that she voluntarily consented to the abortion. In the event that the recipient is physically or legally incapable of providing informed consent, consent may be obtained as is otherwise provided by law.

(2) The abortion is to terminate a pregnancy which is the result of a sexual assault. The cost of the abortion shall be covered only if a report of the assault was made to a valid law enforcement agency within 48 hours of the time the assault occurred and a signed statement from the law enforcement agency accompanies the provider's invoice to the state agency. In the event the recipient was physically unable to make the report within 48 hours of the assault, the report must have been made within 48 hours after the recipient became physically able to make the report.

The statement of the law enforcement agency shall include the following information:

- (a) The name of the victim; and
- (b) The date of the alleged incident; and
- (c) The date the report was made to the law enforcement agency; and
- (d) The name and address of the person who signed the report to the law enforcement agency; and
- (e) A statement by the law enforcement agency that the report alleges at least one of the following:
 - (i) Circumstances existing at the time of the assault caused the recipient to have a reasonable fear of imminent great bodily harm to herself or to another.
 - (ii) The assailant was armed with a dangerous weapon or an article used or fashioned in a manner which led the recipient to reasonably believe it to be a dangerous weapon, and used or threatened to use the weapon or article to cause the complainant to submit.
 - (iii) The assailant caused personal injury to the complainant and used force or coercion to accomplish sexual penetration.
 - (iv) The assailant was aided or abetted by one or more accomplices and either:
 - (aa) An accomplice used force or coercion to cause the recipient to submit; or
 - (bb) An accomplice was armed with a dangerous weapon or an article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the recipient to submit.

The provider's invoice shall also be accompanied by a statement, signed by the recipient, that her pregnancy resulted from the sexual assault reported, and a statement, signed by the recipient's physician, that in his/her professional opinion the length of the pregnancy at the time of the abortion was not inconsistent with the recipient's statement.

(3) The abortion is to terminate a pregnancy which is the result of incest. The cost of the abortion shall be covered only if a report of incest was made to a valid law enforcement agency prior to the time of the abortion and a signed statement from the law enforcement agency accompanies the provider's invoice to the state agency. The statement shall include the following information:

- (a) The name of the victim; and
- (b) The date of the alleged incident; and
- (c) The date the report was made to the law enforcement agency; and
- (d) The name and address of the person who signed the report to the law enforcement agency; and
- (e) A statement by the law enforcement agency that the name of the relative who allegedly committed incest with the victim appears in its report.

The provider's invoice shall also be accompanied by a statement, signed by the recipient, that her pregnancy resulted from the incest reported, and a statement, signed by the recipient's physician, that in his/her professional opinion the length of the pregnancy at the time of the abortion was not inconsistent with the recipient's statement.

(4) For the purposes of this subsection E.2.t. only, the following definitions apply:

(a) "Abortion services": medical service performed for the purpose of terminating a pregnancy. This shall not be construed to include:

(i) drugs or devices which prevent implantation of the fertilized ovum; or

(ii) medical procedures necessary for the termination of an ectopic pregnancy.

(b) "Assailant": person who allegedly committed the sexual assault reported to the law enforcement agency.

(c) "Incest": sexual intercourse with another nearer in kin than first cousin, of the whole or half-blood.

(d) "Valid law enforcement agency": an agency charged under applicable law with enforcement of the general penal statutes of the United States, or of any state or local jurisdiction.

3. Lower Court Rulings: Public Financing of Abortion

1974 Nyberg v. City of Virginia¹

(1) In this case, the Court of Appeals for the Eighth Circuit affirmed a lower court ruling which held that public hospital facilities must be made available for abortion services to those physicians and their patients who request such facilities. (The defendants in the case brought suit against a resolution adopted by the municipal hospital in Virginia, Minnesota which prohibited the use of the hospital facilities for abortions not necessary to save the life of the mother.) It must be noted that a 1977 U.S. Supreme Court decision (Poelker v. Doe), which allowed the restriction of abortion in public hospitals, overrules cases such as Nyberg.

1977 Dakota County Welfare Board v. State of Minnesota²

(1) This case appealed a District court decision affirming an order from the Commissioner of Public Welfare to Dakota County which required payment for non-therapeutic abortions. The Minnesota Supreme Court remanded the decision in light of existing regulations of the Minnesota Department of Public Welfare which did not require that county welfare boards pay for non-therapeutic abortions.

1977 Mower County Welfare Board v. State of Minnesota³

(1) This ruling by the Minnesota Supreme Court, which was handed down simultaneously with the Dakota County case, affirmed a District Court decision reversing an order from the Commissioner of Public Welfare to Mower County which required payment for non-therapeutic

¹ Nyberg v. City of Virginia, 495 F 2d. 1342 (1974).

² Dakota County Welfare Board v. State of Minnesota, 261 N.W. 2d. 565.

³ Mower County Welfare Board v. State of Minnesota, 261 N.W. 2d. 578.

abortions. The court stated, "we hold that existing regulations do not compel such payment by county boards."

1978 Minnesota Medical Association v. State¹

(1) In this case before the Minnesota Supreme Court, the Minnesota Medical Association appealed an order of the Ramsey County District Court denying a motion for a temporary injunction. The injunction was sought to prevent the Minnesota Department of Public Welfare from furnishing to the Catholic Bulletin Publishing Company, any data relating to the names of abortion service providers, description of medical procedures and amounts paid to such providers. The Minnesota Medical Association contended that such disclosure would "infringe physicians' privacy and property rights and medical assistance patients' privacy rights."

(2) The Minnesota Supreme Court held that; (a) the disclosures were part of the public record and as such did not fall under the Data Privacy Act, and (b) the record failed to establish that such disclosure would infringe medical assistance recipients' constitutional rights of privacy or physicians' privacy and property rights.

1979 Hodgson v. County Board of Commissioners

(1) This case, scheduled to be heard on April 27, 1979 before the U.S. District Court of Minnesota challenges Minnesota's medicaid abortion funding policy as a violation of both the Federal Medicaid Act and the Fourteenth Amendment. According to the plaintiffs, Minnesota Statutes 1978, Section 256B.02, Subdivision 13, is in violation of the federal law since the Minnesota Statute does not allow state medicaid

¹ Minnesota Medical Association v. State, 274 N.W. 2d. 84.

funding for any abortion which may be a medical necessity (i.e., the health of the mother may be in jeopardy) whereas the Federal Medicaid Act requires participating states to provide medical assistance to those unable to pay for "necessary medical services." (42 U.S.C. § 1396) (The federal funding policy, as stated in Public Law 95-205, provides federal financial participation for medically necessary abortions.)

(2) Aside from this statutory question, the plaintiffs charge that the Minnesota statute and regulations severely abridge their constitutional rights and expose them to "irreparable harm." The plaintiffs state that, "[d]enying indigent pregnant women medically necessary abortions ignores the Court's position in Roe v. Wade. . . that the woman's health is paramount throughout all three trimesters of pregnancy." As the plaintiffs point out, a state need not fund nontherapeutic abortions, but "[a]t no time does the [Supreme] Court suggest that the regulations refusing medicaid funds for a large number of therapeutic abortions are valid."

(3) The plaintiffs seek a preliminary injunction against enforcement of Minnesota's funding policy.

C. IMPACT OF CURRENT FINANCING POLICY

1. Health Impact

Following the restriction of Medicaid funding for abortion in 1977, the Center for Disease Control initiated the Hospital Surveillance Project, which collected data from various obstetric facilities across the country in order to determine what effect restrictive abortion funding had on women's health.¹ The Center found that no abortion-related deaths were reported during the eight month project and that in the proportion of medicaid women with abortion complications, there was no significant difference between states that funded medicaid abortions and those that did not. However, they did find that restrictive abortion funding was significantly associated with a later gestational age at the time of the abortion. (A later gestational age increases the risk of complication.)

Although the Hospital Surveillance Project reported no abortion-related deaths, the center has documented the abortion-related deaths of three medicaid recipients who lived in states that did not fund abortions. Of the three, one death has been directly attributed to lack of abortion funds, while the other two deaths have been indirectly linked.²

2. Cost Impact³

According to the Minnesota Department of Public Welfare, in fiscal year 1977, 1,881 medicaid abortion claims totaling \$351,755 were paid in Minnesota. If the current, more restrictive financing policy has reduced the number of reported abortions in Minnesota, no

¹ Center for Disease Control, Morbidity and Mortality Weekly Report, February 2, 1979, Vol. 28, No. 4.

² Ibid, p. 38.

³ All estimates in this section provided by the Minnesota Dept. of Welfare.

cost savings would accrue. (If it is assumed that each abortion not funded by Medicaid results in a birth.) According to figures supplied by the Department of Public Welfare, the average medicaid abortion claim in fiscal year 1977 was \$250.00, while the average claim for a total obstetrical care package was \$1,100.00. Therefore, each unfunded medicaid abortion could result in an \$850.00 increase in medicaid expenditures. Using this assumption, the Department of Public Welfare estimates that had the 1,881 abortions performed in 1977 not been funded and 1,881 children were born instead, the additional costs to medicaid would have exceeded \$1.5 million. Also using this assumption, the Department of Public Welfare estimates that the current financing policy could result in a \$1,636,470.00 cost increase for fiscal year 1979 in the AFDC program, with \$732,156.68 of this increase to be funded by the state and counties of Minnesota.