President Bush Sends His Proposed FY 2002 Budget to Congress

While it is ultimately up to Congress to shape the 13 annual spending bills that fund the federal government, President Bush's first budget, made public on April 9, serves as a blueprint that the Republican congressional leaders are likely to follow closely during the FY 2002 appropriations process.

The centerpiece of the president's proposed $473 billion budget for the Department of Health and Human Services is a much-touted 13.5% funding increase for the National Institutes of Health, which includes a 27% increase for AIDS-vaccine research. Community health centers (CHCs)—which provide primary health care services, including in some cases family planning, to low-income people—also would receive a substantial funding increase. This funding boost would support the provision of services to an additional one million clients—a significant down payment on the president's five-year goal to double the CHC patient population and to increase the number of CHCs from 3,300 to 4,500.

The budget proposes funding for two new programs, one to support maternity group homes for pregnant and parenting teens and the other to promote responsible fatherhood, successful parenting and stronger marriages. Consistent with the president's desire to promote "charitable choice," funding under both of these new programs could go to faith-based organizations. Furthermore, the budget contains $89 million for a "Compassionate Capital" fund, which would provide start-up grants and technical assistance to charitable groups that seek to expand social service delivery, as well as $3 million to fund the Center for Faith-Based and Community Initiatives in the Department of Health and Human Services (see related story, page 1).

FY 2002 BUDGET REQUEST FOR SELECTED DOMESTIC REPRODUCTIVE HEALTH PROGRAMS (IN MILLIONS)

Program	*FY 2001*	*FY 2002 Request*
Abstinence-Only Education		
Grants to States*	$ 50	$ 50
Grants to Community-Based Organizations	20	30†
Adolescent Family Life Act	24	28
Portion Set Aside for Abstinence-Only Education	10	10
Community Health Centers	1,164	1,288
Maternal and Child Health Block Grant	714	709
Social Services Block Grant	1,725	1,700
State Children's Health Insurance Program	4,032	3,355
Title X Family Planning	254	254

**Funding is guaranteed under the 1996 welfare reform law. †Appropriated last year to be spent in FY 2002. The Bush administration did not request any additional money.*

One surprise, given his campaign promises, was that the president did not propose an increase in funding for abstinence-only education. Nor did he propose any cuts or restrictive policy language to the Title X family planning program, but instead asked that its existing funding level of $254 be maintained. Yet lurking in the fine print is a provision that would permit states to shift between programs up to 20% of the total funding allocated to them under the Public Health Service Act and under the maternal and child health block grant. Family planning and public health advocates are seriously concerned that such a proposal, promoted in the name of "state flexibility," could provide the states a backdoor mechanism to override congressional spending priorities and divert funding from critical health programs such as Title X.

In a far less subtle attempt to appease the conservative wing of his party, the president proposes to eliminate the requirement that all federal employees' health insurance plans include coverage for contraception. The contraceptive coverage requirement, which has enjoyed bipartisan support since it was first enacted in 1998, was targeted without explanation. Ironically, the Office of Personnel Management (OPM), which administers the Federal Employees Health Benefits Program, in January reported that the implementation of the contraceptive benefit for 1.2 million women of reproductive age "occurred smoothly and without incident"; moreover, OPM had not adjusted premiums "since there was no cost increase due to contraceptive coverage." Combined with the president's action on his first day in office to reimpose the so-called global gag rule, this administration appears to have launched a frontal assault not just on abortion rights, but on family planning as well.—*C. Dailard*

High Court Invalidates Involuntary Drug Tests On Pregnant Women

On March 21, the U.S. Supreme Court declared that a South Carolina public hospital's policy of testing pregnant patients for illicit substances without their consent violates the Fourth Amendment's protections against unreasonable searches. Ruling 6–3 in *Ferguson v. Charleston*, the Court held that because the drug tests were taken for the purpose of incriminating the patients, the Charleston Medical University of South Carolina hospital had a special obligation to ensure that the patients were fully informed of their Fourth Amendment rights. The hospital had argued that the searches were valid under a "special needs" exception that allows searches without an arrest warrant in limited circumstances. The Court disagreed, holding that the "special needs" exception does not apply to searches conducted for criminal purposes. The Court remanded the case back to a lower court for a determination as to whether the women actually consented to the testing.

The testing policy was developed in 1989 by the public hospital and local law enforcement officials in response to perceived increases in substance abuse—especially crack cocaine—largely among low-income and minority pregnant women. Originally, the policy required testing of all pregnant women who were suspected of drug abuse, and those women with positive test results were arrested. In 1990, the policy was amended to allow women who entered treatment to avoid incarceration.

A diverse group of 75 organizations filed friend-of-the-court briefs opposing the hospital's policy. These groups, which included the American Medical Association, American Public Health Association, American Academy of Pediatrics and March of Dimes, argued that the hospital's policy undermined the doctor-patient relationship and deterred women who feared prosecution from seeking prenatal care and other important services, thus risking both maternal and fetal health.

Lynn Paltrow, executive director of the New York–based National Advocates for Pregnant Women (NAPW), who represented the *Ferguson* plaintiffs in the lower courts, called the high court's ruling "a victory for all patients who are entitled to expect that when they go to the doctor they will receive medical care and not a search for police purposes." Jointly with the Women's Law Project in Philadelphia, NAPW monitors federal and state policy in this area and recently published *Year 2000 Overview: Governmental Responses to Pregnant Women Who Use Alcohol or Other Drugs.*

According to the Overview as well as information collected by The Alan Guttmacher Institute, South Carolina is the only state in the nation in which a viable fetus is deemed to be a "person" for child endangerment purposes—which means that women may be held criminally liable for actions such as drug use late in pregnancy that may affect a fetus. Other states have rejected the imposition of criminal penalties, relying instead on a range of less punitive approaches to women's substance abuse during pregnancy ("State Responses to Substance Abuse Among Pregnant Women," *TGR*, December 2000, page 3).—*E. Nash*

Appeals Court Rules For Antiabortion Site

A federal appeals court on March 28 overturned an injunction—and a $107 million jury verdict—against a group of radical antiabortion activists, ruling that their "Wanted" posters, "Dirty Dozen" list and "Nuremberg Files" Web site constituted political speech protected by the First Amendment. Writing for a unanimous three-judge panel of the Ninth Circuit Court of Appeals, Judge Alex Kozinski held that "political speech may not be punished just because it makes it more likely that someone will be harmed at some unknown time in the future by an unrelated third party." In the court's view, the defendants' speech—including listings of the names, addresses and license plate numbers of doctors who perform abortions and their families—while "pungent, even highly offensive," carefully avoided direct threats.

The case, *Planned Parenthood of the Columbia/Wilamette v. American Coalition of Life Activists*, originally had led to a February 1999 verdict which ordered two antiabortion groups and 13 individuals to pay damages to a group of abortion providers. The jury found that the threatening materials violated two federal statutes, the Freedom of Access to Clinic Entrances Act (FACE) and the Racketeer Influenced Corrupt Organizations Act (RICO). Later that month, Federal District Judge Robert E. Jones issued a permanent injunction preventing the defendants from further publishing wanted posters and contributing material to the Web site.

The original verdict and injunction had been viewed as an important deterrent against clinic violence by abortion-rights proponents. With both overturned at least temporarily (an appeal to the full Ninth Circuit has been requested by the plaintiffs and by a group of 12 U.S. senators and 31 House members), proponents will be focusing on how U.S. Attorney General John D. Ashcroft, a staunch abortion foe, enforces FACE and other protections against clinic violence. Ashcroft's first test began the next day, on March 29, when James Charles Kopp was arrested in France on charges that he assassinated New York abortion provider Barnett Slepian in 1998. Slepian's name was included on the "Nuremburg Files" Web site and was crossed off only hours after his death.—*A. Sonfield*.