

COMMITTEE ON SEX AND LAW

A.888

M. of A. Paulin

AN ACT to amend the education law, in relation to providing for dispensing emergency contraception under certain conditions.

THE BILL IS APPROVED

The Association of the Bar of the City of New York supports the Unintended Pregnancy Prevention Act (A888), which permits registered professional nurses and licensed pharmacists to dispense emergency contraception (EC) to women pursuant to a non-patient specific prescription from a licensed physician, certified nurse practitioner, or licensed midwife.¹ The Act will promote public health because women in New York State will have increased access to EC, a regimen of drugs deemed by the United States Food and Drug Administration (FDA) to be safe and effective in preventing unwanted pregnancies.

If it passes this Act, New York State will join several other states – Alaska, California and Washington – which have authorized pharmacists to dispense EC directly to women without a doctor’s visit.² In addition, many countries around the world recognize the benefits of fast, easy access to EC and permit women to obtain EC over the counter or from pharmacists.³ Indeed, the benefits of increased access to EC are

¹Currently, New York State law permits registered professional nurses to administer immunizations and other specified treatments pursuant to a non-patient specific prescription from a licensed physician or certified nurse practitioner. N.Y. Educ. Law §§ 6527(6)(c), 6807(3), 6909(4), 6909(5).

²Center for Reproductive Rights, State Trends in Emergency Contraception Legislation (Oct. 7, 2002) (available online at www.reproductiverights.org/st_ec.html) (“State Trends in Emergency Contraception Legislation”); Wells, et al., Using Pharmacies in Washington State to Expand Access to Emergency Contraception, 30 Fam. Plan. Persp., no. 6 (Nov./Dec. 1998) (available online at www.guttmacher.org/pubs/journals/3028898.html) (“Using Pharmacies in Washington State”).

³State Trends in Emergency Contraception Legislation (citing Albania, Belgium, Denmark, Finland, France, Israel, Morocco, Norway, Portugal, South Africa, Sweden, the United Kingdom, and other countries).

recognized by doctors in this State; notably, the New York State chapter of the American College of Obstetricians and Gynecologists support A888.

The EC Regimen

Time is of the essence for women who want to use EC. A woman must take the first dose of the two-dose EC regimen within 72 hours after unprotected sexual intercourse in order to prevent an unwanted pregnancy. The second dose must be taken 12 hours after the first dose. Although EC is commonly referred to as the “morning-after pill,” a woman may begin the regimen up to 72 hours after unprotected intercourse. However, the regimen is *most effective* if the first dose is taken within 24 hours after unprotected intercourse.

The EC regimen contains similar ingredients to those found in standard birth control pills. EC prevents pregnancy by preventing ovulation, blocking fertilization, or preventing implantation of a fertilized egg.⁴ EC will not terminate or harm an existing pregnancy and, therefore, is not considered an abortion.⁵ (EC should not be confused with a medical abortion, sometimes referred to as RU-486, which is also a regimen of pills. As opposed to EC, a medical abortion is effective only after implantation of a fertilized egg and acts to terminate the pregnancy up to 49 days from a woman’s last menstrual period (lmp).)

In 1997, the FDA deemed the use of EC as safe and effective in the prevention of pregnancy.⁶ The FDA noted that women had been widely using oral contraceptives to prevent pregnancy after unprotected intercourse for several decades.⁷ The FDA found that experience with EC-type products in four European countries and New Zealand demonstrated that the regimens were safe.⁸

The FDA has approved the packaging, selling and marketing of two brands of oral contraceptives, Preven (1998) and Plan B (1999), specifically for use as EC. These brands have been shown to be 75 to 89 % effective in reducing a woman’s risk of pregnancy.⁹

⁴Prescription Drug Products: Certain Combined Oral Contraceptives for Use as Postcoital Emergency Contraception; Notice, 62 Fed. Reg. 8611 (available online at www.access.gpo.gov) (“FDA Notice”); Trussell, et al., Emergency Contraceptive Pills: A Simple Proposal to Reduce Unintended Pregnancies, 24 Fam. Plan. Persp. 269 (Nov./Dec. 1992) (not available online) (“A Simple Proposal”).

⁵FDA Notice, 62 Fed. Reg. at 8611.

⁶Id. at 8610.

⁷Id.

⁸Id. at 8611.

⁹Plan B Package Insert, Clinical Studies (available online at www.go2planb.com); Preven Emergency Contraceptive Prescribing Information, Efficacy (available online at www.preven.com).

EC Reduces Unintended Pregnancies and Abortions

More than two and a half million American women have unplanned pregnancies each year.¹⁰ Approximately one-half of these end in abortion.¹¹ In New York State in 2000, more than 125,000 abortions were performed.¹² Consequently, widespread access to EC could prevent thousands of unintended pregnancies and abortions each year. According to one estimate, the use of EC could reduce by half the number of unintended pregnancies occurring each year in the United States.¹³ In addition, widespread access to EC could prevent up to 700,000 abortions each year.¹⁴ Indeed, a pilot program in Washington State estimated that enhanced access to EC prevented more than 200 unintended pregnancies and more than 100 abortions in the first four months of the program.¹⁵

Present Restrictions on Access to EC

Despite the FDA's approval of two brands of oral contraceptives specifically for use as EC, New Yorkers have limited access to the regimen due to the current requirement that a physician (or certified nurse practitioner or certified nurse midwife) prescribe EC. The physician-prescription requirement adds additional barriers to obtaining EC in a timely fashion. First, a woman must schedule an appointment with a physician; then, she must meet with the physician and obtain a prescription for EC; and, finally, she must fill the prescription at a pharmacy. Each of these steps takes time and delays the commencement of the time-sensitive EC regimen. In addition, the requirement presumes that women have immediate access to a physician and the funds or insurance to pay for the visit. Moreover, the requirement presumes that women have access to pharmacies that stock EC.

The concern that women may spend additional time looking for a pharmacy that stocks EC is not unfounded. A recent study by the New York City Council Investigative

¹⁰Henshaw, Unintended Pregnancy in the United States, 30 Fam. Plan. Persp. 24-29 & 48 (Jan./Feb. 1998) (available online at www.guttmacher.org/pubs/journals/3002498.html).

¹¹Id.

¹²New York State Department of Health, 2000 Vital Statistics, Induced Abortion Summary Information by Women's Age, New York State 2000 (Table 20) (Nov. 2002) (available online at www.health.state.ny.us/nysdoh/vital_statistics/2000/table20.htm).

¹³A Simple Proposal to Reduce Unintended Pregnancies, 24 Fam. Plan. Persp. at 270; The American College of Obstetricians and Gynecologists, Statement Supporting the Availability of Over-the-Counter Emergency Contraception (Feb. 14, 2001) (available online at www.acog.org/from_home/publications/press_releases/nr02-14-01.cfm).

¹⁴Glasier, et al., The effects of self-administering emergency contraception, 339 New Engl. J. Med. 1-4 (1998) (not available online); see also FDA Notice, 62 Fed. Reg. at 8611; A Simple Proposal to Reduce Unintended Pregnancies, 24 Fam. Plan. Persp. at 270.

¹⁵Using Pharmacies in Washington State, 30 Fam. Plan. Persp., no. 6.

Division found that only 55% of all pharmacies citywide carried at least one brand of EC and that there was a large disparity when broken down by borough.¹⁶ Significantly, based upon its findings, the City Council developed recommendations which include passing a resolution to urge the New York State Legislature to pass the Unintended Pregnancy Prevention Act.¹⁷ Moreover, it is likely that rural New Yorkers, who have fewer pharmacies in close proximity than urban residents, will have even more difficulty finding a pharmacy that stocks EC.

The Unintended Pregnancy Prevention Act Will Eliminate Restrictions on Access to EC

If the Legislature passes the Unintended Pregnancy Prevention Act, many of the above-noted restrictions on access to EC will be eliminated. The Act eliminates several time-consuming and costly steps by eliminating an unnecessary visit to a physician. Instead, the Act allows a woman to obtain EC directly from a pharmacist or registered nurse. In addition, the Act may encourage more pharmacies to stock EC because there will be greater knowledge about and demand for the product.

Significantly, the FDA is currently considering a petition to make EC available over the counter.¹⁸ The push to make EC available over the counter has the support of more than 60 medical, public health, other organizations, including the American Medical Association and the American College of Obstetricians and Gynecologists.¹⁹ As set forth in the petition, EC is safe for self-medication, effective when self-administered, treats a condition readily diagnosable by a woman, and the drug's labeling is tailored to self-administration.²⁰

In sum, the Unintended Pregnancy Prevention Act would enable more women residing in New York State to obtain safe and effective treatment for preventing unwanted pregnancies. By increasing access to EC, the Act would decrease the number of unwanted pregnancies and abortions and benefit public health in this State.

For the foregoing reasons this bill is approved.

¹⁶Staff Report to The Committee on Oversight and Investigations, The Council of the City of New York, Emergency Contraception: Available at a pharmacy near you? 4 (Oct. 2002) (available online at www.council.nyc.ny.us).

¹⁷Id. at 9.

¹⁸The petition, which would make the Unintended Pregnancy Prevention Act unnecessary, has been pending for nearly two years and is unlikely to be approved by the current Administration.

¹⁹Citizen's Petition 4 (Feb. 14, 2001) (available online at www.reproductiverights.org/pdf/EC_petition.pdf).

²⁰Id. at 3.