

ARTICLES

Absent Abstinence Accountability

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- *Almost 900,000 pregnancies occur each year among teens aged fifteen to nineteen.*¹
- *Approximately four million new cases of sexually transmitted diseases (STDs) occur annually among teenagers in the United States.*²
- *One in four new cases of human immunodeficiency virus (HIV) infection affects someone younger than twenty-two years of age.*³

Behind these tragic statistics lie individuals consigned to poverty, ill health, and even death. Unless the government effectively addresses these problems, adolescents will continue to be harmed and the government will continue to bear much of the cost.

In attempting to address these disturbing realities, Congress has placed renewed emphasis on abstinence-only sex education. In fact,

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1. See THE ALAN GUTTMACHER INST., *TEENAGE PREGNANCY: OVERALL TRENDS AND STATE-BY-STATE INFORMATION* summary, tbl. 3 (1999).

2. See KAISER FAMILY FOUND. & THE AMERICAN SOCIAL HEALTH ASS'N, *SEXUALLY TRANSMITTED DISEASES IN AMERICA: HOW MANY CASES AND AT WHAT COST?* 4, 8 (1998); *What Teens Don't Know About STDs Puts Them at Risk: A National Survey Finds Few Sexually Experienced 15-17 Year Olds Get Tested for STDs, And Most Underestimate Their Risk* (Kaiser Family Found., MTV & Teen People) (press release dated Mar. 8, 1999).

3. See Philip S. Rosenberg, et al., *Declining Age at HIV Infection in the United States*, 330 NEW ENG. J. MED. 789.

in the last five years, Congress has increased federal funding for abstinence-only programs by three thousand percent.⁴ Federally funded abstinence-only programs stress that abstinence until marriage is the only acceptable option for adolescents. Such programs either make no mention of contraception or inform participants only about the failure rates of birth control methods. Such programs frequently base their message on fear, using scare tactics rather than educating through factually and medically accurate information. Despite this increase in funding, there is limited evidence that such abstinence-only programs are effective. In contrast, broader sexuality education programs, often called "abstinence-based" or "abstinence-plus," that provide information on abstinence, contraception, and STD/HIV prevention have been shown to be effective.⁵

Abstinence-only education will be a prominent issue in 2001 when Congress reauthorizes one of the primary abstinence-only programs, which was enacted as part of welfare reform. In determining whether to reauthorize the welfare reform abstinence-only program, Congress should follow four principles. First, Congress should not endorse any legislation or program that is wasteful or an inefficient use of funds. Second, Congress should not fund any program or project that provides adolescents with inaccurate or misleading information. Third, in the absence of clear evidence that abstinence-only programs are effective, Congress should fund a variety of sexuality education programs. And finally, Congress should ensure that its policies are effective by requiring standard, methodologically-sound, and scientifically rigorous evaluations of any program that it funds. Given the high stakes at issue in sexuality education programs, it is imperative that Congress be driven by factual, rational discourse, not mere ideology.

Background

Currently, two major programs exist to fund abstinence-only education—the Adolescent Family Life (AFL) Demonstration Projects and the welfare reform abstinence-only education

4. See Cynthia Dailard, *Fueled by Campaign Promises, Drive Intensifies to Boost Abstinence-Only Education Funds*, 3 GUTTMACHER REPORT 2 (2000).

5. See Douglas Kirby, *No Easy Answers: Research Findings on Programs to Reduce Teen Pregnancy* (National Campaign to Prevent Teen Pregnancy, D.C.) (1997); Douglas Kirby et al., *School-Based Programs to Reduce Sexual Risk Behaviors: A Review of Effectiveness*, 109 PUBLIC HEALTH REPORTS 339 (May/June 1994).

entitlement program. Although abstinence-only programs are a major component of the conservative agenda, both programs were enacted with very little debate and virtually no opportunity for public comment.

In 1981, Congress enacted the first program focusing on abstinence-only education. This program grew out of a concern by conservative members of Congress that federal family planning services encouraged teenage sexual activity by making contraceptives available to teens.⁶ The AFL program provides demonstration grants to public and nonprofit organizations to support abstinence education and to provide direct services for pregnant and parenting teens.⁷ The statute requires that two-thirds of the funds be used for services and one-third be used for abstinence-focused prevention programs.⁸

In 1983, a group of clergy filed suit in federal district court, arguing that the AFL, on its face and as applied, violated the religion clauses of the First Amendment of the U.S. Constitution.⁹ In 1985, a U.S. district court agreed, finding AFL unconstitutional because it had the primary effect of advancing religion.¹⁰ The case was appealed directly to the United States Supreme Court, which reversed the district court.¹¹ Although the Supreme Court rejected the facial challenge to the AFL, it remanded the case to the district court to determine whether particular AFL grants had the primary effect of advancing religion.¹² The Court noted that "the record contains evidence of specific incidents of impermissible behavior."¹³

In January 1993, the parties reached a settlement agreement.¹⁴ The five-year agreement required the following: AFL grantees must submit curricula to Department of Health and Human Services (DHHS) for review; DHHS must review the curricula for religious content and medical accuracy; DHHS must conduct a site visit of each AFL grantee; and AFL grantees must provide a consent form to

6. See Brian Wilcox et al., *Adolescent Abstinence Promotion Programs: An Evaluation of Evaluations* (1996) (paper presented at the biennial meeting of the American Public Health Ass'n, unpublished manuscript, on file with NARAL).

7. See 42 U.S.C. § 300z (1994).

8. See 42 U.S.C. § 300z-9 (1994).

9. See *Kendrick v. Bowen*, 657 F. Supp. 1547, 1560 (D.D.C. 1987).

10. See *id.*

11. See *Bowen v. Kendrick*, 487 U.S. 589 (1988).

12. See *id.* at 622.

13. *Id.* at 620.

14. See *Kendrick v. Sullivan*, Civil Action No 83-3175 (D.D.C. Jan. 19, 1993) (settlement agreement).

participants indicating that the program “must not teach or promote religion.”¹⁵ Although the settlement agreement expired in 1998, DHHS continues to follow its provisions.¹⁶

The second abstinence-only program was enacted in 1996 as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.¹⁷ This “welfare reform” legislation established an abstinence-only education entitlement program, administered through the Maternal and Child Health Block Grant (MCHBG) program. Beginning in fiscal year (FY) 1998, this program provided \$50 million in grant money each year for five years. Participating states must match every four dollars of federal grant money with three dollars of non-federal funds.¹⁸ Because it is an entitlement, the program is automatically funded for five years without being subject to the appropriations process.

Due in large part to the AFL settlement agreement, which many conservatives perceived as watering down the statute, the welfare reform legislation contained a specific and detailed definition of abstinence-only education.¹⁹ Such a program:

- “has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;”
- “teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;”
- “teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;”
- “teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;”
- “teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical

15. *Id.* at ¶¶ 5-7.

16. See Rebekah Saul, *Whatever Happened to the Adolescent Family Life Act?* 1 GUTTMACHER REPORT 2 (1998). It is unlikely, however, that DHHS will continue to follow the settlement agreement under the new Republican administration.

17. Pub. L. No. 104-93 (1996).

18. See 42 U.S.C. §§ 703(a), 710 (1994); OFFICE OF STATE AND COMMUNITY HEALTH, MATERNAL AND CHILD HEALTH BUREAU, APPLICATION GUIDANCE FOR THE ABSTINENCE EDUCATION PROVISION OF THE 1996 WELFARE LAW, P.L. 104-193, NEW SECTION 510 OF TITLE V OF THE SOCIAL SECURITY ACT at 2 (1997).

19. See Ron Haskins & Carol Statuto Bevan, *Implementing The Abstinence Education Provision of the Welfare Reform Legislation* 4-5, 9 (unpublished manuscript, on file with NARAL).

effects.”²⁰

The intent behind the welfare reform abstinence-only provision, like the original intent behind AFL, was to promote programs that feature the unambiguous message that sex outside of marriage is wrong and inevitably dangerous.²¹ All fifty states applied for the FY 1998 funds, although officials in New Hampshire and California ultimately declined the funding.²² In FY 1998, the federal abstinence-only block grant program resulted in 698 abstinence promotion grants to community-based organizations and education agencies. In addition, twenty-three states funded classroom abstinence programs.²³ The welfare reform abstinence-only program has also had an important impact on AFL. Since 1997, the annual appropriation for AFL has earmarked funds for programs that comply with the welfare reform definition of abstinence-only education.²⁴

In 2000, Congress proposed a third source of abstinence-only funding. In 1999, \$20 million was forward funded to the AFL program to be released in October 2000.²⁵ Congress transferred that money to the Maternal and Child Health (MCH) Block Grant program and earmarked it for abstinence-only programs. Additionally, Congress forward funded an additional \$30 million for

20. 42 U.S.C. § 710 (1994). The other criteria contained in the definition include: “teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child’s parents, and society”; “teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances”; and “teaches the importance of attaining self-sufficiency before engaging in sexual activity.” *Id.*

21. See Haskins & Bevan, *supra* note 19.

22. *Federal Abstinence-Only Programs—What Will They Look Like?* 4 SEXUALITY INFO. AND EDUC. COUNCIL OF THE U.S. ADVOCATES REPORT 3 (SIECUS, New York, NY) (1997); *Protecting Teen Health: Comprehensive Sexuality Education and Condom Availability Programs in the Public Schools* (ACLU/ Reprod. Freedom Project, New York, NY), Dec. 1998, at 7.

23. See *Between the Lines: States’ Implementation of the Federal Government’s Section 510(b) Abstinence Education Program in Fiscal Year 1998* (SIECUS, New York, N.Y.), 1999, at 21.

24. These appropriations earmark these funds for abstinence-only programs that comply with the welfare reform abstinence-only definition. Further, the appropriations waived the the statutory requirement that not more than one-third of the funds appropriated for demonstration projects shall be used for prevention demonstration projects. See Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects, 64 Fed. Reg. 32051 (1999) (proposed June 15, 1999); Departments of Labor, Health and Human Services and Educ. Appropriations Act, Pub. L. No. 104-208 (1997); Departments of Labor, Health and Human Service and Educ. and Related Agencies Appropriations Act, Pub. L. No. 105-78 (1998).

25. FY 2000 Consolidated Appropriations Act, 145 CONG. REC. H12230, H12400, (HR 3424) (Nov. 17, 1999).

abstinence-only programs to be administered through MCH, which will be released in October 2001.²⁶

Waste Avoidance: Does Abstinence-Only Education Work?

In determining whether to continue to fund the welfare reform abstinence-only program, one of the most important principles for Congress to consider is whether continuing to fund such a program is a waste of taxpayers' money. Current research demonstrates that, at best, evidence is lacking to show that abstinence-only programs are effective. For instance, in 1997 the National Campaign to Prevent Teen Pregnancy released a study concluding that "there does not currently exist any scientifically credible, published research" that demonstrates that abstinence-only programs delay or reduce sexual activity.²⁷ Another review of twenty-three individual studies also concluded that there is insufficient evidence to determine whether school-based abstinence-only programs delay the initiation of intercourse or affect other sexual or contraceptive behavior.²⁸

In contrast, existing research indicates that sexuality education programs discussing both abstinence and contraception have positive effects—effects that Congress says it wants to achieve—including increased knowledge; delay in onset of sexual activity; reduction in the frequency of sexual activity; and increased contraceptive use.²⁹

- A review of twenty-three individual studies found specific sexuality and AIDS/STD education programs that discuss both abstinence and contraception may have a number of positive effects on adolescents, including postponing initiation of intercourse, reducing the frequency of intercourse, and

26. FY 2001 Military Construction Appropriations, 114 Stat. 511, 550, 552, Pub. L. No. 106-246 (2000); 146 CONG. REC. H12100, H12104 (Conf. Rep. On H.R. 4577) (Dec. 15, 2000).

27. Kirby, *supra* note 5, at 25. After reviewing six abstinence-only studies that had been published to date, the Campaign's survey finds that "[n]one of these studies found consistent and significant program effects on delaying the onset of intercourse, and at least one study provided strong evidence that the program did not delay the onset of intercourse." *Id.*

28. See Kirby et al., *supra* note 5, at 352. In addition, a panel on HIV convened by the National Institute of Health (NIH) criticized the Maternal and Child Health Block Grant abstinence-only education program, stating, "[a]bstinence-only programs cannot be justified in the face of effective programs and given the fact that we face an international emergency in the AIDS epidemic." *Interventions to Prevent HIV Risk Behaviors*, 15 NIH Consensus Statement Online 2 (Feb. 11, 1997) <http://odp.od.nih.gov/consensus/cons/104/104_statement.htm>.

29. See Kirby, *supra* note 5, at 25-26, 47.

increasing the use of contraceptives.³⁰

- A randomized controlled study of African-American adolescents found longer-term benefits from a safer sex intervention program than from an abstinence intervention. Although adolescents in the abstinence intervention were initially less likely to report having sexual intercourse, the effects disappeared by the six month follow-up visit. In contrast, adolescents in a safer sex intervention, which emphasizes abstinence but also the importance of using condoms, reduced unprotected intercourse for at least twelve months.³¹

Moreover, one of the strongest arguments against broader sexuality education programs—that such programs encourage teens to engage in sex—has been rebutted in the scientific literature:

- One study found that adolescents in the safer sex intervention were not more likely to report having sexual intercourse at follow-up than were adolescents in the control group. Moreover, among adolescents who reported sexual experience prior to the study, those in the safer sex intervention reported less frequent intercourse.³²
- Studies commissioned by DHHS demonstrate that sexuality education “does not cause adolescents to initiate sex when they would not otherwise have done so.”³³
- A study released in 1999 revealed that compared to adolescents in the Netherlands, Germany, and France—who commonly receive open and frank media messages and education concerning sexuality and safe sex—American teens initiate sexual intercourse at a younger age and use oral contraceptives less frequently.³⁴

Given the proven effectiveness of broader sexuality education and the lack of evidence demonstrating the effectiveness of abstinence-only education, continued funding of the federal abstinence-only-until-marriage program is a wasteful and inefficient use of funds.

30. See Kirby et al., *supra* note 5, at 339, 352-53.

31. See John B. Jemmott III, et al., *Abstinence and Safer Sex HIV Risk-Reduction Interventions for African American Adolescents*, 279 JAMA 1529, 1533-35.

32. See *id.*

33. Kristin A. Moore, et al., *Beginning Too Soon: Adolescent Sexual Behavior, Pregnancy, and Parenthood* (Child Trends, Inc., D.C.), 1995, at xiii.

34. Linda Berne & Barbara Huberman, *European Approaches to Adolescent Sexual Behavior and Responsibility* (Advocates for Youth, D.C.) 1999 at 4-8, 22-3, 47-8. This study based its conclusions on available data and does not include data from all four countries for all of its comparisons. For its conclusions regarding oral contraceptive use, the study used data regarding adolescent females and did not include data from France.

Accurate Information: An Essential Component of Any Government Program

Any government program that provides information—especially health information—should be required to provide medically and factually accurate and objective information. Some projects that are receiving federal funds, however, are using curricula that contain biased and one-sided information. For example, the curricula adopted by education agencies receiving grants in FY 1998 under the welfare reform abstinence-only program included *Sex Respect*, *Choosing the Best*, and a curriculum by Teen Aid, Inc., which are all fear-based curricula.³⁵ A Louisiana court found that portions of two such curricula, *Sex Respect* and *Facing Reality*, violated a state statute mandating that all sexuality instruction be factually accurate and religiously neutral. However, schools still use a version of these curricula,³⁶ which include such statements as:

- “If premarital sex came in a bottle, it would probably have to carry a Surgeon General’s warning, something like the one on a package of cigarettes. There’s no way to have premarital sex without hurting someone.”³⁷
- “[N]ature seems to be making a statement about the wisdom of keeping sex within marriage through the current epidemic of sexually transmitted diseases and teen pregnancy.”³⁸
- “For condoms to be used properly, over 10 specific steps must be followed every time which tends to minimize the romance and spontaneity of the sex act.”³⁹

Responsible federal policy requires, at a minimum, that abstinence-only programs provide medically and factually accurate information.⁴⁰

Ration, Not Rhetoric

Given the high stakes facing teens, the fact that more than half of

35. See *Between the Lines*, *supra* note 23, at 19-20.

36. See *Coleman v. Caddo Parish Sch. Bd.*, 635 So. 2d 1238, 1245 (La. Ct. App. 1994). See also *What are Teens Talking About?* (visited September 18, 1999) <<http://www.sexrespect.com/programorg.html>>

37. COLLEEN KELLY MAST, *SEX RESPECT: THE OPTION OF TRUE SEXUAL FREEDOM* 35 (1999).

38. *Id.* at 6.

39. BRUCE COOK, *CHOOSING THE BEST* 26 (1995).

40. In recent years, several states have passed legislation to require sexuality education programs to provide medically accurate information. See, e.g., CAL. EDUC. CODE § 51553 (West 2000); MO. REV. STAT. § 170.015 (2000).

all teens aged fifteen to nineteen years old in the U.S. have had sexual intercourse,⁴¹ and the absence of research showing that abstinence-only programs are effective, "Just Say No" efforts are misleading at best, and dangerous at worst. Congress should support responsible health policy that would give states and localities the broadest possible range of intervention options. In the current context, that would mean funding a variety of sexuality education programs, not just abstinence-only. Not only would such a program give states greater flexibility in choosing programs that would work in their communities, but it would also reflect widespread public attitudes:

- A 1999 poll revealed that "[s]even out of ten Americans oppose the provision of federal funds for education promoting abstinence-only-until-marriage that prohibits teaching about the use of condoms and contraception for the prevention of unintended pregnancy, HIV/AIDS, and STDs."⁴²
- According to a 1999 poll, 93% of Americans support teaching sexuality education to high school students, while 84% support sexuality education for junior high school students.⁴³
- Additionally, a 1997 poll revealed that a mere 13% of adults believe that "teaching teenagers to abstain from sex until marriage is extremely realistic."⁴⁴

Toward Accountability

One of the most important ways for Congress to help the next generation of teens is to determine which intervention programs are most effective. Congress attempted to do this initially; AFL was created as a temporary demonstration program to test various interventions and to determine which programs are most effective.⁴⁵

41. See *Teen Sex and Pregnancy*, FACTS IN BRIEF (Guttmacher Institute, New York, NY) 1999. The percentage of teen girls who have engaged in sexual intercourse before age fifteen has risen from 11% in 1988 to 19% in 1995. See also Jennifer Manlove and Elizabeth Terry, *TRENDS IN SEXUAL ACTIVITY AND CONTRACEPTIVE USE AMONG TEENS*, statistics provided at Messengers and Methods for the New Millennium: A Round Table on Adolescents and Contraception (Washington, D.C.: National Campaign to Prevent Teen Pregnancy and Advocates for Youth, Feb. 10-11, 1999).

42. See *Public Support for Sexuality Education Reaches Highest Level: New Poll Reveals Public Health Issues Compel Overwhelming Majority of Americans To Support Sexuality Education That Includes Abstinence and Contraception Information* (Advocates for Youth & SIECUS) (press release dated June 2, 1999).

43. See Hickman-Brown Public Opinion Research Survey (visited Mar. 1999) <<http://www.siecus.org/parent/pare0003.html>>.

44. See National survey conducted by Bruskin/Goldring Research sponsored by the Durex Truth for Youth campaign (Sept. 1997) (on file with NARAL).

45. The authorization of AFL expired in 1985; since then, the program has been

Under the statute, each funded project is required to spend between one and five percent of its grant on evaluation. However, the AFL statute provides little guidance as to what the evaluation should contain and how it should be conducted; and the statute does not require that the evaluations be consistent so that various programs can be compared. As a result, most of the evaluations of AFL projects have not provided useful or reliable research findings. In fact, a 1996 study of AFL evaluations found “numerous common flaws” including problems with hypotheses, assumptions, study design, methodology, data analysis, and data interpretation.⁴⁶ The study concluded that “the quality of the AFL evaluations funded by the federal government vary from barely adequate to completely inadequate.”⁴⁷

The problem of adequate evaluations continued when Congress enacted the welfare reform abstinence-only program. When initially enacted, the welfare reform abstinence-only program did not contain any money for evaluations to determine whether the programs it funded were effective. Due to criticism, in 1997, a small amount of money, .02% of the FY 1998 and 1999 funding, was allocated to conduct an evaluation of the programs.⁴⁸ However, SIECUS—a leading sexuality education organization—estimates that at least ten percent of the funds allocated on the program should be reserved for evaluation.⁴⁹

Rather than pouring money into programs without any reliable measure of their effectiveness, Congress should require standard, methodologically sound, and scientifically rigorous evaluations of its programs.⁵⁰ Such evaluations should:

operating under funding provided in the annual Labor, Department of Health and Human Services, and Education appropriations bill. *See, e.g.*, 142 CONG. REC. S4317, 4324 (daily ed. Apr. 29, 1996) (statement of Senator Arlen Specter).

46. *See* Wilcox, et al., *supra* note 6, at 4–9.

47. *Id.* at 9.

48. *See* 143 CONG. REC. H6117 (daily ed. July 29, 1997).

49. *See* Further Funding For Abstinence-Only-Until-Marriage Program, Policy Updates (visited June 14, 2000) <<http://www.siecus.org/policy/Pupdates/pdateoo11.html>>.

50. In the current appropriations process in which Congress is attempting to create a SPRANS abstinence-only program, the bill allocates 3.5% of the funding for evaluations. The Committee Report attempts to provide some guidance—albeit inconsistent—about the evaluation. It requires longitudinal studies to track the long-term effects of the program, but requires that the studies be submitted annually. The Report also suggests criteria for determining effectiveness, including prevention and reduction of out of wedlock pregnancies and STDs, age at first sexual activity and intercourse, frequency of sexual activity and intercourse, and number who postpone sexual activity or intercourse through adolescence. The Report also suggests that the evaluation should track groups of

- use random assignment;
- include a sufficiently large sample size;
- conduct long-term follow-up;
- measure behavior rather than just attitudes or beliefs;
- conduct proper statistical analyses;
- publish both positive and negative results, and;
- use independent evaluators.⁵¹

Without such evaluations, congressional funding of abstinence-only programs will remain ideologically rather than empirically motivated. By funding and evaluating abstinence-only programs in tandem with broader sexuality education programs, policymakers can make more rational, scientifically supported decisions.

Conclusion

Congress has a moral, ethical, and fiduciary duty to enact legislation that most effectively and responsibly addresses the current crisis in adolescent reproductive health. Four principles that should guide Congress' decision-making are: avoiding waste, providing medically accurate and objective information, allowing flexibility in determining which programs are effective, and requiring reliable evaluations of funded programs.

Based on the four principles, it is clear that the current welfare reform abstinence-only programs inappropriately fund potentially dangerous projects that have not been proven effective and that fail to address adequately the almost 900,000 teen pregnancies and millions of new cases of STDs occurring among teens each year. Our nation's future efforts must be directed at broader sexuality education programs that have demonstrated positive results, and that provide teens with the information and skills they need to protect themselves.

youth that have received abstinence-only education, including those who have received federally funded family planning services. Because such family planning services are required by law to be confidential, it is unclear how this can be accomplished. *See* 42 C.F.R. § 59.11. The Report also requires looking at rates of abortion, but not birth. *See* H.R. REP. NO. 106-645, at 34-5. (2000).

51. *See* Kirby, *supra* note 5, at 3.

