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Fact Sheet: “Emergency Services” and the Protect Life Act

During House consideration of the Protect Life Act (HR 358), a needless dispute has arisen over a technical amendment in the Act. The amendment is needed to ensure that HR 358’s new conscience protection, creating subsection 1303 (g) in the Patient Protection and Affordable Care Act (PPACA), has legal effect.

This conscience protection is modeled closely on the Hyde/Weldon language that has been part of Labor/HHS appropriations acts since 2004. In 2009 the House Energy and Commerce Committee had voted to insert that protection into PPACA *by unanimous voice vote*; but the Senate later removed this language, which was noncontroversial in the House, so it is being restored through the Protect Life Act. The Hyde/Weldon policy must be restated in PPACA because the Act appropriates billions of dollars in new funds, bypassing the Labor/HHS appropriations bill and any rider contained in it.

The technical amendment adds a few words to Subsection 1303 (d) of PPACA (which HR 358 will redesignate as 1303 (f) because it inserts new provisions on abortion funding). That subsection reads:

“(d) APPLICATION OF EMERGENCY SERVICES LAWS.—Nothing in this Act shall be construed to relieve any health care provider from providing emergency services as required by State or Federal law, including section 1867 of the Social Security Act (popularly known as “EMTALA”).”

The technical change is to insert at the beginning of this sentence the words: **“Subject to subsection (g).”** This new rule of construction in PPACA on “emergency services” remains subject to, and does not override, the Protect Life Act’s conscience provision on abortion. (See HR 358, page 7, lines 15-17.) Thus subsection (d)’s sweeping clause “Nothing in this Act” cannot be used to nullify the conscience provision that immediately follows it.¹

Why is the technical amendment needed?

Because without it, the entire conscience provision in the new bill could become useless if any state passes a new law (or interprets an old law) to say that some or all abortions are to be called “emergency services.” (The state could make as broad a definition of this term as it likes; it is

¹ Pro-abortion groups have charged that this “Subject to” clause was newly inserted into the Protect Life Act when it was taken up in subcommittee this year. That charge is false. This provision has been part of the Protect Life Act, without significant controversy, since the Act was first introduced in the previous Congress on April 22, 2010. See 111th Congress, HR 5111, page 6, lines 4-6. When first introduced in this Congress the provision was absent from HR 358 due to a typographical error, but was restored in the chairman’s mark for the House Energy and Commerce Subcommittee on Health once the error was detected a few days later. The controversy over a “new” and allegedly unprecedented provision was manufactured by groups that oppose conscience protection on abortion.

not defined in subsection (d).) Or this could happen at the federal level. Beginning this summer, for example, the ACLU Reproductive Freedom Project has urged HHS to use EMTALA to warn all hospitals, including Catholic hospitals, that they must perform “emergency” abortions.

Is EMTALA (Emergency Medical Treatment and Active Labor Act) currently a problem?

No. It clearly states that health care personnel must respond to an emergency in which a pregnant woman or “her unborn child” is in distress, and should stabilize the condition of *both*. It is absurd to interpret the deliberate killing of the unborn child as “stabilizing” her condition, though abortion advocates have tried to do so. Thus no one has found a case in which EMTALA was enforced against anyone for not performing an abortion. The Obama administration has also reaffirmed that there is no conflict between EMTALA and conscience laws such as Hyde/Weldon: “The conscience laws and the other federal statutes have operated side by side often for many decades. As repeals by implication are disfavored and laws are meant to be read in harmony, the Department fully intends to continue to *enforce all the laws it has been charged with administering*.... [E]ntities must continue to comply with their... EMTALA... obligations, *as well as the federal health care provider conscience protection statutes.*”²

Then why is EMTALA specifically cited in PPACA’s section on abortion?

That would have to be asked of those who wrote subsection (d) of PPACA. Possibly the drafters wanted to provide some basis for the ACLU’s attempts to misuse EMTALA against the conscience rights of health care providers – attempts which have failed for many years.

Since the “Subject to” provision was restored to HR 358 this February, pro-abortion members of the Energy and Commerce Committee have sharply attacked it for “allow[ing] a hospital to assert a religious objection to the medically necessary termination of a pregnancy” despite the existence of laws like EMTALA (House Committee Report on HR 358, “Dissenting Views,” page 30). But of course, since 2004 the Hyde/Weldon amendment has protected decisions (and not only decisions based on religion) to care for a pregnant woman without being forced by government to perform an abortion for any reason. So what these objectors are admitting is that the “Subject to” provision *simply brings PPACA into line with the federal policy that already has long applied in every other government program.*

Conclusion

Federal conscience laws like the Hyde/Weldon amendment have long ensured that federal and state governments will not misuse any state or federal law, including an “emergency services” law, to punish health care providers because they provide needed care without doing abortions. PPACA should not carve out new arbitrary exceptions or loopholes in such protection but continue this long tradition, as H.R. 358 provides.

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² Department of Health and Human Services, “Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws,” 76 *Fed. Reg.* 9968-77 (Feb. 23, 2011), at 9973, 9974 (emphasis added).