



Secretariat for Pro-Life Activities

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The Need to Strengthen Federal Abortion Non-Discrimination Law

Recent cases of pressure on health care providers to participate in abortion demonstrate the need to strengthen federal protection against abortion-related discrimination.

Alaska

On November 21, 1997, the Alaska Supreme Court ordered a private non-sectarian hospital with a policy against abortion to begin performing abortions. The court said Alaska law protects abortion as a fundamental right; factors such as the hospital's receipt of a certificate of need, and its receipt of federal and state funds for construction and operation, transform the hospital into a "quasi-public" actor which **must** provide abortions.

California

During the 1999 legislative session, a bill (AB 525) was introduced that would have, among other things, disallowed hospitals that decline to participate in abortion from receiving public financing or state-funded health care contracts. Those provisions of the bill were struck by amendment; the final bill enacted into law requires all health plans to provide written notice that they may or may not cover abortion and urges enrollees to call the health plan to find out. Failure to provide such notice is a crime.

In 2003, Governor Gray Davis signed into law a bill (SB 932) that prohibits the attorney general from approving the sale of health care facilities if the seller restricts the kinds of services that may be offered at the facility. This law will effectively prohibit hospitals from ensuring that the property they sell is not used for abortions.

Connecticut

After abortion advocates learned that an outpatient surgical center proposed by four hospitals would not perform abortions and sterilizations, they formed a coalition to defeat the proposed center and intervened in Certificate of Need proceedings. In September of 1997, the Connecticut Office of Health Care Access refused to issue a certificate allowing the center to open.

Florida

In 1997, Bayfront Medical Center, a private non-sectarian hospital, joined a non-profit consortium of hospitals that followed a pro-life ethical policy. After the City of St. Petersburg, which leased land to Bayfront, learned that Bayfront would follow the policy and cease performing abortions, it filed a federal lawsuit against Bayfront and the consortium. The city claimed a clause in the lease providing, that "Bayfront will operate the premises without regard to...creed," had been violated and that Bayfront's agreement to follow the pro-life policy

amounted to an establishment of religion. Under the pressure of the lawsuit and mounting legal fees, Bayfront decided to settle the suit by leaving the consortium.

New Hampshire

In 1998, after “reproductive rights” groups learned that a newly merged hospital would no longer perform elective abortions and sterilizations, they approached the New Hampshire attorney general to challenge the merger. The attorney general issued an opinion concluding on several grounds that the merger is subject to the law of charitable trust and must be reviewed in probate court. Under pressure from the attorney general, the merger dissolved.

New Jersey

Elizabeth General Medical Center (EGMC) agreed to consolidate with St. Elizabeth’s Hospital and no longer perform abortions. Subsequently, on October 21, 1999, a New Jersey Superior Court judge reviewing the consolidation issued a final judgment that (1) allowed pro-abortion groups to intervene in the consolidation proceedings, (2) found that the proposed consolidation would constitute a change in EGMC’s charitable mission, and (3) approved a settlement agreement to place \$2 million in trust for sterilizations, abortions and abortion referrals.

In 1998, Lourdes Health System purchased the bankrupt Rancocas Hospital. After the Rancocas facility ceased performing abortions and sterilizations, the ACLU of New Jersey attempted to intervene in the transaction and compel Lourdes to build an abortion and sterilization clinic. A New Jersey Superior Court Judge disagreed with the ACLU, disallowing its effort to intervene in the transaction.

New York

In 1997, after Catholic dioceses in New York created Fidelis Care, a managed care health plan, Family Planning Advocates of New York (FPA) began pressuring the state health department to force the Catholic health plan to provide abortion counseling and referrals. FPA said that “Fidelis’ ability to serve women of childbearing age is severely compromised by its refusal to cover...abortions” and called upon the State Health Department to “increase its monitoring of Fidelis’ informational and referral processes concerning reproductive health care.” Subsequently, the state comptroller recommended that Fidelis no longer be assigned state health contracts for women of childbearing age.

In 2003, two bills were introduced in the New York State Legislature to allow the state health commissioner in licensing decisions to discriminate against hospitals that do not participate in abortions. (A. 4945 and S. 4031). A third bill would mandate abortion coverage in all health plans that provide maternity coverage (A. 2611). These remain active for the 2004 legislative session.

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