Secretariat for Pro-Life Activities
3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3070 • FAX 202-541-3054
EMAIL: PROLIFE@USCCB.ORG • WEBSITE: WWW.USCCB.ORG/PROLIFE

Fact Sheet:
S. 1397/H.R. 3664, The Abortion Non-Discrimination Act (ANDA)

Summary

S. 1397/H.R. 3664, the Abortion Non-Discrimination Act (ANDA), protects the full range of health care organizations and individual health care providers from governmental discrimination for declining involvement in abortion.

Background

The bill amends an existing federal abortion non-discrimination protection. That protection was enacted—by strong bipartisan majorities—in response to a threat that the Accreditation Council for Graduate Medical Education (ACGME) would require abortion training in all teaching hospitals with obstetrics/gynecology residency programs. The law, 42 U.S.C. § 238n, prohibits the federal government, and any state or local government that receives federal financial assistance, from discriminating against health care entities that decline to perform, refer for, train in, or make arrangements for abortions. To make it clear that residents and residency programs are specifically protected, the law states that "'health care entity' includes an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions."

Current Threats

Unfortunately, the language of the law needs to be clarified to counteract a nationwide campaign to require all health care providers to participate in abortion. Already, that campaign has met with some success. Novel legal and administrative strategies have resulted in:

•Forcing a private community hospital to open its doors for late abortions[1],

•Denying a certificate of need to an outpatient surgical center that declined involvement in abortion after an abortion rights coalition intervened in the proceedings[2],

•Forcing a private non-sectarian hospital to leave a cost-saving consortium because the consortium abided by a pro-life policy in its member hospitals[3],

•Dismantling a hospital merger after abortion advocates approached a state attorney general to challenge the merger[4],

•Pressuring a hospital to place $2 million in trust for abortions and sterilizations before allowing the hospital to consolidate[5],

•Attempting to require a Catholic hospital to build an abortion clinic and pay for abortions[6],

•Threatening a Catholic-operated HMO with loss of state contracts because it declines to

provide abortions[7],

•Prohibiting hospitals from ensuring that the property they sell is not used for abortions[8],

Clarifying Existing Law

Already, the plain language of 42 U.S.C. § 238n protects a broad range of health care providers. The definition of "health care entity" *includes* residency programs and residents. It does not *exclude* any health care entities. The definition is illustrative, not exhaustive. But in light of the recent campaign to force providers to participate in abortions, existing law should be clarified to state that "health care entity" includes the full range of health care entities: all hospitals, health professionals, provider sponsored organizations, heath maintenance organizations, health insurance plans, and all other kinds of health care facilities, organizations or plans. Additionally, the section heading should be modified, reflecting this clarification, to read: "Abortion-related Discrimination in Governmental Activities Regarding Training, Licensing and Practice of Physicians and other Health Care Entities."

Strengthening Existing Law

Existing law protects health care entities from discrimination based on their declining to participate in abortion in three ways: performing, training, and referring. The law should be strengthened to include other kinds of participation: providing coverage of and paying for abortions.

Conclusion

S. 1397/H.R. 3664 both clarifies and strengthens existing law. Its passage is urgently needed to protect health care providers with policies against performing abortions.

Notes

1. *See* Valley Hospital Ass'n. v. Mat-Su Coalition for Choice, 948 P.2d 963 (Alaska 1997).

2. *See* State of Connecticut Office of Health Care Access Final Decision in Roy Bebe, M.D., Hartford Hospital, John Dempsey Hospital, New Britain General Hospital, Saint Francis Hospital and Medical Center and ASC Network Corporation d/b/a Avon Surgery Center for a Certificate of Need, Docket No. 96-547 (Sep. 29, 1997).

3.*See* "City, Bayfront Settle Suit," Wes Allison, *St. Petersburg Times*, Apr 11, 2001, pg. 1.A.

4. *See* New Hampshire Attorney General's Report on Optima Health, March 10, 1998, www.state.nh.us/nhdoj /CHARITABLE/optima1.html.

5. *See* "Merger Pits Care and Doctrine," Steve Chambers, *The Star Ledger*, May 16, 1999, page 1.

6. *See* In the Matter of: Allegheny Hospitals, New Jersey and Zurbrugg Health Foundation, Superior Court of New New Jersey, Civil Division, Burlington County, Docket No. BUR-L-3541-98, Hearing Transcript, Oct. 24, 2002.

7. *See* "N.Y. Insurance Denies Access to Reproductive Healthcare," Womensenews, Jan. 31, 2002 at womensenews.org/article.cfm/dyn/aid/801 (accessed 09/09/03).

8. *See* S.B. 932, 2003-2004 Leg. Sess. (Ca. 2003).

March 2004