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Abortion battle looms on conscience clause

Tom Roberts | Mar. 6, 2009

Sr. Carol Keehan

The latest battle in the abortion wars seems to be shaping up around the matter of ?conscience clauses? intended to protect health care workers who refuse to participate in certain procedures such as abortions or sterilizations because of personal or religious convictions.

Opposing sides in the debate seem to be preparing their best shots for and against the Obama administration?s intent to rescind an 11th hour Bush Administration rule on the issue. But the precise target is not yet clear because the new ruling, expected any day, has not yet been posted. Once it is posted, there will be a 30-day period for public comment.

Update: HHS opens 30-day period for comments on conscience protection [1]

Further clouding the lines is the fact that three federal laws currently exist to protect health care workers who have a conscientious objection to participating in certain medical procedures and a number of states have either enacted or are working on ?conscience clause? legislation.

Press reports characterize the Bush rule, issued in December and posted on the website of the Department of Health and Human Services in January just before the former president left office, as clarifying existing federal policy and strengthening protection of doctors and nurses from being forced to violate their consciences.

Opponents say the Bush rule goes too far by including the right of medical personnel to refuse to follow advance directives for end-of-life care, to administer vaccines and transfusions, to prescribe or dispense contraceptives or to conduct treatments using methods derived from stem cell research.

The rule was almost immediately challenged by a coalition of attorneys general from 13 states led by Connecticut Atty. Gen. Richard Blumenthal, who termed it ?an outrageous rule? and one that ?is an appalling insult and abuse ? a midnight power grab to deny access to health care services and information, including even to victims of rape.?

On March 6, a spokesperson for the United States Conference of Catholic Bishops said the conference was waiting for the new rule to be posted before responding, but noted that there was general concern that rescinding the Bush rule might mark the beginning of a rollback of already existing protections.

The White House, however, on announcing its intent, released a statement saying that President Obama preferred a ?carefully crafted? clause to Bush?s version.

?He believes this issue requires a balance between the rights of providers and the health of women and their families, a balance that the last-minute Bush rule appears to upset,? the statement said.

In a letter last September reacting to the proposed Bush rule, the Catholic Health Association said it had ?long supported and worked for the enactment of conscience clause protections? in federal laws such as the Church Amendments, the Public Health Service Act and the Weldon Amendment.

The laws offer a variety of protection for individual providers, health care facilities and insurers who refuse to provide services they consider contrary to conscience or religious belief. ?We view these existing legal protections as essential for the continuation of both our own ministry and our nation?s commitment to freedom of religion and of conscience,? said Sr. Carol Keehan, president and CEO of the association.

At the same time, Keehan, a member of the Daughters of Charity, wrote that those protections appeared vulnerable to ?a variety of efforts to force Catholic and other health care providers to perform or refer for abortions and sterilizations, including national advocacy campaigns targeting Catholic hospitals; efforts by state governments to undermine the conscience rights of health care providers; and the American College of Obstetricians and Gynecologists proposing to redefine the standards for ethical practice to force doctors to provide or refer for abortions or sterilizations.?

She said the association welcomed the new rules ?in light of these attacks on ? conscience rights.?

Kristen Day, executive director of Democrats for Life, advised caution for the administration in undoing the Bush regulations. ?I think I would urge the president to really look at this closely before rescinding any rules because a significant portion of prolife Democrats and Republicans voted for him.? She said she hopes the president ?would work with both sides and seem some agreement.?

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