



H.R. 3962 and the Protection of State Conscience Rights for Pro-Life Healthcare Workers

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Upon a careful review of H.R. 3962, there is a concern that the bill does not adequately ensure that conscience rights for health care workers will be protected under state law.

Forty-five states, including Guam and the Virgin Islands, have laws which protect health care workers from having to participate in abortion related procedures. A list of these states and relevant statutory provisions is found below.

Section 258 of H.R. 3962 addresses "Application of State and Federal Laws Regarding Abortion."

Subsection (a), which addresses state laws, provides as follows:

NO PREEMPTION OF STATE LAWS REGARDING ABORTION.—Nothing in this Act shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor.

Nothing in this section specifically and explicitly addresses those state laws which protect the conscience rights of health care workers.

This silence is all the more palpable when Subsection (b), which addresses federal laws, is considered.

This subsection specifically and explicitly states that:

(1) **IN GENERAL.**—Nothing in this Act shall be construed to have any effect on Federal laws regarding—

- (A) conscience protection;
- (B) willingness or refusal to provide abortion; and

(C) discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.

To best ensure that H.R. 3962 will not preempt state conscience rights for health care workers, the language of Section 258(b), dealing with conscience protection and federal laws, should be incorporated into Section 258(a), dealing with state laws.

Accordingly, Section 258(a) should be amended to read as follows:

(a) NO PREEMPTION OF STATE LAWS REGARDING ABORTION.—

(1) Nothing in this Act shall be construed to preempt or otherwise have any effect on State laws regarding

(A) conscience protection;

(B) willingness or refusal to provide abortion; and

(C) discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.

(2) Nothing in this Act shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor.

If Congress is truly committed to ensuring that the conscience rights of health care workers are fully protected, then it should take the necessary steps to make it abundantly clear that state conscience laws will not be preempted, or otherwise circumscribed, should this bill become law. The amended language, proposed herein, will serve this purpose.

STATE CONSCIENCE LAWS

ALASKA “Nothing in this section requires a hospital or person to participate in an abortion, nor is a hospital or person liable for refusing to participate in an abortion” (ALASKA STAT. § 18.16.010(b) (2009))

- Note: Alaska Supreme Court held that subsection (b) is “unconstitutional to the extent it applies to quasi-public institutions.” *Valley Hosp. Ass’n v. Mat-Su Coal. for Choice*, 948 P.2d 963, 971 (Alaska 1997).

ARIZONA “A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital, doctor, clinic or other medical or surgical facility . . .

shall not be required to participate in the . . . abortion.” (ARIZ. REV. STAT. § 36-2151 (LexisNexis 2008))

ARKANSAS “No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy.” (ARK. CODE ANN. § 20-16-601(a) (2009))

CALIFORNIA “No such employee or person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his or her refusal to participate in an abortion.” (CAL. HEALTH & SAFETY CODE § 123420(a) (Deering 2008))

COLORADO “[T]he refusal of any such person to participate [in an abortion] does not form the basis for any disciplinary or other recriminatory action against the person.” (COLO. REV. STAT. § 18-6-104 (2008))

DELAWARE “No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy” (DEL. CODE ANN. tit. 24, § 1791(a) (2008))

FLORIDA “Nothing in this section shall require any hospital or any person to participate in the termination of a pregnancy, nor shall any hospital or any person be liable for such refusal.” (FLA. STAT. ANN. § 390.0111(8) (LexisNexis 2009))

GEORGIA “[A]ny person who states in writing an objection to any abortion . . . shall not be required to participate in procedures which will result in such abortion; and the refusal of the person to participate therein shall not form the basis of any claim for damages . . . or for any disciplinary or recriminatory action against the person.” (GA. CODE. ANN. § 16-12-142(a) (2009))

HAWAII “Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal.” (HAW. REV. STAT. ANN. § 453-16(e) (LexisNexis 2009))

IDAHO “Neither shall any physician be required to perform or assist in any abortion, nor shall any nurse, technician or other employee of any physician or hospital be required by law . . . to assist or participate in the performance or provision of any abortion” (IDAHO CODE ANN. § 18-612 (2009))

ILLINOIS “No physician, hospital, ambulatory surgical center, nor employee thereof, shall be required . . . to perform, permit, or participate in any abortion” (720 ILL. COMP. STAT. ANN. 510/13 (LexisNexis 2009))

INDIANA “No physician or employee or member of the staff of a hospital or other facility in which an abortion may be performed shall be required to perform an abortion” (IND. CODE ANN. § 16-34-1-4 (LexisNexis 2009))

IOWA “A person shall not discriminate against any individual in any way . . . because of the individual’s participation in or refusal to participate in recommending, performing, or assisting in an abortion procedure.” (IOWA CODE § 146.1 (2008))

KANSAS “No person shall be required to perform or participate in medical procedures which result in the termination of a pregnancy” (KAS. STAT. ANN. § 65-443 (2008))

KENTUCKY “No physician, nurse staff member or employee of a public or private hospital or employee of a public or private health care facility . . . [shall] be required to, or held liable for refusal to, perform, participate in, or cooperate in such abortion.” (KY. REV. STAT. ANN. § 311.800(4) (LexisNexis 2009))

LOUISIANA “No physician, nurse, student, or other person or corporation shall be . . . in any way prejudiced or damaged because of his refusal for any reason to recommend, counsel, perform, assist with or accommodate an abortion.” (LA. REV. STAT. ANN. § 40:1299.31(A) (2009))

MAINE “No physician, nurse, or other person, who refuses to perform or assist in the performance of an abortion, shall, because of that refusal, be dismissed, suspended, demoted, or otherwise prejudiced or damaged” (ME. REV. STAT. ANN. tit. 22, § 1591 (2009))

MARYLAND “A person may not be required to perform or participate in . . . any medical procedure that results in . . . termination of pregnancy.” (MD. CODE ANN. HEALTH-GEN. § 20-214 (LexisNexis 2009))

MASSACHUSETTS “A physician or any other person who is a member of or associated with the medical staff of a hospital or other health facility . . . shall not be required to participate in the medical procedures which result in such abortion” (MASS. ANN. LAWS. ch. 112, § 12I (LexisNexis 2009))

MICHIGAN “[A] physician, member, or associate of the staff, or other person connected therewith, may refuse to perform, participate in, or allow to be performed on its premises an abortion.” (MICH. COMP. LAWS SERV. § 333.20181 (LexisNexis 2009))

MINNESOTA “No person and no hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion” (MINN. STAT. § 145.414(a) (2008))

MISSOURI “It shall be unlawful for an employer . . . to discriminate against any individual . . . because of such individual’s refusal to participate in abortion” (MO. REV. STAT. § 188.105.1(1)(a) (2009))

MONTANA “All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion” (MONT. CODE ANN. § 50-20-111(2) (2009))

NEBRASKA “No person shall be required to perform or participate in any abortion” (NEB. REV. STAT. ANN. § 28-338 (LexisNexis 2009))

- Class II misdemeanor for anyone who discriminates against a person refusing to participate in an abortion. (NEB. REV. STAT. ANN. § 28-339 (LexisNexis 2009))

NEVADA “An employer shall not require a registered nurse . . . or any other person employed to . . . participate directly in the induction or performance of an abortion” (NEV. REV. STAT. ANN. § 632.475.1 (LexisNexis 2009))

NEW JERSEY “No person shall be required to perform or assist in the performance of an abortion” (N.J. STAT. ANN. § 2A:65A-1 (West 2009))

NEW MEXICO “A person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital . . . shall not be required to participate in medical procedures which will result in the termination of pregnancy” (N.M. STAT. ANN. § 30-5-2 (LexisNexis 2009))

NEW YORK “[A]ny person . . . may refuse to perform or assist in such abortion” (N.Y. CIV. RIGHTS LAW § 79-i(1) (Consol. 2009))

NORTH CAROLINA “Nothing in this section shall require a physician . . . or any nurse . . . to perform or participate in medical procedures which result in an abortion.” (N.C. GEN. STAT. § 14-45.1(e) (2009))

NORTH DAKOTA “[N]or may such hospital or person in any circumstances be required to participate in the performance of an abortion” (N.D. CENT. CODE § 23-16-14 (2009))

OHIO “No person is required to perform or participate in medical procedures which result in abortion” (OHIO REV. CODE ANN. § 4731.91(D) (LexisNexis (2009))

OKLAHOMA “No person may be required to perform, induce, or participate in medical procedures which result in an abortion” (OKLA. STAT. ANN. tit. 63, § 1-741 (LexisNexis 2009))

OREGON “No hospital employee or member of the hospital medical staff is required to participate in any termination of a pregnancy” (OR. REV. STAT. § 435.485(2) (2007))

PENNSYLVANIA “[N]o medical personnel or medical facility, nor any employee, agent or student thereof shall be required . . . to aid, abet, or facilitate performance of an abortion or dispensing of an abortifacient” (18 PA. CONS. STAT. § 3213(d) (2009))

RHODE ISLAND “A physician or any other person . . . shall not be required to participate in the medical procedures which result in the abortion” (R.I. GEN. LAWS § 23-17-11 (2009))

SOUTH CAROLINA “No physician, nurse, technician or other employee of a hospital, clinic, or physician shall be required to recommend, perform or assist in the performance of an abortion” (S.C. CODE ANN. § 44-41-50(a) (2008))

SOUTH DAKOTA “No physician, nurse, or other person who refuses to perform or assist in the performance of an abortion shall be liable to any person” (S.D. Codified Laws § 34-23A-12 (2009))

TENNESSEE “No physician shall be required to perform an abortion and no person shall be required to participate in the performance of an abortion.” (TENN. CODE ANN. § 39-15-204 (2009))

TEXAS “A physician, nurse, staff member, or employee of a hospital or other health care facility who objects to directly or indirectly performing or participating in an abortion procedure may not be required to directly or indirectly perform or participate in the procedure.” (TEX. OCC. CODE ANN. § 103.001 (2007))

UTAH “A physician or any other person . . . shall not be required to participate in the medical procedures which will result in the abortion” (UTAH CODE ANN. § 76-7-306(1) (2009))

VIRGINIA “[A]ny person who shall state in writing an objection to any abortion . . . shall not be required to participate in procedures which will result in such abortion” (VA. CODE ANN. § 18.2-75 (2009))

WASHINGTON “No person or private medical facility may be required by law or contract in any circumstances to participate in the performance of an abortion” (WASH. REV. CODE ANN. § 9.02.150 (LexisNexis 2009))

WISCONSIN “No hospital, school, or employer may discriminate against any person . . . on the ground that the person refuses to recommend, aid or perform procedures for . . . the removal of a human embryo or fetus” (WIS. STAT. ANN. § 253.09(3) (LexisNexis (2009))

WYOMING “No person shall, in any way, be required to perform or participate in any abortion” (WYO. STAT. ANN. § 35-6-106 (2009))

GUAM “No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any person employed or with staff privileges at a hospital, facility or clinic to directly participate in the induction or performance of an abortion” (GUAM CODE ANN. tit. 9, § 31.22(a) (2008))

VIRGIN ISLANDS “Except in case of emergency, no physician, nurse or any other hospital personnel shall be required to perform, assist or in any other way associate himself with the performance of an abortion” (V.I. CODE ANN. tit. 14, § 154 (2009))