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EXECUTIVE DIRECTOR



February 22, 2008

The Honorable Gayle Harrell
Chair, House Health Quality Committee
214 House Office Building
Tallahassee, FL 32399

Re: Concerns with HB 385

Dear Madame Chair:

We have met on several occasions with representatives of Planned Parenthood to discuss concerns with HB 385/SB 780. We have also met with the House sponsor, and staff of the Senate sponsor. At each of these meetings, representatives of Planned Parenthood participated. At these meetings, we have discussed our concerns with the bills, which are sufficiently serious that if we are unable to address them, we will oppose the legislation. We list the concerns and amendments to address them below.

SECTION 2: TREATMENT FOR SURVIVORS OF RAPE

Problematic Structure and Definitions – Emergency Contraception

As you likely know, Catholic health ministries in Florida are directed to provide compassionate care to victims of sexual assault and to treat them with medications that would prevent ovulation, sperm capacitation or fertilization.¹ The aim is to prevent pregnancy in situations of sexual assault. However, taking action that would have an abortifacient effect is not permitted, because of the direct attack on innocent human life.

Specifically, we are concerned about the term “emergency birth control” and definition used in lines 72-74. We cannot accept a definition that includes “devices” as the current bill does. Intrauterine devices (IUDs) are not the standard of care for treating victims of sexual assault currently, and they clearly have the effect of preventing implantation after fertilization. Any mechanism to “prevent pregnancy after sexual intercourse” is broader than “mechanisms approved by the FDA to prevent pregnancy after sexual assault”.

The bill places a premium on using “factually and medically accurate information” (lines 79-83). The medical and scientific literature overwhelmingly uses the term “emergency contraception” – not “emergency birth control” and the bill should be amended accordingly. We recommend the following amendment:

"Emergency ~~birth control~~ contraception" means any drug or ~~device~~ approved by the United States Food and Drug Administration that delays ovulation or

¹ *Ethical and Religious Directives for Catholic Health Care Services*, United States Conference of Catholic Bishops, #36 (USCCB: Washington), 2001.

~~incapacitates sperm, thereby preventing pregnancy after sexual assault prevents pregnancy after sexual intercourse.~~

(Strike all subsequent references to “emergency birth control” and insert “emergency contraception”.)

Problematic Structure and Definitions – Duties of Providers

Levonorgestrel is effective within 72 hours of sexual assault and United States Food and Drug Administration (FDA) guidelines call for a pregnancy test before administering it. With a pregnancy test, there is a psychological benefit to a woman knowing that she was pregnant *prior* to the assault.

There also needs to be some limit on the providing of these drugs, i.e., no obligation to provide them when provision is contraindicated. In its current form, the bill essentially places the patient’s wishes above the professional judgment of the practitioner. This combined with overly broad terms and definitions are very problematic. Amendments are needed that direct provision of emergency contraception within 72 hours of the assault, that include a pregnancy test in the specified protocol (as FDA guidelines direct) and respect professional clinical judgment to the section beginning at line 89:

(2) DUTIES OF LICENSED PRACTITIONERS AND FACILITIES.--

(a) A health care practitioner licensed under chapter 458, chapter 459, or chapter 464, Florida Statutes, or a health care facility licensed under chapter 395, Florida Statutes, that provides care to a rape survivor shall:

1. Provide each female rape survivor with medically and factually accurate, clear, and concise information concerning emergency birth control, including its indications and contraindications and the risks associated with its use.
2. Inform each female rape survivor of her medical option to receive emergency ~~birth control~~ contraception.

(b) If emergency ~~birth control~~ contraception is requested, the health care practitioner shall immediately provide the female rape survivor with ~~the complete regimen of emergency birth control if she is not already pregnant, the 72-hour effectiveness period has not elapsed and it is not otherwise medically contraindicated.~~

Penalties for Non-Compliance are Overly Severe

Lines 124 to 141 outline penalties for failing to comply with the previous section. Provisions give the Agency for Health Care Administration (AHCA) very broad and vague enforcement powers. Something more reasonable is needed. We suggest striking the section:

~~(4) ENFORCEMENT AND PENALTIES.--In addition to any other remedies provided by law, the agency shall respond to complaints and shall periodically determine, using all available investigative tools, whether a health care facility is in compliance with this section. If the agency determines that a health care facility is not in compliance with this section, the agency shall:~~

~~(a) Impose a fine of \$5,000 per woman who is denied medically and factually accurate and objective information about emergency birth control or who is not offered or provided with emergency birth control.~~

~~(b) Impose a fine of \$5,000 for failure to comply with subsection (2). For every 30 days that a health care facility is not in compliance with subsection (2), an additional fine of \$5,000 shall be imposed.~~

~~(c) After two violations, suspend or revoke the health care facility's license or deny the health care facility's application for a license.~~

SECTION 3 – ACCESS TO CONTRACEPTION AND CONSCIENCE

Our position in treating victims of sexual assault is clear: treat them in their entirety with compassion, and help to avoid pregnancy without harming an innocent human being that has been conceived. In the areas of family planning and abortion, there is precedent in Florida law to establish conscience protection. In lines 142 to 147 of the bill remove abortion-related conscience protection outlined in Ch. 390. Provisions to remove protection must be deleted:

~~Section 3. Access to contraception.--~~

~~(1) For all purposes, "contraception" means any drug or device approved by the United States Food and Drug Administration to prevent pregnancy.~~

~~(2) The provision of contraception shall not be subject to or governed by chapter 390, Florida Statutes.~~

While Catholic health ministries comply with the current standard of care morally, there is some possibility that landscape may change (e.g., perhaps in the future, the medical standard of care will include inserting IUDs in children who might be susceptible to another assault new drugs might be categorized as “emergency contraception” that are clearly abortifacient or clearly act to impede implantation of the embryo, etc.). This uncertainty and unwavering concern for human life conceived by rape require that the bill contain meaningful conscience protection.

A number of states that have adopted emergency contraception (EC) laws have broad health care right of conscience protections that are applicable in these situations. Florida does not currently. However, as already noted, there is precedent for conscience protection under Florida law relative to: 1) abortion, 2) family planning services, 3) end-of-life care, and 4) participation in executions.

To address the situation, we recommend the following amendment: at line 142:

(5)CONSCIENCE PROTECTION FOR HEALTHCARE PROVIDERS. No healthcare facility licensed by the state of Florida under chapter 395, Florida Statutes and no health care practitioner licensed under chapter 458, chapter 459, or chapter 464, Florida Statutes that provides care to a rape survivor shall be required to provide medications or treatments when such action violates conscience. Such conscience may include the expectation that a medication or treatment may destroy a fertilized ovum or developing human being.

SECTION 4 – PATIENT PROTECTION

Significant Changes to Pharmacy Practice for All Pharmacies

The changes outlined in Section 4 provide significant changes to pharmacy policy in Florida law. While in some way, the bill outlines policies relative to conscience that have been adopted by a number of pharmacies, there are other pharmacies for which these provisions would create new and substantial burdens.

This bill also places new obligations on every pharmacy to ensure a customer can obtain any approved pharmaceutical contraceptive if it stocks any single contraceptive. This may circumvent purchasing policies that are in place across the industry and places a new obligation on pharmacists to “transfer” prescriptions. Prescriptions belong to the customer – not the pharmacist. While pharmacists often assist in obtaining prescriptions they do not stock, they are not subject to a mandate as outlined in the bill. It may also eliminate age requirements relative to the over-the-counter availability of emergency contraception.

Concerns with Contraception & Relation to Abortion

Certainly, we and many others oppose elective contraceptive use because of harmful effects on women and families. The suggestion that there is insufficient access to contraceptives to prevent abortions is certainly dubious, especially considering that according to the Guttmacher Institute, 54% of women who seek abortions were using contraception the month they became pregnant.

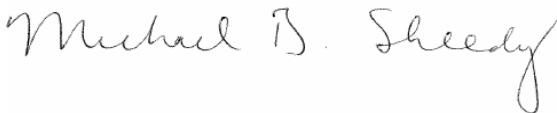
It is our position that increased access to contraceptives is not the best way to decrease abortions through public policy. Indeed, even many supporters of abortion have suggested that by increasing access to contraception, a society will increase its numbers of abortions. Policies that decrease abortions and the rate of abortion include addressing the reasons women cite for having abortions and parental involvement laws. Studies show that such policies work.

For these reasons, this section of the bill should be deleted.

CONCLUSION

Thank you very much for considering our concerns with HB 385.

Sincerely,



Michael B. Sheedy
Associate Director for Health

cc: The Honorable Representative Audrey Gibson