

August 22, 2008

Protections Set for Antiabortion Health Workers; Opponents Denounce Proposed Regulation Allowing Federal Officials to Pull Funding

By Rob Stein

The Bush administration yesterday announced plans to implement a controversial regulation designed to protect doctors, nurses and other health-care workers who object to abortion from being forced to deliver services that violate their personal beliefs.

The rule empowers federal health officials to pull funding from more than 584,000 hospitals, clinics, health plans, doctors' offices and other entities if they do not accommodate employees who refuse to participate in care they find objectionable on personal, moral or religious grounds.

"People should not be forced to say or do things they believe are morally wrong," Health and Human Services Secretary Mike Leavitt said. "Health-care workers should not be forced to provide services that violate their own conscience."

The proposed regulation, which could go into effect after a 30-day comment period, was welcomed by conservative groups, abortion opponents and others as necessary to safeguard workers from being fired, disciplined or penalized in other ways. Women's health advocates, family planning advocates, abortion rights activists and others, however, condemned the regulation, saying it could create sweeping obstacles to a variety of health services, including abortion, family planning, end-of-life care and possibly a wide range of scientific research. [...]

The regulation drops the most controversial language in a draft version that would have explicitly defined abortion for the first time in a federal law or regulation as anything that interfered with a fertilized egg after conception. But both supporters and critics said the regulation remains broad enough to protect pharmacists, doctors, nurses and others from providing birth control pills, Plan B emergency contraception and other forms of contraception, and explicitly allows workers to withhold information about such services and refuse to refer patients elsewhere.

"The Bush administration's proposed regulation poses a serious threat to women's health care by limiting the rights of patients to receive complete and accurate health information and services," said Cecile Richards of the Planned Parenthood Federation of America. "Women's ability to manage their own health care is at risk of being compromised by politics and ideology."

Leavitt said he requested the new regulation after becoming alarmed by reports that health-care workers were being pressured to perform duties they found repugnant. He cited moves by two professional organizations for obstetricians and gynecologists that he said might require doctors who object to abortions to refer patients to other physicians who would provide them.

An early draft of the regulation that leaked in July triggered a flood of criticism from women's health activists, family planning advocates, members of Congress and others. Concern focused on fears that the definition of abortion could be interpreted to include many forms of widely used contraception.

“Words in that draft led some to misconstrue the department’s intent,” Leavitt told reporters during a telephone news conference. “This regulation . . . is consistent with my intent to focus squarely on the issue of conscience rights. This specifically goes to the issue of abortion and conscience.”

But when pressed about whether the regulation would protect health-care workers who consider birth control pills, Plan B and other forms of contraception to be equivalent to abortion, Leavitt said: “This regulation does not seek to resolve any ambiguity in that area. It focuses on abortion and focuses on physicians’ conscience in relation to that.”

Both supporters and critics said the language remains broad enough to apply to contraceptives, as well as many other areas in medicine.

“I think this provides broad application not just to abortion and sterilization but any other type of morally objectionable procedure and research activity,” said David Stevens of the Christian Medical and Dental Association. “We think it’s badly needed. Our members are facing discrimination every day, and as we get into human cloning and all sorts of possibilities, it’s going to become even more important.”

Leavitt stressed that there was nothing in the regulation that would prevent any organization from providing any type of care.

“There is nothing in this rule that would in any way change a patient’s right to a legal procedure,” he said.

The regulation, which would cost more than \$44 million to implement, was aimed at enforcing several federal laws that have been on the books since the 1970s and were aimed primarily at protecting doctors and nurses who did not want to perform abortions in the wake of the Supreme Court’s *Roe v. Wade* decision, Leavitt said.

But critics said they remained alarmed at the scope of the regulation, which could apply to a wide range of health-care workers. For example, the regulation would cover “participating in any activity with a reasonable connection to the objectionable procedure, including referrals, training, and other arrangements for offending procedures.

“For example, an operating room nurse would assist in the performance of surgical procedures; an employee whose task it is to clean the instruments used in a particular procedure would be considered to assist in the performance of the particular procedure,” the regulation states.