

Let Women Die

By Maya M. L. Kushner

“Let Women Die” – this is how many pro-choice organizations refer to House bill 358, which passed on October 13, 2011, and its counterpart, S. 877, which will soon be voted on in the Senate. Introduced by Congressman Joseph Pitts (R-PA), this bill is officially known as the Protect Life Act. Supporters of this bill claim that its passage will ensure that no federal money is used to fund abortions and related services, except in cases of rape, incest, and where the life of the mother is in danger. A similar piece of legislation was introduced by Congressman Pitts in 2009, when the Stupak-Pitts amendment was added to the Affordable Health Care for America Act (AHCAA). The amended AHCAA passed in the House, but not in the Senate. Instead, the Senate passed a similar act: the Patient Protection and Affordable Care Act (PPACA), but it notably did not include the Stupak-Pitts amendment or any similar amendments. The House eventually abandoned AHCAA in favor of PPACA, and President Obama signed PPACA into law on March 23, 2010. Supporters of H.R. 358 and S. 877 argue that the bills are simply a restatement of the Stupak-Pitts Amendment, aimed at closing loopholes for federal funding of abortion services. The main piece of legislation currently governing the federal funding of abortion services is the Hyde Amendment. This amendment isn’t a stand-alone statute or part of a statute, but rather a rider that has been often added to annual appropriation bills since 1976, and applies to funds allocated to the Department of Health and Human Services. The Hyde Amendment prohibits the use of certain federal funds for abortion services. For example, a patient cannot use her Medicaid benefits to pay for abortion. Language excepting cases of rape, incest, and danger to the mother’s life was added in 1977, but varies with each rider passed.

The Hyde Amendment does leave some financial loopholes. First, under the IRS code Section 36B, individuals are able to claim, as tax credit, their health insurance premiums, if they are enrolled in the exchange program. The exchange program is set forth in the PPACA Section 1311, and assists qualifying individuals and small employers to obtain health insurance for themselves and their employees (in the case of small businesses). Second, Section 1402 of PPACA sets forth certain cost-sharing between the federal government and an individual, regarding her health insurance coverage. Primarily, it aims to reduce the out-of-pocket minimums for low-income individuals. Thus, there are federal subsidies for healthcare plans that may include abortion services. H.R. 358 specifically closes these loopholes, and also generally prohibits any federal funding to be used for

abortion services, except in cases of rape, incest, or when the mother's life is in danger. In this respect, it is similar to the Stupak-Pitts Amendment. There are, however, two problems.

The first problem is that there are reasons the Stupak-Pitts Amendment was not passed in the first place. The financial loopholes left by the Hyde Amendment concern programs that primarily serve low-income individuals who are already at a high risk of being unable to afford necessary medical care. Furthermore, a study of the Stupak-Pitts Amendment by the George Washington University Medical School Department of Health Policy concluded that the amendment would effectively eliminate coverage for medically indicated abortions for all women, not just those receiving healthcare subsidies and participating in exchange programs. This is because insurance companies may not be able to offer abortion service coverage if they are a part of an exchange, even if the woman seeking the coverage is paying for the insurance entirely with her own funds.

The second problem with H.R. 358 is that it goes drastically beyond simply restating Stupak-Pitts. Besides restricting funding even further, it would also expressly prohibit any federal or private mandate to provide or ensure abortion services. Put simply, public and private healthcare institutions and providers will no longer be required to perform abortions, even in emergencies. Currently, emergency abortions are governed by the Emergency Medical Treatment and Active Labor Act (EMTALA) of 1986. Under this act, healthcare professionals are required to stabilize the condition of a person requiring emergency medical treatment, which includes performing an abortion, if that would save the mother's life. If they are unable to perform the emergency abortion, they are required to transfer her to an institution which can. H.R. 358 clearly contradicts EMTALA. Under this bill, if a woman comes to a doctor and requires an emergency abortion to save her life, a doctor can choose to refuse to perform this abortion and refuse to refer or transfer her to a doctor that will. He can simply choose to let her die.

This bill is certainly worrying, especially since it has already passed in the House. However, it is unlikely that it will pass in the Senate, because the Senate has previously rejected the Stupak-Pitts Amendment, and the S. 877 goes further than the Stupak-Pitts Amendment.

Sources

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