

Obama rescinds “overly broad” Bush-era conscience rule

Human-rights campaigners have welcomed changes to a Bush-era conscience protection rule for health workers that could have put millions of women’s lives at risk. Sharmila Devi reports.

US campaigners for scientific, reproductive, and women’s rights were heartened by the Obama administration’s rescission of a Bush-era conscience regulation last month, which they viewed as potentially providing cover for health-care workers refusing to treat entire groups of people on account of their moral behaviour.

Conscience laws were introduced in the USA in the 1970s soon after abortion became legal and they say that federally funded hospitals and clinics cannot force medical personnel to do abortions or sterilisations if that would be contrary to their “religious beliefs or moral convictions”.

Campaigners were concerned that changes to the regulation introduced in the final days of the George W Bush administration in 2008, would have widened these laws to include anyone with an objection to certain behaviours, for example, by enabling a receptionist to refuse to make an appointment for an abortion, a doctor to refuse fertility treatment to gays and lesbians, or a pharmacist to refuse to fill a prescription for a potential abortifacient.

“The 2008 regulation put millions of women at risk, and undermined the ability of providers to establish clear protocols to ensure that patients get the health care they need, by intentionally confusing birth control with abortion and extending the ‘conscience rights’ to an extremely broad group of health-care workers”, said Susan Berke Fogel, a director at the National Health Law Programme, a public interest law firm working for the poor and those at risk.

In the early days of President Barack Obama’s administration, officials indicated they would re-examine the conscience regulation and they received more than 300 000 comments, at least two-thirds of which were in favour of

retaining it. After a review, the Health and Human Services (HHS) department said the regulation was problematic. “The final conscience protection rule being issued...by HHS reaffirms the department’s commitment to long-standing federal conscience statutes by maintaining and building upon provisions of the Bush administration rule that established an enforcement process for federal conscience laws, while rescinding the definitions and terms of the previous rule that caused confusion and could be taken as overly broad”, the HHS said in a statement.

“The 2008 regulation put millions of women at risk... by intentionally confusing birth control with abortion...”

Longstanding conscience protections will remain in place for doctors and nurses who do not want to do or assist in abortions or sterilisations as will a process allowing health workers who feel their civil rights have been violated to file complaints.

Religious and prolife groups were dismayed by the new changes. J Scott Ries, a vice-president at the 16 000-member Christian Medical Association (CMA), said many doctors might decide to leave the profession rather than risk working against their faith. He cited a survey commissioned by the CMA in 2009 of 2585 faith-based health-care professionals that found that 91% agreed with the statement: “I would rather stop practising medicine altogether than be forced to violate my conscience.” Some 32% of them said they had been “been pressured to refer a patient for a procedure to which [they] had moral, ethical, or religious objections” and 20% of faith-based medical students said they were “not pursuing a career in obstetric or

gynaecology” because of perceived discrimination and coercion in the specialty. Scott rejected the argument that the Bush regulation blurred the definition of contraception and abortion. “My response is where’s the evidence of lack of access to contraception for women?”, he said.

Fogel said the 2008 regulation was particularly burdensome on low-income women who relied on government-funded health plans and were unable to pay out of pocket or travel to another location if contraception and abortion services were restricted. “The revised regulation reinforces statutory protections in Medicaid and other federal programmes that cannot be ignored because of their moral or religious objections”, she said.

Campaigners are still worried, however, about proposed legislation under discussion in the Republican-controlled House of Representatives that would restrict abortion and bring about the same problems as the Bush-era conscience regulation. At least three bills are under consideration in Congress that would restrict abortion: the Abortion Non-Discrimination Act; No Taxpayer Funding for Abortion Act; and Protect Life Act.

A hard-hitting editorial called “The War on Women” in *The New York Times* at the end of February urged action against the proposed changes. “These are treacherous times for women’s reproductive rights and access to essential health care”, it said. “House Republicans mistakenly believe they have a mandate to drastically scale back both even as abortion warfare is accelerating in the states. To stop them, President Obama’s firm leadership will be crucial. So will the rising voices of alarmed Americans.”

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