



Analysis of Illinois SB 1564 - Detrimental to Both Healthcare Providers and Patients

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SB 1564 as amended by Senate Amendment 3 undermines the freedom of conscience and invites intimidation and legal action against pro-life healthcare providers, and threatens the core mission of pregnancy resource centers that offer women alternatives to abortion.

AUL RECOMMENDATION: Vote **NO**

SB 1564 as amended by Senate Amendment 3 erodes the freedom of conscience for healthcare providers—including the right not to counsel or refer for conscience-violating services—which has been statutorily protected in Illinois for nearly 20 years.¹ Instead, it creates new obligations for healthcare providers, including pregnancy resource centers that offer women alternatives to abortion, to participate in conscience-violating activities.

Under current law, healthcare providers are protected against participating in any phase of a healthcare service that would violate their sincerely held moral convictions, including “counselling, referrals, or any other advice ...” The law respects a healthcare provider’s conscientious determination of what constitutes his or her complicity.

That same existing law already ensures patient safety is not compromised by clarifying that physicians are not relieved from a duty to “inform his or her patient of the patient’s condition, prognosis, and risks...” The law also clearly provides that healthcare personnel are not relieved from “obligations under the law of providing emergency medical care.”

SB 1564 as amended by Senate Amendment 3 uses the force of government to impose new and unnecessary obligations that are contrary to this longstanding law that appropriately protects both the freedom of conscience and patient care.

Contrary to existing law, SB 1564 as amended by Senate Amendment 3 obligates a healthcare facility, physician, or healthcare provider to participate in potentially conscience-violating services by requiring the provider to refer or transfer a patient or provide information to the patient regarding other healthcare providers who the provider reasonably believes offer the objected-to healthcare service. While this may be the existing practice for many healthcare facilities and providers, mandating it as a legal obligation would eliminate the law’s respect for the sincerely held moral convictions of a healthcare provider for whom these actions constitute complicity with the objected-to service.

The bill further creates a duty to inform patients of “legal treatment options” and “benefits of treatment options.” This is an unnecessary and potentially dangerous new obligation that may

¹ 745 ILCS 70.

later be used by abortion advocacy groups as the basis for a lawsuit against healthcare providers whose consciences are violated by suggesting abortion—a “legal treatment option” service—to pregnant patients.

Health care professionals would be required to discuss the “benefits” of abortion and information on where to obtain abortions. Pregnancy resource centers that offer “health care” such as ultrasounds, and perhaps even pregnancy testing, would be forced to violate their core mission under this proposal.

Illinois’ longstanding law protecting the freedom of conscience broadly defines “health care facility” “health care personnel” and “health care” to ensure its goal of comprehensive respect. SB 1564’s utilization of these broad definitions means its coercive reach extends to pregnancy resource centers whose core mission is providing alternatives to abortion.

The bill additionally requires that this information on “legal treatment options” be given in a “timely manner” without defining what constitutes “timely.” All abortions, whether accomplished by invasive surgery or potent chemicals, pose significant risks to women’s health.² It is also undisputed that these risks increase with gestational age.³ Therefore, “timely” may be construed by abortion advocacy groups to mean “immediate” with regards to abortion information, as any delay would potentially increase abortion’s risks.

Although not expressly applied to the new duties regarding referral, transfer, and information, the bill does contain a definition of “undue delay” that is defined as “unreasonable delay that causes impairment of the patient’s health.” Problematically, it fails to define “health.” In the context of abortion, federal courts have defined “health” expansively. In *Doe v. Bolton*,⁴ decided the same day as *Roe v. Wade*,⁵ the U.S. Supreme Court created an unlimited definition of maternal “health.” The Court wrote, “[T]he medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well being of the patient. All these factors may relate to health.” The Court held that the abortionist alone was allowed to make this judgment.

² See e.g. John M. Thorp, Jr., *Public Health Impact of Legal Termination of Pregnancy in the US:40 Years Later*, SCIENTIFICA 2013, available at <http://www.hindawi.com/journals/scientifca/2012/980812/cta/> (last visited Apr. 16, 2015); see also Mailee R. Smith and Dr. Byron Calhoun, *Significant Potential for Harm: Growing Medical Evidence of Abortion’s Negative Impact on Women*, DEFENDING LIFE 2013; The websites for abortion organizations such as Planned Parenthood and the National Abortion Federation acknowledge these risks of abortion. See, e.g., Planned Parenthood Federation of America, In-Clinic Abortion Procedures, <http://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures> (last visited Apr. 16, 2015); The Abortion Pill, <http://www.plannedparenthood.org/learn/abortion/the-abortion-pill> (last visited Apr. 16, 2015); National Abortion Federation, Abortion Facts, available at <http://prochoice.org/education-and-advocacy/about-abortion/abortion-facts/> (last visited Apr. 16, 2015).

³ See L.A. Bartlett et al., *Risk factors for legal induced abortion-related mortality in the United States*, OBSTETRICS & GYNECOLOGY 103(4):729-37 (2004). “The risk of death associated with abortion increases with the length of pregnancy, from one death for every one million abortions at or before eight weeks gestation to one per 29,000 abortions at sixteen to twenty weeks and one per 11,000 abortions at twenty-one or more weeks.”

⁴ 410 U.S. 179 (1973).

⁵ 410 U.S. 113 (1973).

Abortion proponents such as the American Civil Liberties Union (ACLU), the Center for Reproductive Rights (CRR), and Planned Parenthood already frequently file lawsuits aimed at intimidating and discriminating against pro-life healthcare providers and facilities. SB 1564 as amended by Senate Amendment 3 provides fodder for their coercive litigation and intimidation tactics, as well as their anti-conscience agenda.

SB 1564 appears to violate federal conscience law, endangering the state’s federal funding.

SB 1564 violates longstanding federal conscience laws and would jeopardize Illinois' federal funding including Medicaid and Medicare reimbursements. 42 U.S.C. § 238n prohibits requiring health care entities or physicians to refer or arrange for abortions. It declares:

(a) In general

The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—

- (1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;
- (2) the entity refuses to make arrangements for any of the activities specified in paragraph (1)[.]

...

(c) For purposes of this section:

- (1) The term “financial assistance”, with respect to a government program, includes governmental payments provided as reimbursement for carrying out health-related activities.
- (2) The term “health care entity” includes an individual physician....

SB 1564, however, requires in some cases that if a healthcare facility or physician objects to providing abortion they must arrange for abortion by another provider in the facility, arrange for abortion by a transfer, refer the patient, or arrange for a referral by providing information. All of these requirements violate 42 U.S.C. § 238n on its face, by discriminating against healthcare entities because they will not arrange for, refer for, or make arrangements for a referral for abortions.

SB 1564’s violations of 42 U.S.C. § 238n would subject Illinois to enforcement in court or through administrative proceedings through the U.S. Department of Health and Human Services Office of Civil Rights, which has a complaint process to enforce 42 U.S.C. § 238n. Enforcement would subject Illinois to loss of all of the state’s “federal financial assistance,” including (but not limited to) the “reimbursements” Illinois receives through federal Medicaid, Medicare, and other federal health programs.

SB 1564’s attack on the freedom of conscience advances a radical ideology and fails to meet any demonstrated need.

There is no demonstrated need for SB 1564’s erosion of the freedom of conscience that has been protected by Illinois law for decades. Rather, the bill fits a nation-wide pattern of ideological discrimination advanced by abortion proponents.

For example, the factual findings in *Stormans v. Selecky*,⁶ a challenge to anti-conscience Washington State Board of Pharmacy rules, document that purported “refusal stories” used to advance the coercive rules were not the result of natural encounters with access problems, but were “manufactured” by Planned Parenthood and other abortion advocates.⁷ In fact, the court in *Stormans* found, “no Board witness, or any other witness, was able to identify any particular community in Washington—rural or otherwise—that lacked timely access to emergency contraceptives or any other time-sensitive medication.”

SB 1564’s attack on the freedom of conscience would be counterproductive for patient access to care in Illinois.

Protecting the freedom of conscience of healthcare providers and institutions is necessary to avoid added stress on an already overtaxed healthcare system.

Experts project that current shortages of physicians, nurses, and other healthcare professionals will worsen, failing to meet future requirements. There is an important public health interest in ensuring the protection of conscience rights; forcing healthcare professionals to choose between their consciences and their careers will only heighten the current healthcare provider shortage.

In a survey conducted in 2008, 91 percent of faith-based physicians agreed with the statement, “I would **rather stop practicing medicine** altogether than be forced to violate my conscience.”⁸

Protecting the freedom is critical to slowing, not exacerbating, shortages of healthcare professionals and ensuring access to quality health care in Illinois.

⁶ *Stormans Inc. v. Selecky*, 844 F. Supp. 2d 1172 (W.D. Wash. 2012) [hereafter *Stormans* opinion]; Findings of fact and conclusions of law at *Stormans, Inc. v. Selecky*, 2012 U.S. Dist. LEXIS 22375 (W.D. Wash. Feb. 22, 2012). [hereafter *Stormans* findings]

⁷ *Id.* at ¶ 99.

⁸ See Freedom2Care, Two National Polls Reveal Broad Support for Conscience Rights in Health Care (April 2009), available at <http://freedom2care.org/learn/page/polls-april-2009>