Massachusetts Statute Highlights Controversy over Access to Emergency Contraception

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In September 2005 Massachusetts became one of eight states to permit pharmacists to distribute emergency contraception without a doctor’s prescription. The Bill Providing Timely Access to Emergency Contraception also required Massachusetts hospitals to give victims of sexual assault information about and access to emergency contraception.¹ The Massachusetts Legislature overrode a veto by Governor Mitt Romney, who explained his opposition to the bill in the following words:

Because the way this drug works would not only prevent conception – with which I would not have a problem – but it also, in some cases, terminates life after conception. And therefore it ceases in that case to be a contraceptive bill. It becomes an abortion bill, and I indicated I wouldn’t change abortion laws and I won’t violate that promise.²

Emergency contraception – also known as Plan B – is a heavy dose of hormones that should be taken within 72 hours of sexual intercourse. It protects against pregnancy by stopping ovulation, preventing fertilization of the egg, or blocking implantation of the embryo in the uterus. Unlike RU-486, Plan B is not effective if implantation or pregnancy has already occurred.³

Like Governor Romney, some opponents of emergency contraception believe that life begins at conception and that preventing implantation is morally equivalent to abortion. In contrast, emergency contraception supporters, including the Massachusetts Legislature, state that victims of sexual assault should have access to “any drug approved by the federal Food and Drug Administration as a contraceptive method for use after sexual intercourse,” a definition that includes Plan B, which was approved by the FDA in 1999.⁴

The morality of emergency contraception has recently been in contention in numerous states across the country. After some Illinois pharmacists refused to fill or even transfer emergency contraception prescriptions, for example, Governor Rod Blagojevich issued an administrative rule requiring pharmacists who sell any contraceptive to fill the emergency prescriptions without delay. Georgia and three other states, in contrast, protect the right of pharmacists to refuse to dispense emergency contraceptives for moral and religious reasons.⁵

⁵ JODY FEDER, FEDERAL AND STATE LAWS REGARDING PHARMACISTS WHO REFUSE TO DISPENSE CONTRACEPTIVES, CRS REPORT RS22293, at 3-4 (Oct. 7, 2005), available at
Massachusetts requires pharmacists to fill all valid prescriptions without exception. Nonetheless, the hospital provisions of the new legislation attracted controversy, even after the Legislature overrode the veto, when the State Department of Public Health ruled that the new act did not apply to private hospitals. According to the Department, private hospitals could opt out of coverage because they were governed by an earlier Massachusetts statute that allows private hospitals to refuse for moral or religious reasons to perform abortions. Such “conscience clauses” were passed by Massachusetts and most other states after the United States Supreme Court’s 1973 decision legalizing abortion in Roe v. Wade.

In Massachusetts, it is uncertain if the new bill invalidates the earlier conscience clause legislation or if hospitals retain the right to opt out of providing emergency contraception to victims of sexual assault. Initially Governor Romney sided with the Department of Public Health. After his legal counsel decided that the new law supersedes the old, however, the Governor expressed support for requiring all hospitals to provide access to emergency contraception.

Catholic hospital administrators have expressed particular concern about the new legislation. Because Catholicism teaches that life begins at conception, Plan B’s possible prevention of implantation can be viewed as an abortion under church teaching. A spokesman for the Massachusetts Catholic Conference argues that the old statute is still valid while legislators and Massachusetts Attorney General Thomas Reilly believe that all hospitals must follow the new law.

Litigation is expected to resolve the controversy.

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