



### **Lift the Ban on Privately Funded Abortion Services for Military Women Overseas**

- Since 1979, the Department of Defense (DoD) appropriations bills have prohibited the use of federal funds for abortion services at overseas military hospitals in almost all cases. In 1985, the ban was made permanent by the DoD authorization bill.<sup>1</sup> In 1988, DoD issued an administrative order – without congressional consultation – extending the funding ban to prohibit women from obtaining abortion care with their own funds at military facilities overseas.<sup>2</sup> Prior to the 1988 restrictions, women would have to pay for the procedures themselves.
- In 1993, President Clinton issued an executive order lifting the ban on privately funded abortion services, permitting abortion care to be provided at U.S. military hospitals overseas if paid for with private, non-DoD funds. The executive order allowed abortion services to be made available at military medical facilities overseas within the framework set up in *Roe v. Wade*, and in keeping with other laws and regulations governing military medical care.<sup>3</sup>
- In 1995, an anti-choice majority in Congress wrote into permanent law, through the FY'96 Department of Defense authorization act, a ban on privately funded abortion services at overseas military facilities for U.S. servicewomen, except for cases where a woman is the victim of rape or incest. The DoD will only pay for abortion services in cases of life endangerment.<sup>4</sup>
- According to congressional sources, more than 100,000 women – active service members, spouses and dependents of military personnel – live on military bases overseas and rely on military hospitals for their health care.<sup>5</sup> The ban on privately funded abortion care discriminates against women and their families who have volunteered to serve their country by prohibiting them from exercising their legally protected right to choose simply because they are stationed overseas.
- Prohibiting women from using their own funds to obtain abortion services at overseas military facilities endangers their health. Women stationed overseas depend on their base hospitals for medical care, and are often situated in areas where local facilities are inadequate or unavailable. A 2002 General Accounting Office (GAO) report confirms that, "in overseas locations, DoD beneficiaries may face medical practice, language, and cultural differences with host nation care that may make them reluctant to seek care."<sup>6</sup> The current-law policy also may cause a woman facing a crisis pregnancy to seek out an illegal, unsafe procedure.
- The current policy humiliates servicewomen by forcing them to seek the approval of their commanding officer in order to travel back to the United States for abortion services. According to the GAO report, many of these commanding officers "have not been adequately

trained about the importance of women's basic health care...DoD officials said that, lacking this understanding, some commanders may be reluctant to allow active duty members – both men and women – time away from their duty station to obtain health-care services."<sup>7</sup>

- This dynamic may deter servicewomen from seeking basic health-care services. The GAO further reports that, "For active duty women, explaining their specific ailment to their commanding officer (usually male) or appearing like they need special treatment may make them reluctant to seek the care they need."<sup>8</sup>
- As a result of these factors, the current-law ban may cause a woman stationed overseas who is facing an unintended pregnancy to be forced to delay the procedure for several weeks until she can travel to a location where safe, adequate care is available. For each week an abortion is delayed, the potential risk to the woman's health increases.
- If the ban is lifted, no taxpayer dollars would be spent covering the costs of abortion care at overseas military facilities. Following DoD policy for elective procedures excluded from the TRICARE benefit, the woman would be "responsible for all costs associated with the non-covered procedure," including institutional overhead costs. Furthermore, the woman would be required to prepay for her abortion care.<sup>9</sup>
- While the DoD policy respects host nation laws regarding abortion,<sup>10</sup> to the extent feasible and consistent with legal obligations, women stationed overseas should have the same access to abortion services as do women in the United States.
- All three branches of the military already have refusal clause provisions which permit medical personnel who have moral, religious or ethical objections to abortion or family-planning services to opt-out of participating in the procedure.<sup>11</sup> If the restriction is lifted, these "conscience clauses" would remain intact.
- While the Bush administration supported the anti-choice policy, the Department of Defense previously opposed this harmful restriction. In a May 7, 1999 letter to Congress, then-Assistant Secretary for Defense Dr. Sue Bailey stated, "The Department (of Defense) believes it is unfair for female service members, particularly those members assigned to overseas locations, to be denied their constitutional right to the full range of reproductive health care."<sup>12</sup>

#### **FY'07 CONGRESSIONAL ACTION**<sup>13</sup>

- April 26, 2006: House Armed Services Military Personnel Subcommittee approves the FY'07 National Defense Authorization Act. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.

- May 2, 2006: Senate Armed Services Personnel Subcommittee approves the bill. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- May 3, 2006: House Armed Services Committee approves the bill. Rep. Susan Davis (D-CA) offers an amendment to repeal the ban on privately funded abortion care at overseas military hospitals. The amendment fails, 18-39.
- May 9, 2006: Senate Armed Services Committee approves the bill. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- May 10, 2006: During House consideration of the bill, Rep. Susan Davis offers an amendment to repeal the ban on privately funded abortion care at overseas military hospitals. The amendment fails, 191-237.
- May 11, 2006: House approves the bill.
- June 22, 2006: Senate approves the bill. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- September 29, 2006: House-Senate conferees issue a conference report which does not include language to repeal the ban on privately funded abortion services for military women overseas.
- September 29, 2006: House passes conference report.
- September 30, 2006: Senate passes conference report.
- October 17, 2006: President Bush signs the bill into law – P.L. 109-364.

#### **FY'08 CONGRESSIONAL ACTION<sup>14</sup>**

- May 2, 2007: House Armed Services Military Personnel Subcommittee approves the FY'08 National Defense Authorization Act. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- May 9, 2007: House Armed Services Committee approves the bill. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- May 17, 2007: House approves the bill.
- May 22, 2007: Senate Armed Services Personnel Subcommittee approves the bill. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- May 24, 2007: Senate Armed Services Committee approves the bill. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- October 1, 2007: Senate approves the bill.
- December 6, 2007: House-Senate conferees issue a conference report which does not include language to repeal the ban on privately funded abortion services for military women overseas.
- December 12, 2007: House passes conference report.
- December 14, 2007: Senate passes conference report.
- December 28, 2007: President Bush vetoes the bill over an unrelated issue.

- January 28, 2008: President Bush signs the bill into law – P.L. 110-181.

#### **FY'09 CONGRESSIONAL ACTION<sup>15</sup>**

- May 7, 2008: House Armed Services Military Personnel Subcommittee approves the FY'09 National Defense Authorization Act. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- May 12, 2008: Senate Armed Services Committee approves the bill. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- May 16, 2008: House Armed Services Committee approves the bill. No attempt is made to repeal the ban on privately funded abortion services for military women overseas.
- May 22, 2008: House approves the bill.
- September 17, 2008: Senate approves the bill.
- September 24, 2008: House approves amended Senate bill.
- September 27, 2008: Senate approves House amended bill.
- October 14, 2008: President Bush signs the bill into law – P.L.110-417.

#### **January 1, 2009**

#### **Notes:**

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<sup>1</sup> Congressional Research Service, *Abortion Services and Military Medical Facilities* (Apr. 24, 2002).

<sup>2</sup> Congressional Research Service, *Abortion Services and Military Medical Facilities* (Apr. 24, 2002).

<sup>3</sup> Congressional Research Service, *Abortion Services and Military Medical Facilities* (Apr. 24, 2002).

<sup>4</sup> Congressional Research Service, *Abortion Services and Military Medical Facilities* (Apr. 24, 2002).

<sup>5</sup> Press Release, Rep. Jane Harman, *National Defense Authorization Act for Fiscal Year 2003* (May 9, 2003).

<sup>6</sup> United States General Accounting Office, *Defense Health Care; Health Care Benefit for Women Comparable to Other Plans* (May 2002).

<sup>7</sup> United States General Accounting Office, *Defense Health Care; Health Care Benefit for Women Comparable to Other Plans* (May 2002).

<sup>8</sup> United States General Accounting Office, *Defense Health Care; Health Care Benefit for Women Comparable to Other Plans* (May 2002).

<sup>9</sup> Email from Richard P. Starrs, LTC OCLL, United States Army, to Patricia Zavala, Legislative Assistant to Rep. Susan Davis (May 15, 2006) (on file with NARAL Pro-Choice America).

<sup>10</sup> Congressional Research Service, *Abortion Services and Military Medical Facilities* (Apr. 24, 2002).

<sup>11</sup> Congressional Research Service, *Abortion Services and Military Medical Facilities* (Apr. 24, 2002).

<sup>12</sup> Letter from Dr. Sue Bailey, Assistant Secretary of Defense for Health Affairs to The Honorable Loretta Sanchez (May 7, 1999) (on file with NARAL Pro-Choice America).

<sup>13</sup> H.R.5122, 109th Cong. (2006) (enacted).

<sup>14</sup> H.R.1585, 110th Cong. (2007); H.R. 4986, 110th Cong. (2008) (enacted).

<sup>15</sup> S.3001, 110th Cong. (2008) (enacted).