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**Abortion and Military Facilities: The Effect of
the Burris Amendment in the Department of
Defense Authorization Bill**

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Abortion and Military Facilities: The Effect of the Burris Amendment in the Department of Defense Authorization Bill

The U.S. Senate version of the Department of Defense (DOD) authorization bill for FY2011 contains a provision that would change the law regarding abortion in military facilities.

Under current law, abortions may not be performed by DOD medical personnel or in Department of Defense medical facilities except when the life of the mother is at risk, or when the pregnancy is the result of rape or incest. A woman is permitted to leave the base and make her own private arrangement for an elective abortion.

The “Burris Amendment,” added to the DOD authorization bill by the Senate Armed Services Committee, would strike from the law the prohibition on use of military facilities for elective abortions. The amendment does not change a separate provision of the law that prohibits the use of DOD funds for abortion.

The DOD authorization bill may receive consideration by the full Senate shortly after it returns from recess in mid-September, or after the mid-term elections in November.

Background:

Since 1978, the use of DOD funds for elective abortions has been restricted or prohibited by federal law and policy.¹ Initially, abortions were performed in military facilities, provided they were privately funded.

On June 21, 1988, a memorandum issued by Dr. William Mayer, then-Assistant Secretary of Defense (Health Affairs), prohibited the use of overseas military medical facilities for abortions.² Dr. Mayer asserted that it would be an “insensitivity to the spirit” of the law to perform abortions at military facilities, though he conceded that it may not violate the letter of the law.³

In 1993, two days after his inauguration, President Bill Clinton reversed the policy. President Clinton criticized the DOD policy as “go[ing] beyond what I am informed the requirements of the statute are.” He directed the Secretary of Defense to immediately reverse the ban and permit “abortion services to be provided, if paid for entirely with non-DOD funds and in accordance with other relevant DOD policies and procedures.”⁴

President Clinton’s policy permitting abortions in military facilities overseas stood from 1993 to 1996. However, during that time, the administration had to seek civilians to perform the abortions – all military physicians refused to perform or assist in elective abortions.⁵

In 1996, Congress passed what is now 10 USC Sec 1093 (b):

Restriction on Use of Facilities – No medical treatment facility or other facility of the Department of Defense may be used to perform an abortion except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.

There have been attempts in Congress to change this provision of the law. The most recent (prior to the Burris Amendment) was an amendment to allow abortions in overseas military facilities that was offered in the House in 2006. It failed by a vote of 191-237.⁶

During the Senate Armed Services Committee mark-up on May 27, 2010, Senator Roland Burris (Illinois) offered an amendment to the Department of Defense authorization bill to strike Section 1093(b) of the U.S. Code. It passed by a 15-12 vote.⁷

Effect of the Burris Amendment:

Since the current law does not distinguish between overseas and domestic military facilities, the effect of the Burris amendment would be world-wide. It would affect military facilities in the United States and abroad.

However, DOD policy requires military facilities to abide by laws in foreign countries.⁸ While abortion is legal and generally available in most countries with American bases (including England, Germany, Japan, and even Turkey), in countries where abortion is illegal, military facilities will still be required to follow those nations' laws.

Looking Ahead:

In order for the bill containing the Burris Amendment to become law, it will have to pass through three steps. First, it must be voted on by the full Senate. Second, there will be a conference committee between the House and Senate committees to reconcile the differences between the House-passed and Senate-passed versions of the bill. Third, the conference report will have to be voted on by each chamber of Congress before it can be signed into law by the President.

The full Senate is expected to take up the bill shortly after Congress returns from recess. The Chairman of the Senate Armed Services Committee, Carl Levin (Michigan), stated on the Senate floor on August 5, 2010 that the full Senate should consider the Defense authorization bill quickly after returning in September, and asked for an agreement to do so.⁹ Senator McCain (Arizona) objected, arguing that the legislation was being used to “move[] forward with a social agenda.” He noted that if the bill becomes law, “abortion [] is going to be performed in military hospitals for the first time in a long time.”

In response to Senator McCain's objection, Senator Levin stated “obviously, we are going to try to get this bill up in September.”

It is expected that at least one amendment will be offered on the Senate floor to strike the Burris Amendment. A straight up-or-down vote on the amendment (or to overcome a motion to table) would require only 51 votes. However, if opponents have to file cloture on the amendment, 60 votes are necessary to get cloture.

Should the full Senate pass the bill, it would then go to conference with the House. It is possible that the Burris Amendment language could be removed in conference. The House version of the bill does not contain the Burris Amendment.¹⁰

After conference, each chamber will have to pass the final conference report in order for it to reach the desk of the President.

Alternatively, it is possible that Congress could opt for a continuing resolution – thus maintaining current law and current spending amounts, without passing the proposed authorization bill.¹¹

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¹ For a history of Congressional treatment of the use of DOD funds for abortion, *see* David F. Burrelli, CRS Report for Congress: Abortion Services and Military Medical Facilities (Updated July 10, 2008), *available at* http://assets.opencrs.com/rpts/95-387_20080710.pdf [hereinafter CRS Report].

² *Abortion is Restricted at Military Hospitals*, N.Y. TIMES, July 19, 1988, at A11, *available at* <http://www.nytimes.com/1988/07/19/us/abortion-is-restricted-at-military-hospitals.html>

³ *Id.*

⁴ President William J. Clinton, Memorandum for the Secretary of Defense, Memorandum on Abortions in Military Hospitals, January 22, 1993; filed with the Office of the Federal Register, *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=46322>

⁵ CRS Report at 8-11.

⁶ Roll call vote available at <http://clerk.house.gov/evs/2006/roll136.xml>

⁷ Senator Ben Nelson (Nebraska) was the only Democrat to vote against the amendment.

⁸ CRS Report at 10.

⁹ A transcript of the exchange between Sen. Levin and Sen. McCain is available at <http://levin.senate.gov/senate/statement.cfm?id=327064>

¹⁰ In July, Congressmen Todd Akin (Missouri) and Gene Taylor (Mississippi) sent a letter to House and Senate leadership signed by 180 members urging them to “reject any language in the DOD Authorization bill for FY11 (or subsequent years) which would weaken or undermine current policy. Expanding abortion in government owned and operated military medical facilities is simply unconscionable and morally unacceptable. Our military facilities should be a place of healing and life-saving. They should not be in the business of destroying the unborn.” Statement released by Rep. Akin and Rep. Taylor *available at*

http://akin.house.gov/index.php?option=com_content&view=article&id=1537:akintaylor-letter-to-oppose-abortion-at-dod-medical-facilities-sent-to-house-and-senate-leadership&catid=25:press-releases&Itemid=74

¹¹ A continuing resolution is a type of appropriations legislation that is used to continue to fund authorizations if individual appropriations bills have not been signed into law by the end of the Congressional fiscal year. It is a joint resolution, and continues to provide funding for existing programs at existing (or reduced) levels.

Related Links

10 U.S.C. §1093

<http://www.law.cornell.edu/uscode/10/1093.html>

Dornan Amendment

<http://www.policyarchive.org/handle/10207/bitstreams/266.pdf>

Burris Amendment

http://www.fed-soc.org/docLib/20100917_111thBurrisAmendment.pdf