Medical Xpress

Study: Health undervalued in reproductive rights debate

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Women's health is increasingly undervalued in conflicts over reproductive rights, including clashes based on moral objections under so-called conscience clauses, a new study by a University of Illinois legal expert found.

Beth Burkstrand-Reid says a review of recent reproductive rights cases shows that judges may shortchange women's health when it is pitted against other legal interests, such as religious freedom, potentially leading to rulings that could put health at risk.

"Judges may understandably be reluctant to decide who wins in a battle between religious freedom, doctor's rights and women's health," she said. "As a result, they may downplay women's health as an interest, and thus fail to fully consider it in their decisions."

Burkstrand-Reid says women's health will remain at risk even if President Obama rescinds a federal conscience rule this month, as expected. Several states have their own laws on the books, she said, and others may consider legislation to fill the federal void.

"What we are seeing is a battle over whether laws should prioritize women's health or if by doing that the government is impermissibly impinging on moral or religious freedoms," she said. "I don't expect that this controversy will go away anytime soon."

Burkstrand-Reid's study, which will appear in the *University of Colorado*

Law Review, found that some courts cite the availability of alternative reproductive health providers or services as proof that women's health will not suffer even in the face of laws that restrict reproductive health care.

That reasoning can be flawed, said Burkstrand-Reid, a visiting professor in the U. of I. College of Law who studies family and gender law.

She cited a ruling that allowed pharmacists to refuse to provide the morning-after pill under certain circumstances based on the judge's reasoning that other pharmacies in the area stocked the contraceptive, thus protecting women's health in the event of a druggist refusal.

But Burkstrand-Reid says the ruling failed to adequately consider the possibility that a woman could become pregnant because of the delay caused by a pharmacist's refusal, or that druggists at the other outlets might also refuse.

"When women need the morning-after pill, the clock is ticking to prevent pregnancy," she said. "In these situations, you can see a direct clash between women's health and assertions of religious freedom. Increased pharmacist refusal to provide contraception and other actions like it are exactly what reproductive health advocates fear happening nationwide if conscience clauses become the norm."

In another case, a judge upheld a law that would shutter a rural abortion provider, citing services available at another clinic 70 miles away as adequately protecting women's interests. But the ruling did not adequately consider factors such as costs or lack of transportation that could potentially delay the procedure and heighten risks, Burkstrand-Reid said.

Other cases blame women themselves when services are denied, such as

when women are refused vaginal delivery and forced instead to have cesarean sections because judges reason they should have addressed that question sooner.

"We pay a lot of attention to questions concerning access to abortion, birth control and other reproductive services," Burkstrand-Reid said. "What we're not closely considering, however, is how those restrictions on access can impact women's health."

More information: Burkstrand-Reid's study, "The Invisible Woman: Availability and Culpability in Reproductive Health Jurisprudence," is available online at papers.ssrn.com/sol3/papers.cf … ?abstract_id=1345824 .

Source: University of Illinois at Urbana-Champaign (news : web)