2022 Council Resolution 25: Advocacy for Safe Access to Full Spectrum Pregnancy Related Health Care

Council Action: **AMENDED AND ADOPTED**

Board Action: **AMENDED AND ADOPTED**

Status: **Ongoing**

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Purpose:

Affirm that abortion is a medical procedure and that no physician shall be required to perform an act violative of good medical judgment; that ACEP support the position that abortion is a medical procedure and as such involves shared decision making between patients and their physician regarding various criteria; that ACEP oppose criminalization or mandatory reporting for non-public health monitoring reasons of self-induced abortion; that ACEP support an individual's ability to access a full spectrum of evidence-based reproductive health care; and that ACEP oppose criminalization, penalties for, or other retaliatory efforts against patients, advocates, physicians, health care workers, and health systems for receiving, assisting, or referring patients within a state or across state lines to receive reproductive health services.

Fiscal Impact:

Budgeted committee and staff resources for policy development and advocacy initiatives.

WHEREAS, Many states have enacted laws that either restrict access to abortion to very early in pregnancy or make all abortions illegal without regard for the health of the mother or the viability of the pregnancy1; and

WHEREAS, The American Medical Association (AMA) has asserted that abortion is health care2 and that all humans have a fundamental right to health care; and

WHEREAS, The American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American Osteopathic Association, the American College of Physicians, and the American Psychiatric Association have released a joint statement condemning the end of national abortion protections and advocating for the protection of the patient physician relationship in all health care matters3; and

WHEREAS, The AMA has issued briefs in many legal cases in support of continued legal access to safe elective abortions4; and

WHEREAS, Worldwide unsafe abortions due to lack of safe access account for 13% of all maternal mortality and long-term health complications for up to 5 million women annually5; and

WHEREAS, About 6% of people who undergo a legally and safely performed abortion will visit the ED within 6 weeks of said abortion6, indicating that a restriction on access to safe abortions will likely result in an increase in complications presenting to the ED; and

WHEREAS, The removal of legal protections for abortion will increase the number of people who seek less safe methods for abortion with less medical oversight, thereby increasing morbidity and mortality from self-induced, unsafe, and unregulated abortion practice7; therefore be it

RESOLVED, That ACEP affirms that: 1) abortion is a medical procedure and should be performed only by a duly licensed physician, surgeon, or other medical professional in conformance with standards of good medical practice and the Medical Practice Act of that individual's state; and 2) no physician or other professional personnel shall be required to perform an act violative of good medical judgment and this protection shall not be construed to remove the ethical obligation for referral for any medically indicated procedure; and be it further

RESOLVED, That ACEP supports the position that the early termination of pregnancy (publicly referred to as "abortion") is a medical procedure, and as such, involves shared decision making between patients and their physician regarding: 1) discussion of reproductive health care; 2) performance of indicated clinical assessments; 3) evaluation of the viability of pregnancy and safety of the pregnant person; 4) availability of appropriate resources to perform indicated procedure(s); and 5) is to be made only by health care professionals with their patients; and be it further

RESOLVED, That ACEP opposes the criminalization or mandatory reporting for non-public health monitoring reasons of self-induced abortion as it increases patients' medical risks and deters patients from seeking medically necessary services and will advocate against any legislative efforts to criminalize self-induced abortion; and be it further

RESOLVED, That ACEP supports an individual's ability to access the full spectrum of evidence-based pre-pregnancy, prenatal, peripartum, and postpartum physical and mental health care, and supports the adequate payment from all payers for said care; and be it further

RESOLVED, That ACEP opposes the criminalization, imposition of penalties, or other retaliatory efforts against patients, patient advocates, physicians, health care workers, and health systems for receiving, assisting, or referring patients within a state or across state lines to receive reproductive health services or medications for contraception and abortion, and will further advocate for legal protection of said individuals.

Background:

The resolution directs the College to affirm that: 1) abortion is a medical procedure and should be performed only by a duly licensed physician, surgeon, or other medical professional in conformance with standards of good medical practice and the Medical Practice Act of that individual's state; and 2) no physician or other professional personnel shall be required to perform an act violative of good medical judgment and this protection shall not be construed to remove the ethical obligation for referral for any medically indicated procedure; and, that ACEP support the position that the early termination of pregnancy (publicly referred to as "abortion") is a medical procedure, and as such, involves shared decision making between patients and their physician regarding: 1) discussion of reproductive health care; 2) performance of indicated clinical assessments; 3) evaluation of the viability of pregnancy and safety of the pregnant person; 4) availability of appropriate resources to perform indicated procedure(s); and 5) is to be made only by health care professionals with their patients.

The resolution also directs the College to oppose the criminalization or mandatory reporting for non-public health monitoring reasons of self-induced abortion as it increases patients' medical risks and deters patients from seeking medically necessary services and will advocate against any legislative efforts to criminalize self-induced abortion; support an individual's ability to access the full1 spectrum of evidence-based pre-pregnancy, prenatal, peripartum, and postpartum physical and mental health care, and supports the adequate payment from all payers for said care; and, finally, oppose the criminalization, imposition of penalties, or other retaliatory efforts against patients, patient advocates, physicians, health care workers, and health systems for receiving, assisting, or referring patients within a state or across state lines to receive reproductive health services or medications for

contraception and abortion, and will further advocate for legal protection of said individuals.

The issue of access to and provision of prophylaxis, contraception, abortion, and other reproductive health measures is in a state of significant uncertainty as a result of the recent decision by the United States Supreme Court in *Dobbs v. Jackson Women's Health Organization*, which held that the right to abortion is not guaranteed under the Constitution, instead leaving the ability to regulate abortion to individual states. As noted in the majority opinion by Justice Samuel Alito, the *Dobbs* decision is limited to the question of a "…constitutional right to abortion and no other right," and that "…[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion," such as *Griswold v. Connecticut* that established the right for married couples to purchase and use contraception. More simply, the *Dobbs* ruling is limited solely to the issue of abortion (termination of an established pregnancy) and not contraception or other reproductive health options.

As it does for other important emerging issues impacting emergency physicians and the care of emergency medicine patients, ACEP issued a statement in response to the *Dobbs* ruling expressing concerns about the medical and legal implications of judicial overreach into the practice of medicine, reiterating that emergency physicians must be able to practice high quality, objective evidence-based medicine without legislative, regulatory, or judicial interference in the physician-patient relationship (as codified in the policy statement, "Interference in the Physician-Patient Relationship," approved by the Board of Directors in June 2022).

Given wide variation in state regulation of abortion and reproductive health procedures, including new prohibitions on abortions in some states even in cases of rape, incest, or where the life or physical health of the pregnant patient is in danger, and some potential efforts to restrict access to or the provision of emergency contraception or other contraceptives, the legal landscape is still in flux and there remain many unanswered questions regarding legislative, regulatory, and judicial implications for the practice of emergency medicine and the provision of emergency reproductive health care. Some advocates have expressed concerns that this uncertainty may also discourage physicians or hospitals from providing emergency contraception or other reproductive health care out of an abundance of caution to avoid potential legal exposure. Additionally, there are worries that there may be additional civil and criminal penalties at the state level against health care providers for assisting individuals in accessing abortions, or aggressive enforcement of mandatory reporting laws that may put physicians in legal peril.

In years prior to the *Dobbs* decision, there were numerous efforts at the state level to significantly limit abortions and penalize physicians and health care providers who perform the procedure. On July 26, 2022, when the Supreme Court took the procedural step to enter its judgment overturning *Roe v Wade,* the process began for some states to implement existing statutes. In Alabama, a law passed in 2019 makes it a felony for physicians to perform any abortion unless the pregnant patient's life is in jeopardy, punishable by up to 99 years in prison. In Oklahoma, a 2021 law enacted a statewide ban on abortion with exceptions for the life or physical health of the pregnant patient, along with criminal penalties and up to five years in prison for any individual who advises or provides any means of accessing an abortion. After the *Dobbs* decision, Texas law banned abortions from fertilization with the exception of life or physical health of the pregnant patient increasing criminal and civil penalties for providing, advising, or abetting an abortion. Twenty-six states have enacted what are known as born-alive laws, that require physicians to provide medical care and treatment to a fetus or infant born at any stage of development. Under the Texas law, passed in June 2019, physicians who fail to provide that level of treatment face fines of at least $100,000 and third-degree felony charges that could lead to a prison term of two to ten years.

Under existing federal law (and in many cases, state laws), it may not be possible to fully guarantee universal access to emergency contraception in all emergency departments. Some physicians, pharmacists, other health care providers, and hospitals/facilities may choose not to administer or provide prophylaxis on moral or religious grounds, and these "conscience clauses" also prohibit discrimination against those who refuse to participate in such services. For example, many Catholic hospitals do not provide abortion, contraception, or sterilization procedures, including in cases of rape, though these policies are not all universal within such systems (e.g., the provision of contraception in cases of rape may be dependent on the policies of the local bishop).

With respect to the issue of full1 spectrum reproductive care, existing ACEP policy is succinct and limited to the issue of emergency contraception. The ACEP policy statement "Emergency Contraception for Women at Risk of Unintended and Preventable Pregnancy," states in its entirety, "ACEP supports the availability of non-prescription emergency contraception." Prophylaxis and contraception are also discussed as a consideration in the guidelines established under the "Management of the Patient with the Complaint of Sexual Assault" policy, which states:

"A victim of sexual assault should be offered prophylaxis for pregnancy and for sexually transmitted diseases,

subject to informed consent and consistent with current treatment guidelines. Physicians and allied health practitioners who find this practice morally objectionable or who practice at hospitals that prohibit prophylaxis or contraception should offer to refer victims of sexual assault to another provider who can provide these services in a timely fashion."

Another issue in the broader debate is the challenge of misconceptions which conflate contraceptives and abortion/abortifacients, though they are medically distinct (the former preventing pregnancy, the latter terminating an established pregnancy).

To this end, some have recently promoted efforts in multiple states to either fully prohibit or significantly restrict access to certain contraceptive options, such as Plan B One-Step (the "morning-after pill"), an emergency contraceptive which is used to prevent pregnancy after unprotected sex or a failure of other contraceptives, as well as intrauterine devices (IUDs) and others. For example, the organization Students for Life of America argues that Plan B can potentially prevent implantation of a fertilized egg (as noted on the packaging of Plan B), thus constituting an abortion under the view that life begins at conception. However, some OB/GYNs have noted this is "a hypothetical that has never been proven."

Ultimately, it is difficult to predict the range of hypothetical scenarios and individual considerations that may arise within EM, and further clarity may be needed from various authorities to address these potential circumstances. ACEP is also continuing to work its way through other associated issues, such as medical liability, privacy and security of medical records and personal health data, and the ability to treat patients across state lines.

For emergency medicine specifically, much of the consideration is related to how these new federal and state laws and regulations interact with the Emergency Medical Treatment and Labor Act (EMTALA) – a law that has been in place since 1987. The law includes three main obligations: the screening requirement, the stabilization requirement, and the transfer requirement. First, the law requires hospitals to provide a medical screening examination to every individual who comes to the ED seeking examination or treatment. The purpose of the medical screening exam is to determine whether a patient has an emergency medical condition. If an individual is determined to have an emergency medical condition, the individual must receive stabilizing treatment within the capability of the hospital. Hospitals cannot transfer patients to another hospital unless the individual is stabilized. If the individual is not stabilized, they may only be transferred if the individual requests the transfer or if the medical benefits of the transfer outweigh the risks.

On July 11, 2022, the Centers for Medicare & Medicaid Services (CMS) issued additional EMTALA guidance, following up on its previous guidance from September 2021. In this updated guidance, CMS reiterates that EMTALA pre-empts any directly contradicting state laws around the medical screening examination, stabilizing treatment, and transfer requirements. It specifically clarifies that if a physician believes that an abortion needs to be performed to stabilize a patient with an emergency medical condition, the physician MUST provide the treatment regardless of any state law that may prohibit abortions. Further, with respect to what constitutes an "emergency medical condition" (EMC), the guidance states that the determination of an EMC "is the responsibility of the examining physician or other qualified medical personnel. An emergency medical condition may include a condition that is likely or certain to become emergent without stabilizing treatment." Finally, the guidance states that EMTALA pre-empts "any state actions against a physician who provides an abortion in order to stabilize an emergency medical condition in a pregnant individual presenting to the hospital."

In addition to the guidance, HHS Secretary Xavier Becerra, in a letter to providers, further made clear that this federal law pre-empts state law restricting access to abortion in emergency situations.

But even with this new guidance there is still significant grey area. While the guidance notes that EMTALA can be raised as a defense by a physician facing state action, EMTALA does not provide any *proactive* protection to prevent an emergency physician from facing criminal charges brought by the state for providing this federally-mandated care. Some state restrictions only have an exception allowing abortion if it's to prevent the death of the pregnant patient. But EMTALA requires stabilizing treatment to prevent "serious impairment of bodily functions," "serious dysfunction of any bodily organ or part," or to place the health of the patient "in serious jeopardy." This is a significant area of concern, potentially forcing emergency physicians in such states to choose between following EMTALA in order to avoid potential civil monetary penalties, or following the state law in order to avoid potential criminal charges.

ACEP is working to identify other such gaps in existing regulation or statute that could create clinical and legal barriers to how emergency physicians practice medicine. In order to do so, ACEP President Gillian Schmitz has formed a cross-disciplinary task force of experts from across EM to help identify clinical and legal barriers to how emergency physicians practice medicine, and develop recommendations to address them.

As well, ACEP recently joined amicus briefs addressing these concerns. On August 15, 2022, ACEP along with the Idaho College of Emergency Physicians, submitted a brief in the U.S. District Court for the District of Idaho in support of in support of the U.S. Department of Justice's challenge to an Idaho law in *United States v. State of Idaho*. If applied to emergency medical care, the brief argued that Idaho Law would force physicians to disregard their patients' clinical presentations, their own medical expertise and training, and their obligations under EMTALA—or risk criminal prosecution. The next day, on August 16, 2022, ACEP and several prominent medical societies submitted another amicus brief, this time in in the U.S. District Court for the Northern District of Texas in support of the U.S. Department of Health and Human Services' guidance on the Federal Emergency Medical Treatment and Active Labor Act (EMTALA). The brief explained that the Federal guidance merely restates physicians' obligations under EMTALA and describes how those obligations may manifest themselves in real-world emergency room situations involving pregnant patients.

In both cases, the amici have determined the law (ID) or state action (TX) will have damaging professional and legal implications for physicians and adversely impact patient safety. As such, ACEP and other amici, filed the briefs to educate the Courts regarding our physicians' EMTALA obligations as well as the legal and ethical dilemma created by the Idaho legislature's and Texas Attorney General's actions.

Stragegic Plan Reference:

Advocacy – Members believe that they can rely on ACEP to fight for emergency physicians across all landscapes and levels, including federal, state, and local.

- ACEP fights for your rights across all landscapes and levels, including federal, state, local, facility, and administrative.

Practice Innovation – Members work with ACEP to revolutionize the management of acute, unscheduled care, by anticipating emerging trends in clinical and business practices and developing new career opportunities for emergency physicians.

- ACEP revolutionizes acute unscheduled care to anticipate emerging trends in clinical and business practices and develops new career opportunities for emergency physicians.

Prior Council Action:

Substitute resolution 19(04) Emergency Contraception for Women at Risk of Unintended and Preventable Pregnancy adopted. Directed the College to support the availability of non-prescription emergency contraception.

Amended Resolution 32(02) Treatment of Victims of Sexual Assault adopted. Called for the College to take the position that a victim of sexual assault should be offered prophylaxis for sexually transmitted diseases, subject to informed consent consistent with current treatment guidelines and revise the policy statement "Management of the Patient with the Complaint of Sexual Assault" accordingly; and that victims of sexual assault should be offered prophylaxis for pregnancy, subject to informed consent consistent with the current treatment guidelines, and that physicians or others who find this morally objectionable or practice at facilities that prohibit prophylaxis or contraception should offer to refer victims of sexual assault to another provider who can provide those services in a timely fashion; and revise the aforementioned policy statement accordingly.

Substitute Resolution 22(01) Sexual Assault Nurse Examiner Programs adopted. Called for the College to assume a leadership role in organizing formal collaboration with key stakeholders including clinical, legal, forensic, judicial, advocacy, and law enforcement organizations to establish areas of cooperation, mutual training, standardization, and continuous quality improvement for the benefit of the sexually assaulted patient.

Substitute Resolution 23(96) Sexual Assault Patient National Care Protocol adopted. Called for ACEP to take the lead in the development of a national multidisciplinary model protocol that would include training programs and standards for the collection of evidence, examination, and treatment of sexually assaulted patients and that funding sources for the project be sought.

Substitute Resolution 10(91) Sexual Assault adopted. Called for ACEP to develop a recommended list of equipment/supplies for evidence collection kits for victims of sexual assault and address the special needs of pediatric sexual assault patients in its guidelines for management of sexual assault patients.

Substitute Resolution 34(89) "Sexual Assault" adopted. Called for ACEP to develop a position paper on the appropriate management of sexual assault victims of all ages and act as a clearinghouse of resource materials concerning issues on the management of sexual assault victims.

Prior Board Action:

June 2022, approved the policy statement "Interference in the Physician-Patient Relationship."

January 2021, reaffirmed the policy statement "Emergency Contraception for Women at Risk of Unintended and Preventable Pregnancy;" reaffirmed October 2015 and June 2010; originally approved October 2004.

February 2020, reaffirmed the policy statement "Management of the Patient with the Complaint of Sexual Assault;" reaffirmed April 2014 and October 2008; revised and approved October 2002; reaffirmed 1999; revised and approved December 1994; originally approved January 1992.

Substitute Resolution 19(04) Emergency Contraception for Women at Risk of Unintended and Preventable Pregnancy adopted.

October 2002, revised and approved policy statement "Management of the Patient with the Complaint of Sexual Assault."

Amended Resolution 32(02) Treatment of Victims of Sexual Assault adopted.

Substitute Resolution 22(01) Sexual Assault Nurse Examiner Programs adopted.

June 1999, reviewed "Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient" handbook prepared by the Sexual Assault Grant Task Force.

June 1999, reaffirmed policy statement "Management of the Patient with the Complaint of Sexual Assault;" originally approved in January 1992.

Substitute Resolution 23(96) Sexual Assault Patient National Care Protocol adopted.

Substitute Resolution 10(91) Sexual Assault adopted.

Substitute Resolution 34(89) Sexual Assault adopted.

Council Action:

Reference Committee B recommended that Amended Resolution 25(22) be adopted.

RESOLVED, That ACEP affirm~~s~~ that: 1) abortion is a medical procedure and should be performed only by a duly licensed physician, surgeon, or other medical professional in conformance with standards of good medical practice and the Medical Practice Act of that individual's state; and 2) no physician or other professional personnel shall be required to perform an act violative of good medical judgment and this protection shall not be construed to remove the ethical obligation for referral for any medically indicated procedure; and be it further

RESOLVED, That ACEP support~~s~~ the position that the early termination of pregnancy (publicly referred to as "abortion") is a medical procedure, and as such, involves shared decision making between patients and their physician regarding: 1) discussion of reproductive health care; 2) performance of indicated clinical assessments; 3) evaluation of the viability of pregnancy and safety of the pregnant person; 4) availability of appropriate resources to perform indicated procedure(s); and 5) is to be made only by health care professionals with their patients; and be it further

RESOLVED, That ACEP oppose**s** the criminalization or mandatory reporting **of reproductive health-related patient concerns in the emergency department when personal privacy, safety, and/or health are potentially at risk in the acute setting** ~~for non-public health monitoring reasons of self-induced abortion as it increases patients' medical risks and deters patients from seeking medically necessary services and will advocate against any legislative efforts to criminalize self-induced abortion~~; and be it further

RESOLVED, That ACEP support~~s~~ an individual's ability to access the full spectrum of evidence-based pre-pregnancy, prenatal, peripartum, and postpartum physical and mental health care, and supports the adequate payment from all payers for said care; and be it further

RESOLVED, That ACEP oppose~~s~~ the criminalization, imposition of penalties, or other retaliatory efforts against patients, patient advocates, physicians, health care workers, and health systems for receiving, assisting, or referring patients within a state or across state lines to receive reproductive health services or medications for contraception and abortion, and will further advocate for legal protection of said individuals.

The Council adopted Amended Resolution 25(22) on September 30, 2022.

RESOLVED, That ACEP affirm~~s~~ that: 1) abortion is a medical procedure and should be performed only by a duly licensed physician, surgeon, or other medical professional in conformance with standards of good medical practice and the Medical Practice Act of that individual's state; and 2) no physician or other professional personnel shall be required to perform an act violative of good medical judgment and this protection shall not be construed to remove the ethical obligation for referral for any medically indicated procedure; and be it further

RESOLVED, That ACEP support~~s~~ the position that the early termination of pregnancy (publicly referred to as "abortion") is a medical procedure, and as such, involves shared decision making between patients and their physician regarding: 1) discussion of reproductive health care; 2) performance of indicated clinical assessments; 3) evaluation of the viability of pregnancy and safety of the pregnant person; 4) availability of appropriate resources to perform indicated procedure(s); and 5) is to be made only by health care professionals with their patients; and be it further

RESOLVED, That ACEP oppose**s** the criminalization or mandatory reporting **of reproductive health-related patient concerns in the emergency department when personal privacy, safety, and/or health are potentially at risk in the acute setting** ~~for non-public health monitoring reasons of self-induced abortion as it increases patients' medical risks and deters patients from seeking medically necessary services and will advocate against any legislative efforts to criminalize self-induced abortion~~; and be it further

RESOLVED, That ACEP support~~s~~ an individual's ability to access the full spectrum of evidence-based pre-pregnancy, prenatal, peripartum, and postpartum physical and mental health care, and supports the adequate payment from all payers for said care; and be it further

RESOLVED, That ACEP oppose~~s~~ the criminalization, imposition of penalties, or other retaliatory efforts against patients, patient advocates, physicians, health care workers, and health systems for receiving, assisting, or referring patients within a state or across state lines to receive reproductive health services or medications for

contraception and abortion, and will further advocate for legal protection of said individuals.

Testimony:

Testimony was mixed. During asynchronous testimony, some comments suggested that the resolution be combined with Resolution 26(22) and be modified to be actionable and specific for the practice of emergency medicine and the protection of emergency physicians in the practice of emergency medicine. Comments supporting the resolution noted that state laws restricting patient access to the full spectrum of pregnancy related health care contradict the federal mandate to provide evidence based, potentially lifesaving medical care for their patients. Some also opposed the criminalization of clinicians who deliver reproductive health services and asserted that these laws will have a significant ripple effect in the overall medical community in affected states. Although asynchronous testimony supported deleting the first, second, fourth and fifth resolveds, during live testimony most comments supported fully restoring the first, second, fourth, and fifth resolveds noting that the language reflects already existing policy and statements from other physician organizations (including the AMA, AAFP, AAP, ACOG, AOA, ACP, and APA). Several members offered testimony in support of the amended language in the third resolved

Board Action:

The Board deferred action on the resolution to their February 1-2, 2023, meeting pending review of the third resolved and concerns about mandatory reporting requirements in some states.

The Board adopted Amended Resolution 25(22) on February 2, 2023.

RESOLVED, That ACEP affirm that: 1) abortion is a medical procedure and should be performed only by a duly licensed physician, surgeon, or other medical professional in conformance with standards of good medical practice and the Medical Practice Act of that individual's state; and 2) no physician or other professional personnel shall be required to perform an act violative of good medical judgment and this protection shall not be construed to remove the ethical obligation for referral for any medically indicated procedure; and be it further

RESOLVED, That ACEP support the position that the early termination of pregnancy (publicly referred to as "abortion") is a medical procedure, and as such, involves shared decision making between patients and their physician regarding: 1) discussion of reproductive health care; 2) performance of indicated clinical assessments; 3) evaluation of the viability of pregnancy and safety of the pregnant person; 4) availability of appropriate resources to perform indicated procedure(s); and 5) is to be made only by health care professionals with their patients; and be it further

RESOLVED, That ACEP oppose ~~the criminalization or mandatory reporting of reproductive health-related patient concerns~~ **statutory provision of criminal penalties for any medically appropriate care provided** in the emergency department **and additionally oppose mandatory reporting with the intent (explicit or implicit) to prosecute patients or their health care professionals, which includes, but is not limited to, care for any pregnancy, pregnancy-related complications, or pregnancy loss**; and be it further

RESOLVED, That ACEP **specifically** oppose the ~~criminalization,~~ imposition of penalties, or other retaliatory efforts against patients, patient advocates, physicians, health care workers, and health systems for receiving, assisting, or referring patients within a state or across state lines to receive reproductive health services or medications for contraception and abortion, and will further advocate for legal protection of said individuals**; and be it further** [this was previously the last resolved]

RESOLVED, That ACEP support an individual's ability to access the full spectrum of evidence-based pre-pregnancy, prenatal, peripartum, and postpartum physical and mental health care, and supports the adequate payment from all payers for said care~~; and be it further~~**.**

~~RESOLVED, That ACEP oppose the criminalization, imposition of penalties, or other retaliatory efforts against patients, patient advocates, physicians, health care workers, and health systems for receiving, assisting, or referring patients within a state or across state lines to receive reproductive health services or medications for contraception and abortion, and will further advocate for legal protection of said individuals.~~ [moved to 4th resolved]

References:

RESOLUTION REFERENCES

1. Lewis, T. “Overturning Roe v. Wade Could Have Devastating Health and Financial Impacts Landmark Study Showed.” *Scientific American*. 3 May 2022. https://www.guttmacher.org/state-policy/explore/overview-abortion-laws
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7. Foster, DG; et. al. (2022). “The Harms of Denying a Woman a Wanted Abortion Findings from the Turnaway Study.” *Advancing New Standards in reproductive health*. https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf

BACKGROUND REFERENCE

1ACEP recognizes that references to “a full spectrum of reproductive health care options” may be interpreted differently by the reader; however, in order to retain consistency with language used by the authors of the resolution, this verbiage is incorporated into the Background section of the document.

Implementation Action:

Assigned to the Emergency Medicine Reproductive Health & Patient Safety Task Force to develop a comprehensive policy statement on access to reproductive health care and include the tenets of Resolutions 24, 25, 26, and 27. Review ACEP’s policy statement “Emergency Contraception for Women at Risk of Unintended and Preventable Pregnancy” and determine if revisions are needed for a stand-alone policy statement or if it can be included in the comprehensive policy statement on access to reproductive health care. Assigned to Advocacy & Practice Affairs staff for federal and state advocacy initiatives.

In October 2022, ACEP responded to a Department of Veterans Affairs (VA) interim final rule in which VA proposed to amend its medical regulations to establish exceptions to the exclusion on abortions and remove the exclusion on abortion counseling in the medical benefits package for veterans who receive care set forth in that package, and to expand the exceptions to the exclusion on abortions for Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries and remove the exclusion on abortion counseling.

In December 2022, ACEP provided input for the American Medical Association (AMA) Task Force to Preserve the Patient-Physician Relationship When Evidence-Based, Appropriate Care Is Banned or Restricted noting the passage of this resolution and iterating ACEP’s commitment to support equitable, nationwide access to reproductive health care procedures, medications, and other interventions.

The Emergency Medicine Reproductive Health & Patient Safety Task Force developed a new and comprehensive policy statement “Access to Reproductive Healthcare in the Emergency Department” that includes and expands on the policy statement “Emergency Contraception for Women at Risk of Unintended and Preventable Pregnancy.” The new policy statement is intended to focus on protecting the patient-physician relationship, which will allow it to be used to serve patients throughout the United States. The policy statement was approved by the Board in June 2023. Elements of the new policy statement were used in ACEP’s response to HIPAA Privacy Rule to Support Reproductive Health Care Privacy, specifically regarding a proposed prohibition on use or disclosure of PHI, in accordance with the 3rd and 4th resolveds.

ACEP's legislative and regulatory priorities for the First Session of the 119th Congress included "enact liability immunity for physicians providing EMTALA-mandated services, with considerations for reproductive health and patient safety related emergencies" and "monitor new guidance and proposed regulations released by the Administration on reproductive health and patient safety related emergencies."

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