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ISSUE BRIEF

How a new operating arrangement at two Denver-area hospitals threatens patient rights

Three Denver-area hospitals that collectively serve hundreds of thousands of people are operating under rules that preclude a range of widely accepted medical procedures. The procedures, such as contraception and honoring patients' end-of-life orders, are banned or put into question under a document called Ethical and Religious Directives for Catholic Health Care Services, issued by the United States Conference of Catholic Bishops.

The Ethical and Religious Directives (ERDs) have existed for years at Catholic hospitals, and the latest revisions were issued in November 2009. They apply to all Catholic hospitals, but their implementation and the strictness of their interpretation has been varied. The ERDs are new at two of the three Denver-area hospitals addressed in this issue brief. Here's an outline of the recent history and the scope of the ERDs' limitations on patient care.

THE HOSPITALS

Exempla Healthcare was formed in 1998 as a result of a joint venture between Lutheran Medical Center in Wheat Ridge and Saint Joseph Hospital in Denver. The parties agreed the respective traditions of the two hospitals would be observed. As a Catholic hospital, Saint Joseph was historically subject to the ERDs.

Good Samaritan Medical Center in Lafayette opened in December 2004 as part of the Exempla system. The nonprofit, managed-care organization Kaiser Permanente helped finance construction of Good Samaritan. Kaiser has also used Saint Joseph Hospital for its patients.

In 2006, the two members of the Exempla joint venture proposed that Sisters of Charity of Leavenworth, Kansas, acquire the 50-percent interest held by Lutheran Medical Center Foundation, newly renamed Community First Foundation. The Exempla board, a separate body from the two corporate members of the joint venture, opposed this \$300 million transaction. The dispute went into arbitration. In 2009, the arbitrator ruled a member's interest could not be sold but did not rule out a transfer for no payment.

Also last year, the Exempla board members who opposed a change were replaced, and a new operating agreement was entered into giving Sisters of Charity operating control of all three hospitals.

Before the change in management, Lutheran and Good Samaritan had been operated as non-religious hospitals, and Saint Joseph's as a Catholic hospital. In December 2009, Exempla informed the hospital staffs they would be trained in how the ERDs would affect their practice. Generally, the ERDs ban the use of widely accepted medical procedures in some circumstances, particularly affecting women, and gay and lesbian people, or may require acts contrary to the declared instructions of older or disabled people.

The new Exempla management has informed physicians and staff the ERDs will be applied and is implementing training to that end.

HOW THE DIRECTIVES THREATEN PATIENT RIGHTS

The ERDs prohibit hospital staff and physicians with medical privileges from providing a number of well-established types of treatment and other patient care. The directives apply to everyone who works in the hospital regardless of that person's religious beliefs or personal convictions. They apply to everyone who receives treatment in the hospital, also without regard to the patient's preferences. Examples:

ERD 5: The ERDs are binding on all medical staff and administrators, and are a condition of employment.

ERD 17: "Newly born infants in danger of death, including those miscarried, should be baptized if this is possible. In case of emergency, if a priest or a deacon is not available, anyone can validly baptize."

ERD 24: Patients can make advance medical directives. "The institution, however, will not honor an advance directive that is contrary to Catholic teaching."

ERD 45: Precludes the administration of RU 486, the medical abortion pill, to rape victims.

ERD 48: Precludes abortion even for ectopic (outside the uterus) pregnancies.

ERD 52 and introduction to part IV: Contraception is banned. This directive also prohibits advice about contraception to people in danger of spreading or receiving sexually transmitted diseases.

ERD 53: Tubal ligation and other types of sterilization are banned.

ERD 58: "In principle, there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration for those who cannot take food orally. This obligation extends to patients in chronic and presumably irreversible conditions (e.g., the "persistent vegetative state") who can reasonably be expected to live indefinitely if given such care."

ERD 59: "The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, unless it is contrary to Catholic moral teaching."

ERD 59 was recently clarified to require feeding in the Terri Schiavo situation in Florida, despite a medical finding that Schiavo was brain-dead and her husband's expressed wish to cease feeding through a feeding tube.

The Colorado Center on Law and Policy (CCLP) has assisted in the mounting of a legal challenge to the transfer of interest of the non-sectarian hospitals to Sisters of Charity because of the ERD's interference with patients' ability to get care. The case is pending in 20th Judicial District court in Boulder. CCLP is a nonprofit, nonpartisan research and advocacy organization working for justice and economic security for all Coloradans.

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