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HHS Secretary Azar Statement on Executive Order to Protect Infants Born Alive

On Friday, President Trump signed an Executive Order directing the Department of Health and Human Services to ensure that American hospitals comply with their obligations under federal law to provide appropriate screening and medical treatment or transfer for infants, especially those born prematurely and/or with disabilities, and otherwise promote efforts to improve the survival of such infants.

“HHS’s mission is to protect the health and well-being of all Americans, and that means all Americans—including infants born prematurely and infants with disabilities,” said HHS Secretary Alex Azar. “The President’s Executive Order is another step by the most pro-life President in American history and ensures that we provide the same protections for innocent infants who are born premature or with disabilities that we provide for every other American.”

As laid out in the Executive Order, the Emergency Medical Treatment and Labor Act (EMTALA) guarantees, in hospitals that have an emergency department, each individual’s right to an appropriate medical screening examination and to either stabilizing treatment or an appropriate transfer. The Rehabilitation Act of 1973 (Rehab Act) prohibits discrimination against individuals with disabilities in programs and activities receiving federal funding. The Born-Alive Infants Protection Act makes clear that all infants born alive at any stage of development are considered persons for purposes of these and other federal laws and are, therefore, afforded the same legal protections as any other person.

Under these laws, infants born alive who require emergency medical treatment, who are premature, or who are born with disabilities are entitled to meaningful and non-discriminatory access to medical examination and services when they present at hospitals receiving federal funds, and have the right to be free from discrimination on the basis of disability. Infants with disabilities whose parents seek treatment should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about the infant’s relative “worth” based on the presence or absence of disabilities.

Despite these laws, some hospitals fail to perform the required medical screening and, thus, do not provide potentially lifesaving medical treatment to infants with disabilities or infants born before 24 weeks of gestation, even when parents plead for such treatment. For instance, in May 2020, HHS determined that an Ohio hospital had failed in 2017 to ensure medical screening examinations required by EMTALA were performed for twins born prematurely (at 22 weeks gestation) who were not sent to the hospital’s neonatal intensive care unit and died within several hours after delivery. In light of HHS’s determination, the HHS Office for Civil Rights will also be examining this matter to determine whether any additional civil rights violations occurred.

The Executive Order directs the Secretary to take action in the following areas:

- Ensuring that individuals responsible for federally funded programs and activities are aware of the obligations they have under the law, including when infants are born prematurely or with disabilities.
- Ensuring that individuals responsible for federally funded programs and activities are aware that they may not unlawfully discourage parents from seeking medical treatment for their infant child solely because of their infant child's disability.
- Investigating complaints and taking any appropriate enforcement action against individuals or entities found through investigations to have violated federal law, and clarifying the process by which parents and hospital staff may submit such complaints.
- Prioritizing the allocation of HHS discretionary grant funding and National Institutes of Health research dollars for programs and activities conducting research to develop treatments that may improve survival—especially survival without impairment—of infants born alive, including premature infants or infants with disabilities, who have an emergency medical condition in need of stabilizing treatment (a research priority also included in the President’s Fiscal Year 2021 Budget).
- Prioritizing, consistent with the law, HHS discretionary grant funding to programs and activities, including hospitals, that provide training to medical personnel regarding the provision of life-saving medical treatment to all children born alive, including premature infants or infants with disabilities, who have a medical condition in need of stabilizing treatment.

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