# Agency Issues Guidance on 2002 'Born-Alive' Law

BY MARY ELLEN SCHNEIDER
*Senior Writer*

Officials at the Department of Health and Human Services are trying to encourage enforcement of a 2002 law that defines any live birth as a person.

The agency issued guidance in April that withholding medical care from an infant born alive may constitute a violation of the federal Emergency Medical Treatment and Labor Act (EMTALA) and the Medicare Conditions of Participation.

Officials also notified state agencies that receive grants under the Child Abuse Prevention and Treatment Act that they must have procedures in place to respond to any reports of medical neglect of "born-alive infants."

The Born-Alive Infants Protection Act, which was enacted in August 2002, establishes a definition of the terms "individual," "person," "human being," or "child" as any infant who is born alive, at any stage of development.

The federal law (P.L. 107-207) states that "born alive," with respect to a member of the species *Homo sapiens*, means the "complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion."

But the law doesn't mean much medically, according to David Grimes, M.D., an ob.gyn. in Chapel Hill, N.C., and the former chief of the abortion surveillance branch at the Centers for Disease Control and Prevention."The medical impact is negligible," Dr. Grimes said.

If the law is followed to the letter, he said, it will classify more miscarriages as live births and ultimately infant deaths, giving the United States a statistically worse infant mortality.

The American College of Obstetricians and Gynecologists issued an opinion at the time the law was enacted, saying that the statute did not require physicians to make changes to the standard of care.

"The act does not dictate the standard of care to be given to premature infants. It merely provides a definition and does not impose any requirements, restrictions, or penalties," Ralph W. Hale, M.D., ACOG's executive vice president, said in a message to the membership in 2002. "Fellows should be familiar with their states' laws and should consult their local attorneys if they have any questions," he said.

HHS decided to issued the guidance—nearly 3 years after the enactment of the law—because the department recently received several questions about whether it was planning to issue regulations to implement the law, HHS Secretary Mike Leavitt said in a statement. However, the department would not release information on whether any violations had occurred.

In its guidance, HHS said there are some circumstances where EMTALA protections can be applied to an infant who is born alive under the law.

For example, if an infant were born alive, under the definition in the law, at the hospital, and a prudent layperson could conclude that the infant was suffering from an emergency medical condition based on appearance or behavior, the hospital and medical staff would be required to perform a medical screening.

If an emergency condition existed, the staff would be obligated under EMTALA to either admit the infant or stabilize and transfer him or her. Under EMTALA, each violation can cost a physician up to $50,000.

David W. Hager, M.D., an ob.gyn. in Lexington, Ky., and a member of the Christian Medical Association, agrees that the majority of physicians have been adhering to the law. However, he said, it's important to ensure that it is being implemented across the board, even in cases where the live birth is the result of an abortion. And all physicians need to be aware of their responsibilities under the law to screen infants who are born alive, and to stabilize and transfer them when appropriate, he said.

But Vicki Saporta, president and CEO of the National Abortion Federation, said the 2002 law seems unnecessary since physicians were and are abiding by state and federal laws that protect the legal rights of infants from birth. ■



Pages 76a—76b