President Trump Signs Executive Order Protecting Born-Alive Infants

Order comes after Congress fails to pass the Born-Alive Abortion Survivors Protection Act (S. 311)

Jonathan Abbamonte / October 9, 2020

President Trump has signed an executive order making it mandatory for all hospitals in the United States to provide medical treatment or an emergency transfer for infants who are in need of emergency medical care.

The president’s executive order prohibits hospitals from unlawfully discriminating against or withholding treatment from extremely preterm infants, infants born with disabilities, or any other infants in need of emergency care. This includes born-alive infants who survive botched late-term abortions at public and private hospitals and infants born alive after failed abortions for women who are admitted into a hospital emergency room.

The president’s executive order, however, does not extend to infants who survive abortions at private abortion clinics such as Planned Parenthood clinics unless, in the event of a serious complication, the baby and mother are transferred to a hospital before the baby dies. Extending legal protection to abortion survivors born alive at abortion clinics would require Congress passing the Born-Alive Abortion Survivors Protection Act.

But the president’s executive order is expected to make a big difference in saving countless lives of infants born prematurely or with serious disabilities. At many hospitals, infants born prematurely at 22, 23, or 24 weeks gestation are often denied medical treatment, even if parents plead for the doctors to provide such treatment.

President Trump signed the executive order on September 25th, just a few days after he had announced that he would be issuing an executive order to protect born-alive infants at the virtually-held National Catholic Prayer Breakfast on September 23rd.
The president’s prerecorded address at the National Catholic Prayer Breakfast made clear that his executive order would “ensure that all precious babies born alive, no matter their circumstances, receive the medical care that they deserve.” “This is our sacrosanct moral duty,” the president said.

Hospitals that receive federal funding will be subject to additional requirements and oversight by the U.S. Department of Health and Human Services.

Hospitals that receive federal funding will be required to provide “meaningful and non-discriminatory” access to medical treatment services for infants in need of emergency medical care with the consent of their parents or legal guardian.

Hospitals receiving federal funding under the new executive order will not be permitted to “unlawfully discourage parents from seeking medical treatment for their infant child solely because of their infant child’s disability.” The executive order further requires hospitals to allow infants to be transferred to another hospital if the hospital they are currently at is not able to provide the necessary and appropriate medical care the infant needs.

The president’s executive order derives its authority from the Emergency Medical Treatment and Labor Act (EMTALA)—a federal law which requires appropriate medical treatment or transfer for any person who arrives at a hospital emergency room in the U.S. and treatment is requested on their behalf—and Section 504 of the Rehabilitation Act (Rehab Act)—a federal law which prohibits any organization receiving federal funding (including federally-funded hospitals) from discriminating against persons on the basis of disability.

President Trump’s executive order also clarifies that the Born-Alive Infant Protection Act of 2002 guarantees that an infant born alive at any stage of development is considered a “person” under federal law and is therefore entitled to “the same legal protections as any other person.” As such, doctors and other relevant healthcare workers are required to provide born-alive infants with equal access to medical treatment appropriate to their condition as would be given to any other person suffering from a condition of similar gravity.

Despite federal laws that require hospitals to provide emergency medical treatment for persons on their premises and that guarantee full legal protection for all infants born alive at any stage of development, many hospitals do not provide potentially lifesaving treatment to very premature infants or to infants who are born with a serious disability.
The U.S. Department of Health and Human Services is currently running an ongoing investigation of a hospital in Ohio which in 2017 failed to perform necessary medical screening for infant twins born prematurely at 22 weeks gestation. The twins were not transferred to the hospital’s neonatal intensive care unit and as a result both twins died a few hours after delivery.

Many hospitals have institutional policies on when to provide and when to deny potentially lifesaving treatment for very premature infants. Infants that are denied treatment are usually instead provided “comfort care” and left to die.

It is not known what percentage of very premature infants in the United States are denied potentially lifesaving treatment and provided with only “comfort care.”

But hospitals that are part of the Eunice Kennedy Shriver National Institute of Child Health and Human Development Neonatal Research Network regularly make treatment and outcome statistics of their preterm infant patients available to researchers. In one study, it was revealed that between 1998 and 2003, nearly 20% of very premature infants born between 22 and 25 weeks gestation were not provided with intensive care at hospitals in the Neonatal Research Network. Not surprisingly, 100% of the infants who failed to receive intensive care did not survive the study found.

However, the results from that study are old and it lumped together all preterm infants born between 22 and 25 weeks gestation. The likelihood that very preterm infants will receive intensive care varies greatly by gestational age. Premature infants born at 24 or 25 weeks gestation are much more likely to receive intensive treatment than infants born at 22 or 23 weeks. Whether or not very preterm infants receive intensive care at say 23 weeks also varies from hospital to hospital.

A more recent study using birth statistics from 2006-2011 shows that fewer than half of the infants that were born at hospitals within the Neonatal Research Network between 22 weeks, 0 days gestation and 22 weeks, 6 days gestation received intensive treatment. By contrast, more than 90% of preterm infants born after 24 weeks, 2 days gestation received intensive treatment.

Even when provided with the best medical treatments available, though, infants born at 22 or 23 weeks are much less likely to survive than infants born at 24 or 25 weeks gestation. For this reason, many hospitals do not provide treatment for very premature infants born at 22, 23, or even 24 weeks gestation unless the infant displays certain characteristics such as
heavier birth weight that make their survival more likely at that stage of development.

But far too often hospitals deny treatment to very preterm infants that could have survived if they had been given the proper care.

According to a 2008 study published in The New England Journal of Medicine, it is estimated that more than twice as many infants born at 22 weeks gestation in hospitals in the Neonatal Research Network from 1998-2003 would have survived had they been provided with full intensive treatment after birth. And an estimated more than 40% more infants born at 23 weeks would have survived if they had been provided intensive treatment.

The president’s executive order comes after the U.S. Senate twice narrowly failed to secure the 60 votes necessary to trigger a vote on the Born-Alive Abortion Survivors Protection Act (S. 311) and after a companion bill (H.R. 962) was not even permitted to be brought up for a vote in the Democrat-controlled House of Representatives.

The Born-Alive Abortion Survivors Protection Act would make it mandatory for health care practitioners to provide appropriate emergency medical care to infants born alive at any stage of development, including very premature infants, infants with disabilities, and infants that survive abortion. It would also make anyone who intentionally kills a born-alive infant subject to the same penalties as anyone else convicted of murder under federal law.

Republicans in Congress had drafted the Born-Alive Abortion Survivors Protection Act after the state of New York last year repealed a state law guaranteeing medical care for infants born alive after an attempted abortion. New York law had previously guaranteed born-alive infants full protection under state law and had required a second attending doctor for abortions after 20 weeks gestation to provide immediate medical care in the event that the child survived the abortion.

The Born-Alive Abortion Survivors Protection Act also came after Virginia Governor Ralph Northam last year made public comments in defense of infanticide. In a public radio interview, Northam had defended a late-term abortion bill up for consideration in his state, saying that if a baby is born alive after an abortion, the baby would be “kept comfortable” and resuscitated “if that’s what the mother and the family desired.” “[T]hen a discussion would ensue between the physicians and mother,” Northam had said.

President Trump’s executive order to protect vulnerable newborn and infant children accomplishes some of what the Born-Alive Abortion Survivors Protection Act (S. 311) seeks to accomplish. Like S. 311, the president’s executive order makes it mandatory for hospitals
to provide appropriate medical care to infants at any stage of development, including for infants born alive following an attempted abortion.

But because there are currently no federal laws specifically punishing doctors who fail to provide medical treatment to abortion survivors, the president’s executive order has to rely on other federal statutes such as EMTALA and the Born-Alive Infant Protection Act of 2002. EMTALA requires hospitals to provide medical treatment to persons who have treatment requested for them on their behalf. But EMTALA only applies to healthcare facilities with an emergency department. Ambulatory surgical clinics such as private abortion clinics, however, do not have emergency rooms, so EMTALA does not apply to them.

The Born-Alive Infant Protection Act of 2002, requires any infant born alive at any stage of development to be treated as a person under federal law, entitled to all the rights and protections therein. But over the years, it has become clear that the Born-Alive Infant Protection Act is not enough to protect preterm infants and infants who survive abortion.

The matter is a pressing issue as many infants are born alive after an abortion. The U.S. Centers for Disease Control and Prevention (CDC), National Center for Health Statistics has determined that from 2003-2014 at least 143 infant deaths after birth were due to induced abortion. The CDC admits that it is possible that this is an underestimate of all infants who died after birth due to injuries sustained during an abortion.

That is why Congress must pass the Born-Alive Abortion Survivors Protection Act (S. 311). The bill would provide clear and substantial penalties for failing to provide medical attention to an infant that is born alive after a failed abortion. The bill would provide a true deterrent to infanticide because it would require any hospital worker or abortion clinic employee with knowledge of the crime to report the incident to law enforcement and it would allow the woman to sue doctors who refuse to provide appropriate treatment to born-alive infants.