

## I. GENERAL PROVISIONS

OFFICE OF THE HEAD OF STATE

**3514** *Organic Law 2-2010 of March 3 on Sexual and Reproductive Health and Voluntary Termination of Pregnancy*

JUAN CARLOS I

KING OF SPAIN

To all whom this may be seen or known:

**Know Ye:** That the Legislature has approved and I have given assent to this Organic Law.

PREAMBLE

I

Sexuality and procreation are directly connected to human dignity and to the right to personal growth and development. These entitlements are protected by several fundamental rights, namely those guaranteeing physical and moral integrity and family and personal privacy. Whether and when to have children is among the most personal and private decisions individuals can make. It is also a decision falling completely within the realm of self-determination. Governments are required not to interfere with them and to provide conditions, including counselling and health services, for these decisions to be made freely and responsibly.

Protection of this aspect of personal freedom has special significance for women, whose lives are profoundly affected in every way by pregnancy and motherhood. The

special connection between women's rights and sexual and reproductive health is noted by many international instruments. Within the United Nations system, article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women adopted by General Assembly Resolution 34/180 of 18 December 1979 establishes that "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning". The Beijing Platform for Action adopted at the Fourth World Conference on Women held in 1995, recognizes that "The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence". Within the European Union, European Parliament Resolution 2001/2128(INI) on sexual and reproductive health and associated rights makes several recommendations to Member States on issues of contraception, unwanted pregnancy, and sex education. These recommendations were based, inter alia, on the huge inequalities experienced by European women in terms of access to reproductive health services, contraception and abortion according to their income or country of residence.

The Convention on the Rights of Persons with Disabilities of 13 December 2006, ratified by Spain, requires States Parties to ensure that "The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided" and to ensure that these persons "retain their fertility on an equal basis with others".

This Law seeks to adapt the Spanish legal system to the international consensus on these issues by updating public policy and introducing new sexual and reproductive health services. The Law is based on the conviction, validated by current scientific knowledge, that offering adequate reproductive and sex education, ensuring universal access to effective family planning by incorporating state-of-the-art contraceptives to the roster of services offered by the National Health System, and making sexual and

reproductive health programs and services available, are the most effective ways to prevent sexually transmitted infections, unwanted pregnancies and abortions, especially among young people.

This Law addresses the protection and defense of sexual and reproductive health rights in a comprehensive manner. It introduces into the Spanish legal system the definitions on sexual and reproductive health adopted by the World Health Organization and provides for the adoption of a range of both health- and education-related measures and steps. Consistent with the views prevailing in politically and culturally like countries, the Law strikes voluntary termination of pregnancy from the Criminal Code with a view to more adequately guaranteeing and protecting the rights and interests of both pregnant women and prenatal life.

## II

The foremost duty of legislators is to make the law consistent with the values of society. Legislators must also ensure that law reforms provide certainty and security, as freedom can only thrive on the firm ground of clear, precise legislation. Such is the spirit behind these new regulations on voluntary termination of pregnancy.

A quarter century ago, legislators partly decriminalized abortion in an effort to address the social problem posed by unsafe abortions that seriously threatened women's lives and health. They did so after taking stock of the majority consensus on the relevance of women's childbearing rights. Resulting Criminal Code reforms made strides by providing women with access to legal, safe abortions upon the occurrence of any one of several events contemplated in the law, including serious risk to the their life or physical and mental health, when pregnancy resulted from rape, or when the fetus was malformed or mentally disabled. However, application of the law led to uncertainty and practices detrimental to legal certainty, with serious consequences to both the security of women's rights and effective protection of the concerned legal interest. These practices, contrary to the spirit of the law, tended to create a predicament for the health care providers entrusted with providing the medical services required to terminate a pregnancy.

The need to reinforce legal certainty in reference to regulations on the voluntary termination of pregnancy was emphasized by the European Court of Human Rights in a 20 March 2007 decision stating that "in such situations the applicable legal provisions must, first and foremost, ensure clarity of the pregnant woman's legal position". It also added that "Once the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it."

In a free, pluralistic and open society it is the role of the legislature, within the range of options allowed under the Constitution, to adapt fundamental rights to the prevailing values and the needs of the day. Application of the law, growing social and legal recognition of women's autonomy in the private and public domains, and prevailing legal trends in like countries all speak in favor of clearly regulating voluntary termination of pregnancy with a view to adequately protecting both women's autonomy and prenatal life. The Parliamentary Assembly of the Council of Europe, in Resolution 1607 of 16 April 2008, reaffirmed the right of all human beings, in particular women, to respect for their physical integrity and to freedom to control their own bodies. The Assembly asserted that in this context the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, and invited member states to decriminalize abortion within reasonable gestational limits.

This new Law takes especially careful account of the constitutional doctrine laid out in the decisions of the Constitutional Tribunal. In Decision 53/1985, the Tribunal, though often divided on substantive questions, did lay out certain principles that were subsequently validated by jurisprudence and which served as benchmarks for this law. One of these principles is that the competing rights and interests involved in regulating voluntary termination of pregnancy are not absolute. As such, the legislature must "balance the protected legal interests and rights at hand and attempt to harmonize them if possible, or if not, spell out the conditions and requirements for one of them to prevail" (CTD 53/1985). Although "the system of laws does not consider the unborn as citizens entitled to the fundamental right to life guaranteed under article 15 of the Constitution", this is not meant to deprive them of all constitutional protection (CTD 116/1999). Prenatal life is a legal interest deserving of protection. While it is the role

of legislators to extend such protection, they must not overlook the fact that the manner in which protection is configured and implemented is always contingent on guaranteeing the fundamental rights of pregnant women.

Based on the doctrine in CTD 53/1985 and the qualitative changes undergone by prenatal life during pregnancy, legislators weighed the facts and attained practical concordance between the conflicting rights and interests through a system of gradual protection.

This Law recognizes the right to freely decide whether and when to have children. This implies, *inter alia*, ensuring that women can make conscious, responsible decisions as to whether to carry a pregnancy to term, and that these decisions are respected. Based on expert opinion and comparative law, legislators considered it reasonable to allow a period of fourteen weeks in which to guarantee the right of women to make an informed decision about termination of pregnancy, free from interference. This concept, referred to in CTD 53/1985 as "conscious self-determination", considers that decisive third-party intervention to shape a pregnant woman's will provides no significant guarantees to the fetus while needlessly restricting the right to personal growth and development protected under article 10.1 of the Constitution.

Experience shows that prenatal life is best protected by policies that actively support motherhood and pregnant women. In the early stages of pregnancy, protection of a legal right is best achieved by working with the pregnant woman rather than against her. She can make a decision after being apprised of the services, assistance and rights to which she is entitled should she wish to proceed with her pregnancy; of the medical, psychological and social consequences of continuing or terminating her pregnancy, and of the counselling services available to her both before and after the procedure. The Law provides for a waiting period of at least three days and requires that information be provided in a clear, objective, pressure-free manner in non-threatening surroundings.

As noted in CTD 53/1985, a crucial milestone of the pregnancy process "is the

moment when the nasciturus becomes viable outside the womb". Fetal viability, in the general consensus of the scientific community based on neonatology research, begins at approximately the twenty-second week. Until then the Law allows termination of pregnancy, provided that the life or health of the pregnant woman is at serious risk or that the fetus is seriously malformed. These health grounds for voluntary termination of pregnancy are complemented by steps designed to ascertain with complete accuracy that this is indeed the case. As opposed to current regulations, the Law imposes a clear time limit on application of the so-called therapeutic indication. If a woman's life or health is at risk beyond the twenty-second week of pregnancy, the appropriate course of action is to induce labor, which fully balances her right to life and physical integrity and protection of the life in formation.

Beyond the twenty-second week, the law contemplates two exceptions for termination of pregnancy. The first refers to cases of "fetal anomalies incompatible with life", an exception to considering prenatal life a protected legal interest under article 15 of the Constitution (CTD 212/1996). The second exception applies when "the fetus has an extremely serious and incurable condition, as confirmed by a Medical Committee". Confirmation defers to the expert opinion of medical practitioners, based on current scientific knowledge.

The Law further sets out a range of guarantees on effective access to voluntary termination of pregnancy and to protection of women's privacy and confidentiality. These provisions are intended to address issues in the existing regulatory framework, including territorial disparities in access to services and breaches of privacy. As such, the authorities are required to ensure effective enjoyment of the rights recognized herein, including access to services.

The Law also provides for conscientious objection by health care providers directly involved in voluntary termination of pregnancy, although more specific regulations will be addressed in a future reform of this Law.

Article 145 of the Criminal Code has been rewritten to limit the penalties imposed on women who otherwise abort or consent to an abortion. Prison terms are removed

and application of the maximum penalty under certain circumstances is better defined. A new article 145(b) on penalties for those who terminate a pregnancy within the law but without fulfilling the requirements is added.

Law 41 of 14 November 2002 (The Patient Rights Act) is also amended to make consent to voluntary termination of pregnancy part of general provisions and end the exceptionality rule therein.

### III

The Law is divided into a Preliminary Section, two Sections, three Additional Provisions, a Repealing Provision and six Final Provisions.

The Preliminary Section sets out the purpose, definitions, basic principles, and rights enshrined in the law.

Section I on Sexual and Reproductive Health contains four chapters. Chapter I sets out sexual and reproductive health policy objectives. Chapter II contains health-related measures, and Chapter III contains education-related steps. Chapter IV mandates formulation of a new National Sexual and Reproductive Health Strategy as an instrument of jurisdictional policy development cooperation.

Section II regulates conditions for voluntary termination of pregnancy and access guarantees.

Additional Provision 1 requires the competent authorities to verify compliance with the rights and delivery of the services recognized herein.

Additional Provision 2 requires the Government to evaluate the financial cost of the services and benefits recognized in this Law and to adopt the steps contemplated in Law 16 of 28 May 2003 (The National Health System Quality Act).

Additional Provision 3 deals with access to contraceptive methods and their inclusion in the roster of services offered by the National Health System.

The Repealing Provision abolishes Criminal Code article 417(b) introduced into the Criminal Code of 1973 by Organic Law 9 of 5 July 1985 and upheld in the Criminal Code of 1995.

Final Provision 1 amends Article 145 of the Criminal Code and introduces a new article 145(b). Final Provision 2 amends article 9(4) of Law 41 of 14 November 2002 on Patient Rights and Medical Records and Information. The other Final Provisions refer to the organic nature of the law, require the Government to draft the regulations of the Law, and set out the jurisdiction of application and the effective date of the Law (within four months of publication).

## **PRELIMINARY SECTION**

### **General Provisions**

#### **Article 1. Purpose**

The purpose of this Organic Law is to guarantee fundamental sexual and reproductive health rights, regulate conditions for voluntary termination of pregnancy, and set out related obligations for the competent authorities.

#### **Article 2. Definitions**

For the purposes of this Law, the terms below will mean as follows:

(a) Health: A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

(b) Sexual Health: A state of physical, psychological and sociocultural well-being related to sexuality, which implies freedom from coercion, discrimination, and violence.

(c) Reproductive Health: A state of physical, psychological and sociocultural well-being in aspects related to reproduction, which implies a safe sex life and the freedom to decide if and when to have children.

### **Article 3. Principles and Scope**

1. Everyone has the right to freely adopt decisions affecting their sexual and reproductive life without limitations other than respecting the rights of others and the public order guaranteed by the Constitution and the law.

2. The right to decide freely whether and when to have children is formally recognized.

3. Access to the services and benefits herein will not be denied because of race, ethnicity, religion, beliefs, opinion, sex, disability, sexual orientation, age, marital status or any other personal or social condition or circumstance.

4. The authorities, as required, will deliver the services and comply with the obligations set out herein as part of sexual and reproductive health guarantees.

### **Article 4. Access Guarantees**

The Government and its agents will guarantee equal access to the National Health System services and benefits included in the scope of this Law.

## SECTION I

### **Sexual and Reproductive Health**

## CHAPTER I

### **Sexual and Reproductive Health Policies**

### **Article 5. Government Objectives**

1. In implementing health, educational and social policy, the authorities will guarantee:

(a) Inclusion of reproductive and sex education and information in the formal education system curriculum.

(b) Universal access to sexual and reproductive health services and programs.

(c) Access to safe, effective birth control methods.

(d) Elimination of all forms of discrimination, especially against persons with disabilities. This will include guaranteeing their sexual and reproductive health rights and providing the support required by their disabilities.

(e) Providing comprehensive, gender-sensitive sexual and reproductive health education.

(f) Providing safe sex and contraception information designed to help prevent sexually transmitted infections and diseases and unwanted pregnancies.

2. Government policy will promote:

(a) Equality and mutual respect between men and women in the area of sexual health and educational programs especially designed to foster understanding and respect for individual sexual choices.

(b) Responsible sexual behavior, regardless of sexual orientation.

#### **Article 6. Information and Education Initiatives**

The authorities will implement sexual and reproductive health information and education initiatives, especially through the media, with a special focus on preventing unwanted pregnancies. These initiatives will be principally aimed at young persons and individuals with special needs and to preventing sexually transmitted infections.

## **Health-Related Steps**

### **Article 7. Sexual and Reproductive Health Care**

Public health facilities will guarantee:

(a) Quality, comprehensive sexual health care services and standards of care based on the best scientific knowledge available.

(b) Universal access to effective family planning practices through addition to the roster of National Health System services of state-of-the-art contraceptives whose effectiveness is supported by scientific evidence.

(c) The provision of quality pregnancy, childbirth and postpartum services to women and couples. Provision of these services will take due account of the access needs of persons with disabilities.

(d) Perinatal care centered on the family and healthful growth and development.

### **Article 8. Medical Practitioner Training**

Training of health care providers will be gender-sensitive and will include:

(a) Integrating sexual and reproductive health into the curriculum of health sciences and medical schools, including research and training in the clinical practice of voluntary termination of pregnancy.

(b) Professional sexual and reproductive health training, including the practice of pregnancy termination.

(c) Integrating sexual and reproductive health into the curriculum of continuing training and education programs for health care providers.

(d) Health care provider training will take due account of the circumstances and needs of especially vulnerable groups and social sectors, including persons with

disabilities.

## CHAPTER III

### **Education-Related Measures**

#### **Article 9. Sexual and Reproductive Health in the Education System**

The education system will hold sexual and reproductive health education as an integral part of personal growth and value development objectives and will develop a comprehensive approach contributing to:

(a) A vision of sexuality that promotes equality and joint responsibility by men and women, with special emphasis on preventing gender violence and sexual abuse.

(b) Recognition and acceptance of sexual diversity.

(c) Appropriate development of sexuality based on the characteristics of young people.

(d) Prevention of sexually transmitted diseases and infections, especially HIV.

(e) Prevention of unwanted pregnancies as part of responsible sex.

(f) Integration of sexual and reproductive health into the education system will take due account of the circumstances and needs of especially vulnerable groups and social sectors, including persons with disabilities. Students will be provided in all cases with information and materials that are both accessible and age-appropriate.

#### **Article 10. Training Activities**

The authorities will support school communities in the implementation of activities related to sex education and prevention of sexually transmitted infections and unwanted pregnancies, including through the provision of adequate parental

information.

## CHAPTER IV

### **Sexual and Reproductive Health Strategy**

#### **Article 11. Development of a Sexual and Reproductive Health Strategy**

To meet the objectives herein, the Government, in collaboration with Autonomous Communities and with full respect for their jurisdictional rights, will enact a Sexual and Reproductive Health Strategy. The said Strategy will be drafted in collaboration with learned and professional societies and community groups.

The Strategy will complement the criteria of quality and equity in the National Health System, with emphasis on young people and groups with special needs.

The Strategy will be in effect for a term of five years. Results, especially universal access to sexual and reproductive health, will be evaluated at two-year intervals.

## SECTION II

### **Voluntary Termination of Pregnancy**

#### CHAPTER I

#### **Conditions**

#### **Article 12. Guaranteed Access to Voluntary Termination of Pregnancy**

Access to voluntary termination of pregnancy is guaranteed in the conditions set out herein. These conditions will be interpreted in the manner most favorable to the protection and effectiveness of the fundamental rights of women requesting the

procedure, in particular their right to personal growth and development, life, physical and moral integrity, privacy, freedom of thought, and freedom from discrimination.

### **Article 13. Common Requirements**

Voluntary termination of pregnancy must meet the following requirements:

First: It must be performed by a medical specialist or under his/her supervision.

Second: It must be performed in an accredited public or private health care facility.

Third. It must be performed with the express written consent of the pregnant woman or her duly authorized representative, as the case may be, pursuant to the provisions in Law 41/2002 on Patient Rights and Medical Records and Information.

Express consent may be dispensed with in the cases contemplated in article 9.2.(b) of the said Law.

Fourth. Women aged 16 and 17 can consent to voluntary termination of pregnancy on their own under provisions applicable to women of legal age.

At least one authorized representative, parent or legal guardian of a woman in this age range will be informed of her decision.

The foregoing will be dispensed with if the concerned minor has compelling reason to believe that notification will lead to clear and present danger of domestic violence, threats, coercion, mistreatment, helplessness or abandonment.

### **Article 14. Termination of Pregnancy on Request**

Pregnancies may be terminated within the first fourteen weeks of gestation at the request of the pregnant woman, provided the following requirements are met:

(a) That the pregnant woman is informed of her rights and of available counselling and support services and assistance, pursuant to articles 17(2) and 17(4) of this Law.

(b) That at least three days elapse between delivery of the above information and performance of the procedure.

#### **Article 15. Termination on Health Grounds**

Exceptionally, a pregnancy may be terminated for medical reasons in any one of the following circumstances:

(a) Prior to the twenty-second week of pregnancy, if the woman's life or health is in serious risk, as confirmed in advance by a medical specialist not performing or supervising the procedure. Confirmation will not be required in emergency cases of immediately life-threatening risk.

(b) Prior to the twenty-second week of pregnancy, provided that there is a risk of serious fetal anomalies, as confirmed in advance by two medical specialists not performing or supervising the procedure.

(c) In case of fetal anomalies incompatible with life as confirmed in advance by a medical specialist not performing or supervising the procedure, or when the fetus is found to suffer from an extremely serious condition that is incurable at the time of diagnosis, as confirmed by a Medical Committee.

#### **Article 16. Medical Committee**

1. The Medical Committee in the preceding paragraph will consist of two specialists in gynecology and obstetrics or prenatal diagnosis, plus one pediatrician. The pregnant woman will be entitled to designate one of these specialists.

2. The pregnant woman will make a decision about the procedure once the Committee confirms the diagnosis.

3. Autonomous Communities will set up at least one such Medical Committee in each public health facility. Incumbent and alternate members designated by the competent health authorities will serve for at least one year. Appointments will be

published in the Official Gazettes of the respective Autonomous Communities.

4. The particulars of Medical Committee operation will be set out in the regulations.

#### **Article 17. Prior Information**

1. Women expressing their willingness to undergo voluntary termination of pregnancy will be apprised of the existing methods, the conditions for termination set out herein, the accredited public health facilities offering this service, the formalities to be completed, and the conditions for public health system coverage.

2. Women choosing to terminate a pregnancy pursuant to article 14 will be given a sealed envelope containing information on:

(a) Public assistance and counselling services available to pregnant women and health coverage during pregnancy and childbirth.

(b) Labor-related rights accruing to pregnant women and new mothers, available childcare services and assistance, government benefits, and other relevant childbearing incentive and assistance information.

(c) Centers providing adequate contraception and safe sex information.

(d) Centers where counselling can be obtained both before and after pregnancy termination.

Such information will be available at all public health care facilities, or in those accredited to perform voluntary termination of pregnancy. For the purposes of article 14 above, pregnant women will be issued a certificate attesting to the date information was provided.

The contents and format of the above information will be set out in the regulations to be enacted by the Government.

3. In the cases contemplated in article 15(b) of this Law, pregnant women will be

additionally provided with written information on the rights of persons with disabilities, available public services and assistance, and community groups assisting such persons.

4. Prior to providing consent, all pregnant women will be provided the information required by articles 4 and 10 of Law 41 of 14 November 2002, specifically on the medical, psychological, and social consequences of continuing or terminating their pregnancies.

5. The information to be provided pursuant to this article will be presented in a clear, objective, and understandable manner. Persons with disabilities will have this information provided in suitably accessible formats and media.

Written materials will specify that all information will also be provided verbally upon request.

## CHAPTER II

### **Access Guarantees**

#### **Article 18. Guaranteed Access**

Public health facilities will adopt steps to guarantee that voluntary termination of pregnancy services are provided in the cases and per the requirements set out herein. These services will be included in the roster of services offered by the National Health System.

#### **Article 19. Guaranteed Service Delivery**

1. To ensure the quality and equality of voluntary termination of pregnancy care, the competent health authorities will guarantee the basic service contents to be determined by the Government in consultation with the Interterritorial Health Council. All women will be guaranteed equal access to these services, regardless of place of residence.

2. Voluntary termination of pregnancy services will be provided at health facilities belonging to or associated with the public health system.

Health care providers directly involved in voluntary termination of pregnancy may object on conscientious grounds, provided their choice does not undermine access or the quality of care. Refusal to perform a pregnancy termination procedure for reasons of conscience is a personal decision which must be made in advance and communicated in writing. This notwithstanding, medical practitioners will at all times provide adequate medical treatment and care to women who so require, both before and after a pregnancy termination procedure.

If a public health facility is unable to promptly provide the procedure, pregnant women will be able to obtain it in another accredited center anywhere in the country, and the health authorities will undertake in writing to directly cover the cost.

3. Procedures in article 15(c) of this Law will be preferably performed in an accredited public health facility.

#### **Article 20. Privacy and Confidentiality**

1. Facilities providing voluntary termination of pregnancy services will ensure the privacy of women and the confidentiality of their personal data.

2. Facilities providing voluntary termination of pregnancy services will set up an active, diligent medical record safekeeping system and implement the high-level personal data security steps required in the applicable law.

#### **Article 21. Data Processing**

1. A health facility requested to provide voluntary termination of pregnancy data will advise requesters in advance that all identifying personal information concerning patients actually having received such services will be encrypted and separated from the associated clinical data.

2. Facilities providing voluntary termination of pregnancy services will set up an appropriate mechanism for automating and encrypting personal information pertaining to patients having received or receiving care pursuant to this Law.

For the purposes of the preceding paragraph, identifying patient information will include first and last names, addresses, telephone numbers, electronic mail addresses, national identity card numbers or equivalent, and any other information capable of disclosing the patient's physical or genetic identity.

3. Upon intake, patients will be assigned a code that will identify them throughout the process.

4. Health facilities will substitute the assigned patient code for identifying information in all medical records related to voluntary termination of pregnancy so as to prevent improper access to the said information.

5. Without prejudice to the forms of access permitted hereunder, voluntary termination of pregnancy data will be entered in patient records in such a way as to prevent viewing by personnel not involved in performing the procedure.

## **Article 22. Personal Information Sharing and Access**

1. Access without consent to identifying patient records or data will only be allowed on the terms set out in the Law on Patient Rights and Medical Records and Information.

When a medical practitioner requires access for the purposes of providing adequate care to the patient, the information released will be strictly limited to that necessary for the stated purpose. A record of all instances of such access will be kept.

In all other cases contemplated in the law, access will require express authorization from a competent agency, including a detailed declaration of the reason for the request. The information to be released will be strictly limited to that necessary for the stated purpose.

2. Patient discharge reports, medical certificates and any other documents related to voluntary termination of pregnancy that are required or requested for any purposes will be given exclusively to the patient or her designee. All such documents will strictly enforce the patient privacy and confidentiality provisions recognized in this Chapter.

3. Health facilities will not use patient information for the purposes of advertising or soliciting business. Patients will not be asked to consent to the use of their information for these purposes.

### **Article 23. Removal of Data**

1. Five years after discharge, health facilities having performed a voluntary termination of pregnancy procedure will ex officio strike all patient data from the record. Notwithstanding the foregoing, medical records may be kept for epidemiologic, research or National Health System organizational reasons, in which case all identifying patient information and codes assigned pursuant to the preceding articles will be struck from the record.

2. The foregoing will be construed without prejudice to the personal data removal rights set forth in Organic Law 15 of 13 December 1999 (The Personal Information Protection Act).

### **Additional Provision 1: Role of Competent Authorities**

The State will guarantee and enforce National Health System compliance with the rights and services herein.

To encourage improvements in service equity and accessibility and monitor National Health System compliance with the rights and services herein, the Government will issue an annual status report based on data submitted by Autonomous Communities to the National Health System's Interterritorial Council.

### **Additional Provision 2: Evaluation of Costs and Adoption of Steps**

The Government will evaluate the financial cost of the public services and benefits herein and will adopt the appropriate steps as required under Law 16 of 28 May 2003 (The National Health System Quality Act).

### **Additional Provision 3: Access to Contraceptive Methods**

Within a year of the strike date of this Law, the Government will guarantee effective access to contraceptive methods by including state-of-the-art contraceptives whose effectiveness is supported by scientific evidence in the roster of National Health System services, under the same conditions as other publicly-funded drug programs.

### **Repealing Provision: Criminal Code Article 417(b)**

Article 417(b) in the consolidated Criminal Code text published in Decree 3096 of 14 September 1973 and written pursuant to Organic Law 9 of 5 July 1985 is repealed.

### **Final Provision 1: Amendment to the Criminal Code Organic Law 10 of 23 November 1995**

One. Article 145 of the Criminal Code is amended as follows:

#### **"Article 145.**

1. Performing an abortion with the woman's consent in any of the cases not permitted by the law is punishable by one to three years' imprisonment and one to six years' suspension of the license to practice a health-related profession or serve in any capacity in a public or private gynecological clinic, establishment, or center. The maximum penalty may be imposed if the offense takes place outside an accredited public or private health center or establishment.

2. Inducing or consenting to one's own abortion in any of the cases not permitted by the law is punishable by a fine of six to 24 months' net income.

3. The maximum penalty contemplated in this article may be imposed

when an abortion is performed after the twenty-second week of pregnancy.”

Two. Article 145(b) is added to the Criminal Code, as follows:

**“Article 145(b).**

1. Performing an abortion in any of the cases permitted by the law is punishable by a fine of six to 12 months’ net income and six months to two years’ suspension of the license to practice a health-related profession or serve in any capacity in a public or private gynecological clinic, establishment, or center, if the said abortion is performed:

(a) Without ensuring that the pregnant woman has been duly informed of her childbearing rights and the public services and assistance available to her;

(b) Ahead of the waiting period contemplated in the legislation;

(c) Prior to securing the required clearances;

(d) Outside an accredited public or private health center or establishment, in which case the maximum penalty may be imposed.

2. The maximum penalty contemplated in this article may be imposed when an abortion is performed after the twenty-second week of pregnancy.

3. Pregnant woman will not be subject to punishment under this article.”

Three. Article 417(b)(a.1) in the repealing provision is hereby repealed.

**Final Provision 2: Amendment to Law 41 of 14 November 2002 on Patient Rights and Medical Records and Information**

Article 9(4) of Law 41 of 14 November 2002 on Patient Rights and Medical Records and Information is amended as follows:

“4. Practices such as clinical trials and assisted reproductive technology will

be governed by the general provisions on legal age and the applicable special provisions.”

### **Final Provision 3: Organic Nature**

This Organic Law is enacted under article 81 of the Constitution.

The precepts in the Preliminary Section, Section I, Chapter II of Section II, the Additional Provisions, and Final Provisions 2, 4, 5 and 6, are not organic in nature.

### **Final Provision 4: Regulatory Enablement**

The Government will draft the regulatory provisions required to put into practice and enforce this Law.

Prior to the effective date of the said regulations, all regulatory provisions not contrary to the provisions herein remain in effect.

### **Final Provision 5: Scope**

Without prejudice to the authority of the Autonomous Communities, this Law will be enforceable throughout the entire country.

The competent health authorities will guarantee that public and associated health facilities in the pregnant woman’s home Autonomous Community provide the services herein whenever requested.

### **Final Provision 6: Effective Date**

The Law will enter into force within four months of publication in the Official Gazette.

I therefore hereby

Order all Spaniards, both private citizens and authorities, to observe and enforce this Organic Law.

Madrid, 3 March 2010

JUAN CARLOS R.

The Prime Minister

JOSÉ LUIS RODRÍGUEZ ZAPATERO