

Federal Law on Conscience Rights in Health Care

Introduction

- Conscience protection laws stem from a long tradition of defending religious and conscience rights in the United States, from the First Amendment to laws protecting conscientious objectors during time of war.
- While numerous federal laws and programs spend billions of dollars each year to promote access to health care services, including reproductive services, conscience protection laws are based on the premise that, the nation should never require the violation of individual autonomy, morals, or religious beliefs to achieve health care access.
- These laws ensure that Americans from diverse faith and philosophical backgrounds are free to pursue their professional calling without fear of persecution or coercion.

The Weldon Amendment

- First adopted in 2004, included in each subsequent HHS appropriations act.ⁱ
- Requirements apply to federal agencies and programs as well as State and local governments receiving federal funds from HHS.
- Prohibits discrimination against health care providers who do not provide, pay for, provide coverage of (in the case of a health plan), or refer for abortions.
- Protects a broad number of entities including physicians and other health care professionals, hospitals, provider-sponsored organizations, HMOs, and health insurance plans that do not cover abortion.

Public Health Service Act Section 245

- Signed into law by President Clinton in 1996.
- Places restrictions on the federal government as well as State and local governments receiving federal financial assistance.ⁱⁱ
- Prohibits discrimination against both individuals and institutions (including doctors, hospitals, and postgraduate training programs) that refuse to undergo training in, require or provide training in, provide referrals for, or perform abortions.ⁱⁱⁱ
- Prohibits discrimination against individuals and institutions that refuse to “make arrangements for” any of these activities.^{iv}
- Prohibits, for example, discrimination against a doctor who refused even to “make arrangements for” such activities as abortion referrals.

The Church Amendments

- Enacted at various times in the 1970s in response to *Roe v. Wade* and to address concerns that doctors and faith-based hospitals would be forced to perform abortions or sterilizations as a condition of receiving federal funds.^v
- Prohibits courts and other public officials from requiring individuals or institutions receiving grants under certain federal programs to perform or assist in abortions or sterilizations, or to provide facilities or personnel for the same.^{vi}
- Prohibits entities from discriminating against physicians or other health care personnel because of their religious or moral objections to performing abortions or sterilizations.^{vii} Areas of prohibited discrimination include employment, promotion, termination, and extension of staff privileges.^{viii}
- Extends protection to individuals, including researchers and laboratory staff, participating in HHS-funded behavioral or biomedical research (including research funded by the National

Institutes of Health).^{ix} Under this provision, no individual can be discriminated against on the basis that: 1) the individual performed or assisted in any lawful research activity; or 2) the individual refused to perform or assist in any research activity because it would be contrary to his or her religious beliefs or moral convictions. This means, for example, that researchers who object to participating in federally funded embryo-destroying research cannot be fired or otherwise discriminated against on the basis of their beliefs.

- Subsection (d) applies to all programs administered by the Secretary of HHS^x and prohibits any program funded “in whole or in part” by HHS from requiring any individual to perform or assist in “any part” of a “health service program or research activity” if such participation would be contrary to the individual’s religious beliefs or moral convictions.
- This provision is not specific to abortion or sterilization and covers a broad array of activities, including contraception programs and research activities administered by HHS.

The Provider Conscience Regulation

- Regulation development began partially in response to a November 2007 ethics opinion by the American College of Obstetricians and Gynecologists that raised fears that physicians would risk losing board certification if they did not violate their conscience by referring for abortions.^{xi}
- On December 18, 2008, the Bush Administration finalized a regulation, which took effect January 20, 2009, implementing the Weldon Amendment, PHSA section 245, and the Church Amendments.
- Defined key statutory terms, provided guidance for HHS grantees and other funding recipients subject to the law’s requirements, and designated the HHS Office for Civil Rights to receive and investigate complaints of discrimination. The regulation can be read at: http://www.freedom2care.org/docLib/20090313_HHS_20081218_reg_FINAL.pdf

The Obama Administration Replaces Conscience Protections

- On February 18, 2011 the Obama Administration gutted the provider conscience regulation, though leaving intact the discrimination reporting option. The regulation can be read at: http://www.ofr.gov/OFRUpload/OFRData/2011-03993_PL.pdf

ⁱ See the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110-329, Div. A section 101, 122 Stat. 3574, 3575.

ⁱⁱ See 42 U.S.C. section 238n.

ⁱⁱⁱ See 42 U.S.C. section 238n(a).

^{iv} Ibid.

^v See *Taylor v. St. Vincent’s Hospital*, where the 9th Circuit Court of Appeals required a Catholic hospital to provide facilities for performing sterilizations, in spite of the hospital’s faith-based policy against providing sterilizations. 523 F.2d 75 (1975).

^{vi} See 42 U.S.C. section 300a-7(b).

^{vii} See 42 U.S.C. section 300a-7(c)(1).

^{viii} The Church Amendments also prohibit discrimination against individuals because of their past involvement in lawful abortions or sterilizations.

^{ix} See 42 U.S.C. section 300a-7(c)(2).

^x See 42 U.S.C. section 300a-7(d).

^{xi} See “HHS Secretary Calls on Certification Group to Protect Conscience Rights,” U.S. Department of Health and Human Services, March 15, 2008 (available at <http://www.hhs.gov/news/press/2008pres/03/20080314a.html>) (last accessed April 3, 2009). See also, Mark Hemingway, “A Limit to ‘Choice’: Obama will invite discrimination against doctors who choose not to perform abortions,” *National Review Online*, March 5, 2009 (available at <http://article.nationalreview.com/?q=N2E3ODlhYWRjNDQ4NGRkZTE0MWU4MDhkOWVjNzdkZjQ>) (last accessed April 3, 2009).