

Conscience and the New Healthcare Law

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Where does the new healthcare overhaul law (H.R. 3590, the "Patient Protection and Affordable Care Act") leave healthcare professionals regarding the exercise of their conscience rights? How might it impact the poor patients now served by faith-based professionals and institutions?

Summary of Conscience Protection Gaps

1. Narrow range of moral issues. Conscience protections only apply to abortion and assisted suicide--not to all the other ethical challenges healthcare professionals face, such as prescriptions of abortifacients, contraception, sterilization and many other issues with moral implications.
2. No protection for medical residents who decline to train for abortions. While the new law does not invalidate other existing Federal law that prohibits discrimination against individuals who decline to participate in training for abortions, the other existing law does not apply to funding under the new law.
3. No protection for health plans. The conscience protections in the new law only apply to "individuals" and "healthcare facilities"; the law does not include proposed language to also protect "a provider-sponsored organization, a health maintenance organization, a health insurance plan, a plan sponsor, a health insurance issuer, a qualified health plan or issuer offering such a plan, or any other kind of health care facility, organization, or plan."
4. Nowhere to report abortion discrimination. Notably, the law does not specify an agency where victims of discrimination may report abuses related to abortion--only abuses related to assisted suicide.
5. "Assisted suicide" conscience protection may be invalid. Some analysts have raised the concern that terms such as "assisted suicide" may not apply to states where assisted suicide is legal but the act has been semantically redefined by euphemisms such as "aid in dying."

The gaps in conscience protections leave healthcare professionals, and especially faith-based physicians, nurses, hospitals and clinics, vulnerable to all forms of discrimination by governments and on a host of ethical issues beyond abortion.

The long-term result of this gap of protection may well be the forcing out of faith-based professionals and institutions from medicine, resulting in the loss of the vital healthcare services for the poor that they provide.

Conscience sections in H.R. 3590 ("Patient Protection and Affordable Care Act")

Abortion

SEC. 1303. SPECIAL RULES.

(3) PROVIDER CONSCIENCE PROTECTIONS.-No individual health care provider or health care facility may be discriminated against because of a willingness or an unwillingness, if doing so is contrary to the religious or moral beliefs of the provider or facility, to provide, pay for, provide coverage of, or refer for abortions.

(b) APPLICATION OF STATE AND FEDERAL LAWS REGARDING ABORTION.-

(2) NO EFFECT ON FEDERAL LAWS REGARDING ABORTION.- (A) IN GENERAL.- Nothing in this Act shall be construed to have any effect on Federal laws regarding- (i) conscience protection; (ii) willingness or refusal to provide abortion; and (iii) discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.

Assisted suicide

SEC. 1553. PROHIBITION AGAINST DISCRIMINATION ON **ASSISTED SUICIDE**. (a) IN GENERAL.-The Federal Government, and any State or local government or health care provider that receives Federal financial assistance under this Act (or under an amendment made by this Act) or any health plan created under this Act (or under an amendment made by this Act), may not subject an individual or institutional health care entity to discrimination on the basis that the entity does not provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(b) DEFINITION.-In this section, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

(d) ADMINISTRATION.-The Office for Civil Rights of the Department of Health and Human Services is designated to receive complaints of discrimination based on this section.