

The Need for Conscience Protection

There has been much debate about the need for abortion-related conscience protection in the pending health care bills. But the bills pose a threat to conscience that is *not limited to abortion*.

1. Current federal law permits, without fanfare, the accommodation of a wide range of religious and moral objections in the provision of health insurance and services. Currently, insurers are free under federal law to accommodate purchasers or plan sponsors with moral or religious objections to certain services. Plans may, and currently do, accommodate those objections by allowing purchasers not to buy coverage for assisted suicide, gender change surgery, contraceptives, sterilization, in vitro fertilization, or other procedures that the purchaser or sponsor finds religiously or morally problematic. Likewise, federal law currently does not forbid insurers from excluding from their plans any services that the insurers themselves oppose on moral or religious grounds. Nor does federal law forbid a health benefits plan from accommodating the moral or religious objections of individual or institutional health care providers, or prevent such providers from contracting with a plan. Indeed, these various freedoms have hardly been considered accommodations, because they have not been requests for exceptions to general rules, but simply decisions not to buy, or otherwise not to participate in, coverage for the objectionable services. And these conscience-based decisions by some participants in the system happen daily and without incident.

2. The proposed healthcare bills would impose new mandates to cover certain services, creating new risks of conflicts over conscience. The current bills require health plans to cover “essential benefits.” The essential benefits, in turn, must include certain specified categories, such as “ambulatory patient services,” “prescription drugs,” and “preventive” services. And within those categories, the bills designate an Executive Branch official to define what specific services plans must cover. Thus, any item or service defined as “essential” *must* be provided—regardless of any conscientious objection on the part of the insurer, purchaser, or plan sponsor. The freedom that insurers, purchasers, and sponsors currently enjoy under federal law to offer or purchase health plans that are not morally or religiously objectionable to them will be lost. In addition, in various ways, the bills give the Executive Branch the authority to regulate the selection of providers by health plans. Health plans may therefore be newly required to exclude providers because they have a conscientious objection to particular procedures.

3. The final bill should be fixed to retain the freedom of conscience that insurers, purchasers, sponsors, and providers currently have under federal law. In light of these new mandates, Congress is faced with the question whether it will require those who wish to participate in the vital work of providing health care coverage and services in America to violate their conscience as a condition of that participation. The answer should be a resounding no. The right to conscience protection derives from the dignity of the human person—it should not be limited to a particular procedure or religious group. Out of respect for this foundational principle, Congress should expressly declare in the final bill that it should not be construed to prohibit accommodations of conscience for those who participate in the delivery or coverage of health care services. Such a protection would not amend any other federal law, or affect any state or local law, but instead prevent *only the new law* from imposing *new* burdens on conscience. This would not effect a sea change regarding conscience protection, but instead would prevent one.