



Secretariat of Pro-Life Activities

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Dear Representative:

I am writing to urge your support for H.R. 1179, the Respect for Rights of Conscience Act of 2011. This bipartisan bill, introduced on March 17 by Reps. Jeff Fortenberry (R-NE) and Dan Boren (D-OK), will help ensure that the new health care reform act is not misused to violate the religious freedom and rights of conscience of those who offer and purchase health insurance coverage in our nation.

Federal law, until now, has never prevented the issuers and purchasers of health coverage from negotiating a health plan that is consistent with their moral and religious convictions. Church employers, for example, may currently purchase a plan for their employees that is consistent with the Church's moral teachings – they need only find an insurer willing to accommodate their moral concerns.

This could change, however, with implementation of the Patient Protection and Affordable Care Act (PPACA) as now written. The Act establishes a new list of “essential health benefits” that will be mandatory for most health plans throughout the United States (Sec. 1302). In addition, a provision added in the Senate near the end of the legislative process requires all group and individual plans to cover general “preventive services,” as well as additional preventive services specifically for women, and to do so without co-pays or out-of-pocket expenses (Sec. 1001, creating Sec. 2713 of the Public Health Service Act).

PPACA outlines the mandated benefits in broad terms such as “ambulatory patient services” and “prescription drugs,” designating the Department of Health and Human Services (HHS) to determine specifics. For months, Planned Parenthood and other groups have been urging that mandated “preventive services for women” include all drugs and devices approved by the FDA for contraception -- including those that can prevent the implantation and survival of a newly conceived human being, and hence are seen as abortifacient by the Catholic Church and many others. In fact, the FDA's most recently approved drug for “emergency contraception,” Ulipristal (with the trade name Ella), is a close analogue to RU-486 that can induce an abortion several weeks into pregnancy. And while coverage for abortion after implantation cannot be mandated as an “essential health benefit” under PPACA (see Sec. 1303 (b)(1)(A)), it is not clear whether abortion may be mandated instead as a “preventive service” for women.

Mandated inclusion of contraception, sterilization and abortifacient drugs in health plans poses an obvious potential conflict with rights of conscience. Such conflicts would also arise if HHS mandates inclusion of some fertility treatments such as *in vitro* fertilization, treatments using material from deliberately killed unborn children, or other procedures specifically rejected by the teachings of some religions. It is worth noting that PPACA does respect religious freedom in some contexts: It explicitly exempts religious sects such as the Amish that decline participation in social health programs generally; allows Christian Scientists in its Elder Justice

program to choose prayer as their sole form of healing; and allows behavioral health treatment using traditional tribal practices in the Indian Health Service.¹ However, it arbitrarily and inexplicably does *not* protect the many religious denominations – including those providing the backbone of the nonprofit health care system in this country – whose moral teaching rejects specific procedures. If religious and other stakeholders are driven out of the health insurance marketplace by this aspect of PPACA, legislation whose purpose was to expand health coverage could have the opposite effect.

H.R. 1179 would address this serious problem, and restore the legal status quo existing prior to enactment of PPACA. It states that a health plan shall not be considered as failing to provide “essential health benefits,” or as meeting other requirements under PPACA, if it excludes specific procedures that violate the moral or religious convictions of those providing or purchasing the plan. It further ensures that nothing in Title I of PPACA will be construed as requiring a health care provider to violate his or her religious or moral convictions on such procedures, or as making health plans impose such requirements on providers. Finally, the bill forbids governmental entities implementing PPACA to discriminate against those exercising these rights of conscience, and provides for a private right of action as well as action by the HHS Office for Civil Rights to address violations of the law.

Finally, this legislation also addresses two criticisms sometimes made against broad conscience protection laws. First, it references anti-discrimination language already found in PPACA, so a claim of conscience rights cannot be used to deny life-affirming treatments to some classes of people based on a belief that their lives are less worth saving than others. Second, it explicitly allows HHS to require that health plans which exercise a conscientious exemption must remain actuarially equivalent to otherwise comparable plans which do not, so a claim of conscience cannot be misused to exclude treatments an insurer or employer sees as expensive.

H.R. 1179 is modest and well-crafted legislation. It does not reverse or alter any requirement under current state or federal law; it only prevents PPACA itself from being misused to deny Americans’ existing freedom to seek health care coverage that meets their medical needs and respects their deepest convictions. I am sure that most members of Congress voting for PPACA did not intend that it should deny or take away this freedom. Therefore I hope and expect that Representatives who supported PPACA as well as those who opposed it will join in co-sponsoring the Respect for Rights of Conscience Act and in helping to ensure its enactment.

Sincerely,



Cardinal Daniel N. DiNardo
Archbishop of Galveston/Houston
Chairman, Committee on Pro-Life Activities
United States Conference of Catholic Bishops

¹ On these provisions see USCCB Secretariat of Pro-Life Activities, *Issues of Life and Conscience in Health Care Reform: An Analysis of the “Patient Protection and Affordable Care Act” of 2010* (May 24, 2010), p. 7, at www.usccb.org/healthcare/PPACA-Analysis-5-24-10.pdf.