



Secretariat of Pro-Life Activities

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194

202-541-3070 • FAX 202-541-3054 • EMAIL PROLIFE@USCCB.ORG • WEB WWW.USCCB.ORG/PROLIFE

CURRENT FEDERAL LAWS PROTECTING CONSCIENCE RIGHTS

Over the past forty-one years, numerous federal laws and regulations have been enacted to protect rights of conscientious objection. Many of these laws relate to controverted areas of reproductive health. Some are nondiscrimination laws protecting those who object to participation in abortion on any grounds whatsoever.

1973 Public Health Service Act (the “Church amendment”): Declares that hospitals or individuals’ receipt of federal funds in various health programs will not require them to participate in abortion and sterilization procedures, if they object based on moral or religious convictions. It also forbids hospitals in these programs to make willingness or unwillingness to perform these procedures a condition of employment. Another provision protects the general conscience rights of individuals in federally funded health service programs. A final provision prohibits entities that receive public health service funds from discriminating against applicants who decline to participate in abortions or sterilizations on account of religious beliefs or moral convictions.

42 U.S.C. §300a-7(b). Prohibition of public officials and public authorities from imposition of certain requirements contrary to religious beliefs or moral convictions. The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act (42 U.S.C. 201 et seq.), the Community Mental Health Centers Act (42 U.S.C. 2689 et seq.), or the Developmental Disabilities Services and Facilities Construction Act (42 U.S.C. 6000 et seq.) by any individual or entity does not authorize any court or any public official or other public authority to require -

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be **contrary to his religious beliefs or moral convictions**; or

(2) such entity to -

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is **prohibited by the entity on the basis of religious beliefs or moral convictions**, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedures or abortion by such personnel would be **contrary to the religious beliefs or moral convictions of such personnel**.

42 U.S.C. §300a-7 (c) Discrimination prohibition.

(1) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act (42 U.S.C. 201 et seq.), the Community Mental Health Centers Act (42 U.S.C. 2689 et seq.), or the Developmental Disabilities Services and Facilities Construction Act (42 U.S.C. 6000 et seq.) after June 18, 1973, may -

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his **religious beliefs or moral convictions**, or because of his **religious beliefs or moral convictions** respecting sterilization procedures or abortions.

(2) No entity which receives after July 12, 1974, a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health and Human Services may -

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his **religious beliefs or moral convictions**, or because of his **religious beliefs or moral convictions** respecting any such service or activity.

42 U.S.C. §300a-7 (d). Individual rights respecting certain requirements contrary to religious beliefs or moral convictions. No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his **religious beliefs or moral convictions**.

42 U.S.C. §300a-7 (e). Prohibition on entities receiving Federal grant, etc., from discriminating against applicants for training or study because of refusal of applicant to participate on religious or moral grounds. No entity which receives, after September 29, 1979, any grant, contract, loan, loan guarantee, or interest subsidy under the Public Health Service Act (42 U.S.C. 201 et seq.), the Community Mental Health Centers Act (42 U.S.C. 2689 et seq.), or the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.) may deny admission or otherwise discriminate against any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to

counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's **religious beliefs or moral convictions**.

1974 Legal Services Corporation on abortion: Prohibits Legal Services Corporation funds from being used to compel involvement in abortion.

42 U.S.C. §2996f(b). Limitations on uses. No funds made available by the [Legal Services] Corporation under this subchapter, either by grant or contract, may be used . . . (8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, **contrary to the religious beliefs or moral convictions of such individual or institution . . .**

1986 Foreign aid: Prohibits discrimination against foreign aid grant applicants who offer natural family planning on account of religious or conscientious commitments. Approved every year since 1986. Current provision:

Title III of Division K (Department of State, Foreign Operations, and Related Programs Appropriations Act) of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113. *Provided further,* That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's **religious or conscientious commitment** to offer only natural family planning...

1988 Civil Rights Restoration Act: Prohibits construing a federal sex discrimination provision [Title IX of the Education Amendments of 1972] to require an educational entity to violate its religious tenets, or to pay for or provide abortion or abortion benefits.

20 U.S.C. §1687. Interpretation of ‘program or activity’. [In defining a “program or activity” that is covered by the nondiscrimination provision] . . . [S]uch term does not include any operation of an entity which is controlled by a religious organization if the application of [the provision] to such operation would not be consistent with the religious tenets of such organization.

20 U.S.C. §1688. Neutrality with respect to abortion. Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion.

1994 Refusal to participate in executions or in prosecutions of capital crimes: Protects employees from being forced to participate in federal executions or prosecutions.

18 U.S.C. §3597 (b). Excuse of an employee on moral or religious grounds. No employee of any State department of corrections, the United States Department of Justice, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, or bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or participate in any prosecution or execution under this section if such participation is contrary to the **moral or religious convictions** of the employee. In this subsection, “participation in executions” includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

1996 Protecting health care entities that decline involvement in abortions for any reason: Prohibits the federal government and state and local governments receiving federal funds from discriminating against health care entities (including residency programs) and individual health care providers that do not provide, train in or refer for abortions.

42 U.S.C. §238n. Abortion-related discrimination in governmental activities regarding training and licensing of physicians.

The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that -

- (1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;
- (2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or
- (3) the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training....

1996 Vaccinations: Protects aliens who object to vaccinations on account of religious beliefs or moral convictions.

8 U.S.C. §1182 (g). Bond and condition for admission of alien excludable on health-related grounds. The Attorney General may waive the application of . . . subsection (a)(1)(A)(ii) of this section [requiring documentation that one has been vaccinated against certain diseases] in the case of any alien . . . under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien’s **religious beliefs or moral convictions** . . .

1997 Medicare: counseling and referral: Prohibits construing the Medicare statute to require Medicare + Choice managed care plans to provide counseling and referral services to which they have a moral or religious objection.

42 U.S.C. §1395w-22(j)(3)(B). Conscience protection. Subparagraph (A) [prohibiting interference with provider advice to enrollees] shall not be construed as requiring a Medicare + Choice plan to provide, reimburse for, or provide coverage of a counseling or referral service if the Medicare + Choice organization offering the plan -- (i) **objects to the provision of such service on moral or religious grounds**; and (ii) in the manner and through the written instrumentalities such Medicare + Choice organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization or plan adopts a change in policy regarding such a counseling or referral service.

1997 Medicaid: counseling and referral: Prohibits construing the Medicaid statute to require Medicaid managed care plans to provide counseling and referral services to which they have a moral or religious objection.

42 U.S.C. §1396u-2(b)(3). Construction. Subparagraph (A) [protecting enrollee-provider communications] shall not be construed as requiring a Medicaid managed care organization to provide, reimburse for, or provide coverage of, a counseling or referral service if the organization --(i) **objects to the provision of such service on moral or religious grounds**; and (ii) in the manner and through the written instrumentalities such organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization adopts a change in policy regarding such a counseling or referral service.

1998 Federal Employees' Health Benefits Plan Regulation: Protects providers delivering care under the federal employees' health benefits program from being required to discuss treatment options to which they have a conscientious objection.

48 C.F.R. §1609.7001 (c)(7) . . . Providers, health care workers, or health plan sponsoring organizations are not required to discuss treatment options that they would not ordinarily discuss in their customary course of practice because such options are **inconsistent with their professional judgment or ethical, moral or religious beliefs.**

1999 Contraceptive coverage for federal employees: Exempts religious health plans from a contraceptive coverage mandate in the federal employees' health benefits program, and prohibits other health plans in this program from discriminating against individuals who object to prescribing or providing contraceptives on moral or religious grounds. Approved every year since 1999. Current provision:

Sec. 726 of Title VII of Division E (Financial Services and General Government Appropriations Act) of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113

(b) Nothing in this section shall apply to a contract with... any existing or future plan, if the carrier for the plan objects to such coverage on the basis of **religious beliefs.**

(c) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual

refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individual's **religious beliefs or moral convictions**.

2000 Congressional intent regarding a DC contraceptive mandate: Affirms Congress's intent that a conscience clause protecting religious beliefs and moral convictions be a part of any DC contraceptive mandate. Approved every year since 2000. Current provision:

Sec. 808 of Title VIII of Division E (Financial Services and General Government Appropriations Act) of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113. Nothing in this Act may be construed to prevent the Council or Mayor of the District of Columbia from addressing the issue of the provision of contraceptive coverage by health insurance plans, but it is the intent of Congress that any legislation enacted on such issue should include a "conscience clause" which provides exceptions for **religious beliefs and moral convictions**.

2003 United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003: Protects organizations that receive foreign aid funds to prevent and treat HIV/AIDS from being forced to participate in prevention methods or treatments to which they have religious or moral objections. Current version, revised and strengthened in 2008:

22 U.S.C. §7631 (d). An organization, including a faith-based organization, that is otherwise eligible to receive assistance under section 104A of the Foreign Assistance Act of 1961 [22 U.S.C. 2151b-2], under this chapter, or under any amendment made by this chapter or by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, for HIV/AIDS prevention, treatment, or care –

(1) shall not be required, as a condition of receiving such assistance –

(A) to endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or

(B) to endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a **religious or moral objection**; and

(2) shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements under such provisions of law for refusing to meet any requirement described in paragraph (1).

2004 Hyde/Weldon Conscience Protection Amendment: Protects physicians and nurses, hospitals, health insurance companies, and other health care entities from being forced by state or federal governments to perform, pay for, provide coverage of, or refer for abortions. Approved every year since 2004. Current version:

Sec. 507 (d) of Title V of Division H (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act) of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113.

(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on

the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, 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.

2010 Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148.

Allows qualified health plans to choose whether or not to cover elective abortions; prevents such plans from discriminating against health care providers that are not involved in abortion; prevents governmental bodies from discriminating against health care providers that are not involved in assisted suicide.

Sec. 1303. SPECIAL RULES. [42 U.S.C. §18023]

(b)(1)(A). Notwithstanding any other provision of this title (or any amendment made by this title)—

(i) nothing in this title (or any amendment made by this title), shall be construed to require a qualified health plan to provide coverage of [abortion] services... as part of its essential health benefits for any plan year; and

(ii) subject to subsection (a), the issuer of a qualified health plan shall determine whether or not the plan provides coverage of [such] services... as part of such benefits for the plan year.

(b)(4). No qualified health plan offered through an Exchange may discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions.

(c)(2)(A). 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.

Sec. 1553. PROHIBITION AGAINST DISCRIMINATION ON ASSISTED SUICIDE. [42 USC §18113]

(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.

(c) CONSTRUCTION AND TREATMENT OF CERTAIN SERVICES.— Nothing in subsection (a) shall be construed to apply to, or to affect, any limitation relating to—

- (1) the withholding or withdrawing of medical treatment or medical care;
- (2) the withholding or withdrawing of nutrition or hydration;
- (3) abortion; or
- (4) the use of an item, good, benefit, or service furnished for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(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.

2012 Enhancement of Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of Such Members.

Protects religious freedom and conscience rights of chaplains and other military personnel. Most recent version is Sec. 533 of the National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, as amended by Sec. 532 of the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66 [10 U.S.C.A. Subt. A, Pt. II, Ch. 53, Refs & Annos]:

(a) Protection of rights of conscience.—

(1) Accommodation. Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

(2) Disciplinary or administrative action.--Nothing in paragraph (1) precludes disciplinary or administrative action for conduct that is proscribed by chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) [10 U.S.C.A. § 801 et seq.], including actions and speech that threaten good order and discipline.

(b) Protection of chaplain decisions relating to conscience, moral principles, or religious beliefs.--No member of the Armed Forces may—

(1) require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or

(2) discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph (1).

February 2016