



Secretariat of Pro-Life Activities

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HHS Refuses to Enforce Weldon Amendment

In violation of a federal law known as the Weldon Amendment, the California Department of Managed Health Care requires health plans to cover abortions. Religious employers in California that offer group health plans to their employees lodged an objection with the U.S. Department of Health and Human Services (HHS), which has oversight responsibility for enforcing the Weldon Amendment, noting that the State's action violates the Weldon Amendment. On June 21, HHS sent the State and the objecting sponsors a letter stating that HHS refuses to take any action because the insurance companies have no moral or religious objection to abortion coverage.

1. What is the Weldon Amendment?

The Weldon Amendment provides that states receiving federal funds may not discriminate against health plans based on their decision not to cover or pay for abortions.¹ The worst sort of discrimination against a plan that does not cover or pay for abortion would be to drive it out of existence, which is what California has done.

2. Does the Amendment require the existence of a moral or religious objection?

No. The Amendment says nothing about moral or religious objections.

3. Does the Amendment require an objection from your insurance company?

No. The Amendment says that *health plans* are not required to cover or pay for abortion. It does not require that your insurance company have an objection to covering or paying for abortion.

¹ The full text of the Weldon Amendment, which has been included in every Labor/HHS appropriations bill enacted since 2004, reads as follows:

- (1) None of the funds made available in this Act [Labor/HHS] 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.

4. So why did HHS refuse to enforce the Amendment?

For three reasons. First, HHS says that the Amendment only protects “health care entities” and that the plan sponsors in this case are not “health care entities.” Second, based on legislative history, HHS says that the Amendment is intended to protect only health care entities with a religious or moral objection to abortion. Third, HHS claims that a broader reading would create a constitutional problem by requiring the rescission of all funds appropriated under the Labor/HHS appropriations bill for any violation of the Amendment.

5. Did HHS get it right?

HHS got it wrong on all three counts.

First, the Weldon Amendment applies to “health care entities,” but the Amendment defines that term to include “a health insurance *plan*, or any other kind of ... *plan*.” All plans, without exception, are covered.

Second, the Amendment does not require the existence of a moral or religious objection on the part of anyone. Nor does it require an objection from your insurance company.

There is legislative history that the Amendment has the *effect* of protecting conscience rights, but the Amendment’s plain and unambiguous text makes clear that its applicability is not limited to or conditioned on the existence of a conscientious objection. For that reason, resort to legislative history to effectively rewrite the Amendment is entirely inappropriate. HHS has no power to rewrite an Act of Congress.

Lastly, HHS does not sit as a court of law. Its job is to enforce laws enacted by Congress to the greatest extent allowed by the Constitution. That means vigorously defending the constitutionality of those laws, not buckling immediately at the slightest constitutional doubt. In any event, the asserted constitutional issue in this case runs only to the question of an appropriate remedy. Even if accepted, it does not mean that HHS is completely powerless to enforce the Amendment.

6. What does HHS’s decision mean for those with religious objections to paying for or covering abortion?

It effectively means that the Amendment will provide no protection for the purchasers and sponsors of health plans who object to covering or paying for abortion.

The decision also violates an express and repeated promise by the Administration to enforce the Weldon Amendment and other federal laws that preserve the right not to be involved in abortion. *See, e.g.*, Executive Order 13535 (March 24, 2010) (promising to enforce the Weldon Amendment and related federal laws); 76 Fed. Reg. 9968 (Feb. 23, 2011) (same).

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