

The Federal Refusal Clause: Endangering Women's Health

The Federal Refusal Clause, also known as the Weldon amendment, is a wide-sweeping and controversial provision that threatens women's access to reproductive-health care by blocking federal, state and local governments from enforcing their own pro-choice laws and contracts. Becoming law as part of the FY'05 Omnibus Appropriations bill – even though the Senate Appropriations Committee did not include it in its bill and the Senate never voted on the language – the Federal Refusal Clause prohibits federal, state, and local government from “discriminating” against a health-care entity that “does not provide, pay for, provide coverage of, or refer for abortions.”¹ In other words, it explicitly grants a broad variety of health-care entities – such as hospitals, HMOs, and insurance companies – the right to refuse to provide, refer for, or pay for abortion services.

Supporters of the Federal Refusal Clause wrongly argue that the law is needed to protect individuals and health-care organizations that oppose abortion. However, no federal law forces individuals to provide abortion care. In fact, the 1973 Church amendment explicitly protects individuals who object to providing abortion care based on religious beliefs or moral convictions.² Similarly, no federal law requires hospitals to provide abortions either, except in a medical emergency.

Moreover, 47 states and the District of Columbia allow certain individuals or entities to refuse to provide women specific reproductive health services, information, or referrals.³ But the Federal Refusal Clause goes much, much further: it allows a wide range of health-care corporations – or a few board members controlling the company's policy, whether for religious, political, or any other reasons – to prohibit doctors from giving information to their patients regardless of *their* religion, morals, or values.

If not repealed, the Federal Refusal Clause could:

- *Give health-care corporations license to interfere with a doctor's ability to provide comprehensive health information to patients, thus undermining the doctor-patient relationship.*
 - Without question, there is a delicate balance between rights, both of patients and of providers. Sadly, however, this law offers no balance – instead giving a “conscience” to corporations but not to a doctor or a woman. Regardless of whether a health-care company chooses to provide abortion services, the procedure is a legal one, and in order to ensure genuine informed consent, patients must receive information about each legal and appropriate medical option.

- This law gives health-care corporations – hospitals, provider sponsored organizations, HMOs, community health centers, health insurance plans, or any other kind of health care facility, organization or plan – license to stifle communication between doctors and patients, threatening women’s ability to access information about how to access abortion services. Because they allow politicians and corporations to dictate the content of private conversations between doctors and patients, Congress has voted against these types of gag rules for other health-care services. Pregnant women—like all patients—deserve access to information about all their legal and medically appropriate options.

- *Jeopardize women’s lives.*
 - In addition to interfering with the doctor-patient relationship and threatening women’s access to comprehensive health information, the Federal Refusal Clause allows hospitals to believe – wrongly – that they can turn away *any* woman seeking abortion care without repercussions, even when the woman’s life is in jeopardy. While the Emergency Medical Treatment and Active Labor Act, known as EMTALA, ensures that a woman who needs abortion care in an emergency won’t be turned away⁴, the Federal Refusal Clause gives rogue hospital executives or agents the false belief that they can deny these women treatment.

- *Override federal Title X guidelines that ensure women receive referrals when requesting information about all their medical options.*
 - The Federal Refusal Clause could prohibit the federal government from enforcing its own requirement that Title X-funded family-planning clinics provide a woman facing an unintended pregnancy with an abortion referral when she requests one. Rogue clinics may believe they can stifle communication between physicians and patients without repercussion, thereby undermining the doctor-patient relationship and leaving low-income women facing unintended pregnancies without critical information about their medical options.

- *Restrict low-income women’s access to necessary reproductive-health care.*
 - Federal law, under the Hyde amendment, requires states to provide Medicaid coverage for abortion services in cases of rape, incest, or when a pregnancy endangers a woman’s life.⁵ In addition, some states cover abortion services in a wider range of circumstances. The Federal Refusal Clause, however, could stop states from ensuring that Medicaid HMOs provide or pay for these abortions, thus impeding low-income women’s ability to receive critical medical care.

- *Impinge on states' ability to protect women's health.*
 - If interpreted as its proponents urge, the law could effectively overrule state constitutions by federal legislative fiat, violating basic principles of federalism. An example in Alaska is illuminating. The law's authors claim that the Federal Refusal Clause will overrule *Valley Hospital v. Mat-su Coalition for Choice*, a case where the Alaska Supreme Court concluded that the state constitution requires that quasi-public hospitals provide abortion services.
 - Additionally, the Federal Refusal Clause could preclude states and local governments from enforcing their own health-care certification and licensing requirements in the area of abortion. In deciding whether to approve a hospital merger, a state might no longer consider whether the newly merged hospital system would end women's access to full reproductive-health services, leaving even more communities without access to abortion care.
- *Cost states billions of dollars through the loss of all health, education, and labor-related funds if they violate the misguided law.*
 - The Federal Refusal Clause's draconian enforcement mechanism would penalize a state with not just the loss of all family-planning money—or even the loss of all health money—but the loss of all health, education, and labor-related funds. This would undermine states' ability to improve their schools, aid unemployed workers, collect child support, provide child care to low-income parents, and vaccinate children. The threat of such devastating consequences is bound to have a chilling effect on those charged with enforcing laws protecting women's reproductive rights.

The Public Overwhelmingly Opposes Refusal Clauses.

Research shows that the public strongly opposes efforts to grant health-care companies the right to refuse to provide abortion services or referrals for any reason, including on the basis of religious objections.

- Seventy-six percent of the public oppose exempting hospitals from providing medical services on religious grounds.⁶
- Eighty-nine percent oppose allowing insurance companies to refuse to pay for medical services on religious grounds.⁷
- Seventy-nine percent of women say they oppose legislation granting hospitals the right to refuse to provide medical services or medications for religious or moral reasons.⁸

January 1, 2009

Notes

¹ FY'05 Consolidated Appropriations Act, Pub. L. No. 108-447, 118 Stat. 2809 (Dec. 8, 2004).

² Church amendment to the Public Health Service Extension Act of 1973, Pub. L. No. 93-45, Tit. IV, § 401, 87 Stat. 95 (codified at 42 U.S.C.A. § 300a-7).

³ NARAL PRO-CHOICE AMERICA FOUNDATION, *Who Decides? The Status of Women's Reproductive Rights in the United States* (18th ed. 2008), available at http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides.

⁴ Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (1986).

⁵ Hyde Amendment of 1976, Pub. L. 94-439, § 209.

⁶ ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).

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⁸ ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).