



## **Refusal Clauses in Current Law**

Refusal clauses can permit a broad range of individuals and institutions—including hospitals, hospital employees, health-care providers, and insurers—to refuse to provide, pay for, counsel about, or even refer for medical treatment. While it can be appropriate to allow individual providers to decline to provide certain medical services because of their personal objections or religious views, it is not appropriate for institutions at large to claim a “conscience,” and to refuse to provide women with medically necessary information, referrals, or services can jeopardize their health. If an individual chooses not to provide a service which he or she opposes, then other health-care personnel or the health-care company employing the individual must ensure that women receive the requested care. Refusal clauses must not block women’s access to health-care services.

Following is a summary of refusal clauses in current federal law, followed by the text of the laws. For more information about the implications of these laws, please see the fact sheet entitled, “Refusal Clauses: Dangerous for Women’s Health.”

### **Summary of Key Refusal Laws**

The first refusal clause, now known as the Church amendment, was enacted in 1973, immediately after *Roe v. Wade*, and was amended a year later. The Church amendment states that no individual has to provide or assist in the provision of *any* medical procedure if doing so is contrary to the individual’s religious beliefs or moral convictions. It also states that no health-care *entity* (such as a hospital) may be required to provide abortion or sterilization services. This language applies to programs and individuals involved in any program funded by the Department of Health and Human Services.

The Balanced Budget Act of 1997 further extended the scope of refusal clauses. In sections of the bill ostensibly designed to remove “gag” rules, which prevent doctors from providing patients with comprehensive medical information, Congress for the first time extended refusal clauses to allow plans and institutions acting as insurers to opt-out of providing information or services to which they are morally or religiously opposed. Prior to this time, refusal clauses applied to individuals, and in the case of the Church amendment and the Civil Rights Restoration Act, also applied to entities. But nowhere did refusal clauses extend to plans or institutions acting as insurers.

The Federal Refusal Clause, also known as the Weldon amendment, pushes the policy even further. Enacted in 2005, it permits health-care companies to refuse to comply

with any federal, state, or local law and regulation that pertains to abortion services or referrals. This law exempts not only individual anti-choice providers but also hospitals—including for-profits, HMOs, and health-insurance corporations.

Most recently, the Department of Health and Human Services, under the Bush administration, wrote a regulation that further expanded refusal rights; the regulation offers broad rights to employees who are only tangentially involved in providing the services at issue (for example, receptionists scheduling appointments), and it has the potential to grant entire health-care corporations the same “conscience” rights as those offered to individuals. In addition, it allows individuals to refuse to give *referrals and information* about a broad range of services. This could affect reproductive-health services and many other health-care services beyond.

Broad refusal clauses preclude not only services, but also information and referrals; consequently, they pose serious dangers to the health of Americans. Medicine and ethics—not politics—should determine health-care choices.

### **Current Law**

This section provides the text of several laws (including some not mentioned above in the summary) regarding refusal clauses:

#### **Church (D-ID) Amendment to the Health Programs Extension Act of 1973, Pub. L. No. 93-45. (Enacted June 18, 1973)**

SEC. 401 (b). The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act 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 procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

(c) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental

Disabilities Services and Facilities Construction Act after the date of enactment of this Act may—

- (1) discriminate in the employment, promotion, or termination of the employment of any physician or other health care personnel, or
- (2) 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 abortion.

**The Church Amendment was amended by the National Research Act of 1974, Pub. L. No. 93-348. (Enacted July 12, 1974)**

SEC. 214 (a)(2). Section 401 of such Act is amended by adding the following new subsection:  
(c)(2) No entity which receives after the date of enactment of this paragraph a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health, Education, and Welfare 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 or assistance in the performance of such service or activity on the grounds that his performance or assistance in the performance of such activity would be contrary to his religious beliefs or moral convictions respecting to any such service or activity.

(b) Section 401 of such Act is amended by adding at the end of the following new subsection:  
(d) No individual shall be required to perform or assist in the performance if 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, Education, and Welfare if his performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.

**Danforth (R-MO) Amendment to the Civil Rights Restoration Act, Pub. L. No. 100-259. (Enacted March 22, 1988)**

SEC. 909. Nothing in this title 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 any abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

**Commerce, Justice, State Appropriations from FY 97 Omnibus Appropriations, Pub. L. No. 104-208. (First Enacted, October 1, 1988 - Current Language Enacted September 30, 1996)**

SEC. 103. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term or in the case of rape: Provided, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

SEC. 104. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion.

SEC. 105. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: Provided, That nothing in this section in any way diminishes the effect of section 104 intended to address the philosophical beliefs of individual employees of the Bureau of Prisons.

**ACGME (Accreditation Council on Graduate Medical Education), Pub. L. No. 104-134. (Amendment to the permanent authorizing statute Enacted April 25, 1996) (Also called the Coats Amendment or referred to as part of the Public Health Service Act)**

SEC. 245 (a) In general—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.
- (b) Accreditation of Postgraduate Physician Training Programs—
- (1) In General—In determining whether to grant a legal status to a health care entity (including a license or certificate), or to provide such entity with financial assistance, services or other benefits, the Federal Government or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standards that requires an entity to perform an induced abortion or

require, provide, or refer for training in the performance of induced abortion or make arrangements for such training regardless of whether such standard provides exceptions or exemptions. The government involved shall formulate such regulation or other mechanisms or enter into such agreements with accrediting agencies, as are necessary to comply with this subsection.

(2) Rules of Construction—

(A) In General—With respect to subclauses (I) and (II) of section 705 (a) (2) (B) (I) (relating to a program of insured loans for training in the health professions), the requirements in such subclauses regarding accredited internship or residency programs are subject to paragraph (1) of this subsection.

(B) Exceptions—This section shall not:

(i) prevent any health care entity from voluntarily electing to be trained, to train or to arrange for training in the performance of, to perform or to make referrals for induced abortions or

(ii) prevent an accrediting agency or Federal, State or local government from establishing standards of medical competency applicable only to those individuals who have voluntarily elected to perform abortions.

(c) Definitions—for the purposes of this section:

(1) The term “financial assistance”, with respect to government program, includes government payments provided as reimbursement for carrying out health-related activities.

(2) The term “health care entity” includes an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions.

(3) The term postgraduate physician training program includes a residency training program.

**Balanced Budget Act of 1997, Pub. L. No. 105-33 (Enacted August 5, 1997)**

*MEDICARE+CHOICE SECTION (Title IV, Subtitle A)*

SEC. 1852 (j)(3) Prohibiting interference with provider advice to enrollees—

(A) In General—Subject to subparagraphs (B) and (C), a Medicare+Choice organization (in relation to an individual enrolled under a Medicare+Choice plan offered by the organization under this part) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D) from advising such an individual who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan, if the professional is acting within the lawful scope of practice.

(B) Conscience protection—Subparagraph (A) 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.

*MEDICAID SECTION (Title IV, Subtitle H)*

SEC. 4704 (b)(3) Protection of enrollees-provider communications—

(A) In general—Subject to subparagraphs (B) and (C), under a contract under section 1903(m) a Medicaid managed care organization (in relation to an individual enrolled under the contract) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D) from advising such an individual who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the contract, if the professional is acting within the lawful scope of practice.

(B) Construction—Subparagraph (A) 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.

**Contraceptive Coverage for Federal Employees—FY'06 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act (Enacted November 30, 2005); Continued in the Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5 (Enacted February 15, 2007).**

SEC. 625 Effective as of October 1, 1999, section 635 of Public Law 106-58 is amended—

(2) in subsection (c), by inserting 'or otherwise provide for' after 'to prescribe'.<sup>1</sup>

*(See referenced language in Sec 656 of Pub. L. No. 105-277, immediately below, which was carried over into Pub. L. No. 106-58, referenced here).*

*DEPARTMENTS, AGENCIES, AND CORPORATIONS GENERAL PROVISIONS  
GOVERNMENT-WIDE SECTION (Title VIII)*

SEC. 656 (a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with:

(1) any of the following religious plans:

(A) Personal Care's HMO; and

(B) OSF Health Plans, Inc.; and

(2) any existing or future plan, if 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 contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions.<sup>2</sup>

**Federal Refusal Clause (also called the Weldon amendment)**

**FY'06 Departments of Labor, Health, and Human Services, and Education Appropriations Act, Pub. L. No. 109-149 (Enacted December 30, 2005); Continued in the Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5 (Enacted February 15, 2007).**

*GENERAL PROVISIONS—LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION*

SEC. 508. (d)(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.

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<sup>1</sup> Commerce, Justice, State Appropriations from FY'00 Consolidated Appropriations, Pub. L. No. 106-113 (Enacted November 29, 1999); Continued in FY'01 Omnibus Consolidated Appropriations, Pub. L. 106-554 (Enacted December 21, 2000), FY'02 Treasury, Postal Appropriations, Pub. L. 107-67 (Enacted November 12, 2001), and FY'03 Omnibus Appropriations, Pub. L. 108-7 (Enacted February 20, 2003), FY'04 Omnibus Consolidated Appropriations, Pub. L. 108-199 (Enacted Jan. 23, 2004), FY'05 Omnibus Consolidated Appropriations, Pub. L. 108-447 (Enacted December 8, 2004), FY'06 Transportation, Treasury, Housing and Urban Development, the Judiciary, The District of Columbia, and Independent Agencies Appropriations Act (Enacted November 30, 2005). and Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5 (Enacted February 15, 2007).

<sup>2</sup> Treasury, Postal Appropriations from FY'99 Omnibus Appropriations, Pub. L. No. 105-277 (Enacted October 21, 1998); Continued in FY'00 Treasury, Postal Appropriations, Pub. L. 106-58 (enacted September 30, 1999), FY'01 Omnibus Consolidated Appropriations, Pub. L. 106-554 (Enacted December 21, 2000), FY'02 Treasury, Postal Appropriations, Pub. L. 107-67 (Enacted November 12, 2001), FY'03 Omnibus Appropriations, Pub. L. 108-7 (Enacted February 20, 2003), FY'04 Omnibus Consolidated Appropriations, Pub. L. 108-199 (Enacted Jan. 23, 2004), FY'05 Omnibus Consolidated Appropriations, Pub. L. 108-447 (Enacted December 8, 2004), Amended in FY'06 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act (Enacted November 30, 2005), and Continued in the Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5 (Enacted February 15, 2007).