



Refusal Clauses: Dangerous for Women's Health

Refusal clauses (sometimes called “conscience” clauses) permit a broad range of individuals and institutions—including hospitals, hospital employees, health care providers, employers, and insurers—to refuse to provide, pay, counsel or even refer for medical treatment.

This fact sheet discusses the history of refusal clauses and some of their many effects on Americans’ ability to access quality, comprehensive health care. For more detail about each of the specific laws, see the fact sheet entitled, “Refusal Clauses in Current Law.”

The Origin of Refusal Clauses

Refusal clauses were first enacted immediately after *Roe v. Wade*.¹ In response to *Roe*, in 1973 Congress adopted an amendment named after then-Sen. Frank Church (D-ID), allowing individuals or entities that receive certain federal funds to refuse to provide abortion or sterilization if such services are contrary to their religious or moral beliefs.² In 1974, the statute was amended to include broad language stating that no individual may be required to perform or assist in performing *any* health-care service or research activity funded by the Department of Health and Human Services. Following Congress’ lead, 47 states and the District of Columbia passed laws that permit certain medical personnel, health facilities, and/or institutions to refuse to provide abortion care,³ most of which were enacted shortly after *Roe*.⁴ In the years following, lawmakers enacted refusal clauses only in isolated circumstances.⁵

Regrettably, there has been a recent resurgence of legislative activity related to refusal clauses.⁶ On the federal level, anti-choice members of Congress passed a sweeping law known as the Federal Refusal Clause,⁷ which permits health-care companies to refuse to comply with federal, state, and local laws and regulations that pertain to providing, counseling for, referring for, and paying for abortion services. In other words, it grants a broad variety of health-care entities – including hospitals, HMOs, and insurance companies – the right to refuse to provide, pay for, or refer for abortions. Most recently, the Bush Department of Health and Human Services published 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, on the state level, in 2008 anti-choice legislators in **10** states introduced bills to allow pharmacists to refuse to fill women’s prescriptions for birth control.⁸

Broad Loopholes = Access Denied

Carefully crafted refusal clauses may be appropriate in some circumstances to protect individual medical providers. However, broad refusal clauses have negative consequences by denying women medically necessary information, referrals, or services. For example, broad refusal clauses may allow:

- **Employers** who oppose birth control on religious grounds to refuse to provide contraceptive coverage in their health plans, even when employees do not share the same religious views as their employer;
- **Pharmacists** who erroneously believe that birth-control pills cause abortion to refuse to dispense, or provide referrals for, lawfully prescribed oral contraceptive medications;
- **Health-care professionals** who object to contraception or abortion to deny their patients information on, or a referral for, family-planning services, regardless of the patient's health-care needs.

Refusal clauses also can affect a broad range of reproductive-health services, including: information and referrals for family planning, genetic counseling, infertility treatment, sexual-assault treatment, sterilization, STD and HIV testing, and abortion care.

Comprehensive Medical Information – Not Politics, Religion, or Ideology – Should Determine Health-Care Decisions

Health-care providers have a duty to ensure that women receive accurate information and appropriate care. Failure to provide this care—even for religious, political, or ideological reasons—jeopardizes women's health and violates bedrock principles of medical ethics.

- **Refusal clauses violate informed consent principles.** When health-insurance companies and managed-care plans withhold information from women about their health options, they trample on a bedrock principle of medical ethics: informed consent. Under this doctrine, patients must be informed of the risks, benefits, and alternatives to treatment. The American Medical Association has emphasized, "The patient's right to self-decision can be effectively exercised only if the patient possesses enough information to enable an intelligent choice."⁹
- **Failure to provide full information about all relevant medical options violates standards of care.** In *Brownfield v. Daniel Freeman Marina Hospital*, a court ruled that a rape survivor who was denied information about emergency contraception at a Catholic hospital emergency room could sue for medical malpractice. The court asserted that a woman's "right to control her treatment must prevail over [a hospital's] moral and religious convictions." Further, it is the hospital's duty to provide full information about all medical options in order to protect patients' right to choose whether to undergo medical treatment. As the court stated, "Meaningful exercise of this right is possible

only to the extent that patients are provided with adequate information upon which to base an intelligent decision.”¹⁰

- **Institution-wide refusal clauses can, paradoxically, trample on the consciences of individual health-care providers.** For example, if a legislature enacts a broad refusal clause for insurance companies, an insurer may refuse to cover sterilization counseling, referrals, or services. A physician in such a plan who determined that a patient faced life-threatening circumstances if she became pregnant again and that sterilization would be in her best interests would be prohibited from providing the woman with appropriate information, referrals, or treatment. This tramples not only on the conscience rights of the patient but also on those of the doctor. Anti-choice activists, who often claim to care about doctors’ consciences, conveniently ignore this consequence.

Refusal Clauses Endanger Women’s Health

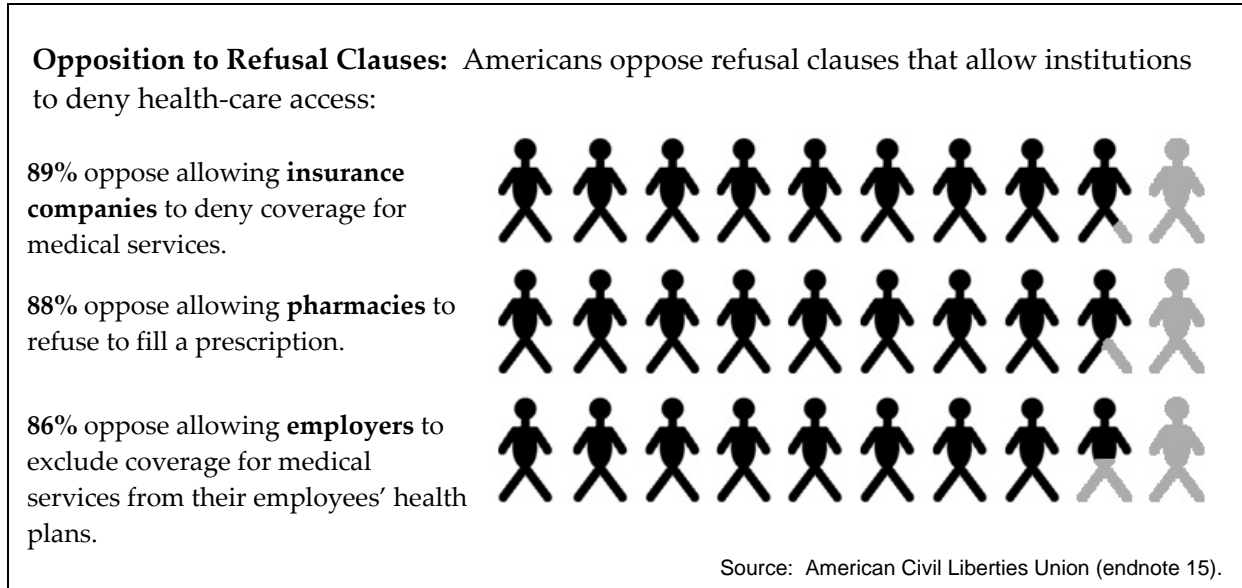
When health-care institutions and providers deny women access to information about all their health care options, they can compromise women’s health.

- Of course, pregnancy is a welcome development in many women’s lives. But for some others, pregnancy can be dangerous, making access to contraceptives and abortion services imperative. For instance, conditions such as cancer, rheumatic fever, severe diabetes, malnutrition, phlebitis, sickle cell anemia and heart disease, significantly increase the risks associated with pregnancy.¹¹
- Women in rural areas may face serious health risks if the only hospital in their area refuses to provide certain reproductive-health services. One Catholic sole-provider hospital in rural California denied a sterilization to a 34-year-old woman following her ninth pregnancy. Although the woman’s doctor advised her against any subsequent pregnancies, and sterilization would have been safest and easiest immediately following delivery, the hospital refused to permit the procedure.¹²
- Fifty-five percent of Catholic hospitals do not provide emergency contraception—a concentrated dose of ordinary birth control pills that prevents pregnancy after sex—even to women who have been raped.¹³ For example, in 1992, 14 Catholic hospitals in Chicago treated an estimated 1,004 rape survivors but refused to offer them emergency contraception.¹⁴

The Public Opposes Refusal Clauses

- Nearly nine out of 10 Americans oppose refusal clauses that allow certain institutions to refuse to provide health-care payment or services.¹⁵

- Eighty-five percent of women believe that hospitals that receive government funds should not be allowed to prohibit doctors from providing any legal, medically appropriate service.¹⁶



Mergers in the Health-Care Industry Exacerbate the Impact of Refusal Clauses

Across the country, health-care organizations have been consolidating in an effort to reduce costs and compete more successfully in the market. Catholic hospitals “constitute the largest single group of the nation’s not-for-profit hospitals,” operating 16.1 percent of total hospital beds in 2001.¹⁷ The Catholic Church’s influence is spreading through mergers and affiliations between Catholic and nonsectarian hospitals. When nonsectarian hospitals merge with Catholic hospitals, they are pressured to adopt the rules governing Catholic hospitals, which are laden with policies forbidding various types of services.¹⁸ Mergers between Catholic health-care providers and nonsectarian providers curtail access to reproductive services, often without the knowledge of the patients served by the merged hospitals and health plans.¹⁹

- Catholic teaching explicitly disapproves of contraceptive methods other than natural family planning (the rhythm method).²⁰
- The Ethical and Religious Directives for Catholic Health Care Services denounce assisted reproductive technologies such as in vitro fertilization and sperm donation, prohibit abortion care, prohibit treatment for an ectopic pregnancy, prohibit contraception other than natural family planning, ban prenatal diagnosis when undertaken with the intention of terminating the pregnancy if a serious anomaly is discovered, and bar permanent and temporary sterilization of both men and women.²¹

- Between 1990 and 2001, an estimated 50 percent of mergers between Catholic and non-Catholic hospitals resulted in the elimination of some or all reproductive-health services.²² For instance, when Catholic Healthcare West replaced Gilroy, California’s only community hospital, with a Catholic hospital, all contraceptive services, sterilizations, and abortion services were eliminated, forcing women to travel 25 to 35 miles to receive basic family-planning care.²³ More recently, a patient denied termination of a doomed pregnancy at a New Hampshire hospital was forced to travel 80 miles by cab to the nearest hospital not under religious restrictions.²⁴

Narrow Refusal Clauses Allow Religious Freedom Without Seriously Compromising Women’s Health

Anti-choice proponents of refusal clauses claim that without such provisions, religious organizations would be forced to abandon their principles. However, such refusal clauses often exempt a broad range of organizations, including health plans and hospitals, most of which not only have a secular purpose, but also employ and serve individuals who do not share those organizations’ religious beliefs. Recent California and New York court decisions support the efforts of pro-choice advocates to safeguard women’s access to contraception and make clear that institutions may not impose one particular religious view on the general public.

- ***Catholic Charities v. Superior Court:*** In 2000, Catholic Charities of Sacramento filed suit against the state of California, claiming that the state’s contraceptive coverage law is unconstitutional because it forces the agency to violate its religious beliefs by providing contraceptive benefits to its employees. The law contains a “religious employer” exemption, but Catholic Charities did not qualify for it. Recognizing that the law was designed to remedy gender discrimination, and not to intervene with church conflict, the California Supreme Court upheld its constitutionality. The court rejected all eight constitutional challenges asserted by Catholic Charities, and held that the law does not interfere with the autonomy of a religious organization or impermissibly burden the right of free exercise.²⁵ In October 2004, the United States Supreme Court declined to hear the case, letting the California Supreme Court ruling stand.²⁶
- ***Catholic Charities v. Serio:*** New York’s refusal clause is equally narrow, and 10 faith-based social services organizations filed a similar lawsuit in opposition to New York’s contraceptive-equity law in 2002.²⁷ They claimed that the law violated the New York and U.S. Constitutions. In October 2006, New York’s highest court held that the law did not violate the state or federal Free Exercise Clauses or the federal Establishment Clause, which forbid the government from prohibiting the exercise of free religion, and therefore, the organizations were not constitutionally entitled to be exempt from its provisions.²⁸

Refusal Clauses in the States

- Forty-seven states and the District of Columbia have laws that allow certain individuals or entities to refuse to provide women specific reproductive-health services, information, or referrals: (AK, AZ, AR, CA, CO, CT, DC, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY).²⁹
- Despite widespread public opposition to refusal clauses, 19 of the 27 states with laws or regulations requiring health insurers to provide equitable coverage for contraception include refusal clauses, allowing employers and/or insurers that object on religious or moral grounds to refuse to provide or pay for contraceptive coverage (AZ, AR, CA, CT, DE, HI, ME, MD, MA, MI, MO, NV, NM, NY, NJ, NC, OR, RI, WV).³⁰

Conclusion

Traditionally, refusal clauses have recognized the complexity of human values, feelings, and religious beliefs by enabling *individuals* to opt out of providing health-care services to which they are religiously or morally opposed. However, efforts in Congress and state legislatures to expand refusal clauses to employers, health insurers, and pharmacists and to preclude not only *services*, but *information* and *referrals*, pose serious dangers to Americans' health. Science – not politics – should determine medical decisions. Health-care institutions hold themselves out as providers of health care; they should have a duty to ensure that patients receive accurate information and appropriate care. Failure to provide this care—even for religious reasons—is wrong and may jeopardize patient health.

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Notes

¹ *Roe v. Wade*, 410 U.S. 113 (1973).

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 & NARAL PRO-CHOICE AMERICA FOUNDATION, *Who Decides? The Status of Women's Reproductive Rights in the United States* (16th ed. 2007), available at http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides. In addition, West Virginia has a statute that provides an opt-out for physicians or persons who object to performing or assisting in an abortion on a minor. W. VA. CODE § 16-2F-1 to -9.

⁴ Rachel Benson Gold, *Conscience Makes A Comeback In the Age of Managed Care*, GUTTMACHER REP. ON PUB. POL'Y, Feb. 1998, at 1.

- ⁵ In 1988, Congress inserted a refusal clause in the appropriations for the Bureau of Prisons, providing that funds could not be used to require any person to perform or facilitate an abortion for a prisoner. Dep'ts of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1988, Pub. L. No. 100-459, 102 Stat. 2186 (Oct. 1, 1988). In 1996, Congress enacted a bill providing that accreditation of postgraduate physician training programs could not be withdrawn based solely on a refusal to provide training in abortions. Omnibus Consolidated Receptions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (Apr. 25, 1996) (codified at 42 U.S.C.A. § 238n).
- ⁶ In 2006, 21 states considered 51 measures that would restrict women's access to health care services by allowing health care entities and/or individuals to refuse to provide medical services: AL, GA, IL, IN, MI, MN, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SD, TN, VT, WA, WV, WI. NARAL PRO-CHOICE AMERICA & NARAL PRO-CHOICE AMERICA FOUNDATION, *Who Decides? The Status of Women's Reproductive Rights in the United States* (16th ed. 2007), available at http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides
- ⁷ FY'05 Consolidated Appropriations Act, Pub. L. No. 108-447, 118 Stat. 2809 (Dec. 8, 2004).
- ⁸ NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (16th ed. 2007), available at http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/.
- ⁹ Council on Ethical and Judicial Affairs, American Medical Association (AMA), *Informed Consent, Ethical Opinion E-8.08, CODE OF MEDICAL ETHICS*, at <http://www.ama-assn.org/ama/pub/category/print/8488.html> (last updated July 22, 2002).
- ¹⁰ *Brownfield v. Daniel Freeman Marina Hospital*, 208 Cal. App. 3d 405, 412-14 (Ct. App. 1989).
- ¹¹ *Harris v. McRae*, 448 U.S. 297, 339 (1980) (Marshall, J., dissenting).
- ¹² ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 2 (2002), citing Leslie Laurence, *The Hidden Health Threat That Puts Every Woman At Risk*, REDBOOK, July 2000, at 112, 114.
- ¹³ Teresa Harrison, *Availability of Emergency Contraception: A Survey of Hospital Emergency Department Staff*, ANNALS OF EMERGENCY MED. (Has not been published as of May 16, 2005).
- ¹⁴ Liz Bucar & David Nolan, *Emergency Contraception and Catholic Health Care*, CONSCIENCE: A NEWSJOURNAL OF PROCHOICE CATHOLIC OPINION (1999), citing Cecile Bouchardeau, *Catholic Hospitals Deny Rape Victims Choice*, CHI. REP., Oct. 1993.
- ¹⁵ ACLU Reproductive Freedom Project, *American Civil Liberties Union (ACLU), Religious Refusals and Reproductive Rights*, at 20 (2002).
- ¹⁶ CFFC, *Religion, Reproductive Health and Access to Services: A National Survey of Women* (poll conducted by Belden Russonello & Stewart) (Apr. 2000), at <http://www.cath4choice.org/new/pollreport.htm> (last visited May 5, 2005).

- ¹⁷Mergerwatch & Family Planning Advocates of New York State, *No Strings Attached: Public Funding of Religiously-Sponsored Hospitals in the United States*, at 24 (2002).
- ¹⁸CFFC, *Caution: Catholic Health Restrictions May be Hazardous to your Health*, at 4 (1999); Mergerwatch & Family Planning Advocates of New York State, *No Strings Attached: Public Funding of Religiously-Sponsored Hospitals in the United State*, at 21-25 (2002).
- ¹⁹In a 1995 survey, 73 percent of women were not aware that belonging to a Catholic health care plan would limit their access to medical procedures such as family planning, abortion, vasectomies, in vitro fertilization, and emergency contraceptive pills for rape victims. CFFC & EDK ASSOCIATES, INC., *Health Care Reform Crossroads: The Gap Between Catholic Church Mandates and Women's Needs*, at 10 (1995).
- ²⁰NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *Ethical and Religious Directives for Catholic Health Care Services*, at 18 (1994).
- ²¹NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *Ethical and Religious Directives for Catholic Health Care Services*, at 17-20 (1994).
- ²²CFFC, CATHOLIC HEALTH CARE UPDATE, *The Facts about Catholic Health Care*, July 2002.
- ²³Maria Alicia Gaura, *Newly Catholic Hospital Bans Family Planning*, S.F. CHRON., Oct. 1, 1999.
- ²⁴Lois Utley, *Hospital Mergers 101: Countering the Threat to Patient's Rights and Access to Care from Religious/Secular Hospital Mergers*, The MergerWatch Project, 2005.
- ²⁵*Catholic Charities of Sacramento, Inc. v. Superior Court*, 85 P.3d 67 (Cal. 2004); *cert. denied*, No. 03-1618 (U.S. Oct. 4, 2004).
- ²⁶*Catholic Charities of Sacramento, Inc. v. Superior Court*, 85 P.3d 67 (Cal. 2004); *cert. denied*, No. 03-1618 (U.S. Oct. 4, 2004).
- ²⁷Clifford J. Levy, *Bishops Sue State to Block Coverage for Birth Control*, N.Y. TIMES, Dec. 31, 2002, at B5.
- ²⁸*Catholic Charities of the Diocese of Albany v. Serio*, 7 N.Y. 3d 510. (App. Div., 2006).
- ²⁹NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (17th ed. 2008), available at http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/.
- ³⁰NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (17th ed. 2008), available at http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/.