



**NARAL**  
Pro-Choice America

## **Current Refusal Laws**

Refusal laws 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. 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 laws must not block women’s access to health-care services.

Following is a summary of refusal provisions 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 Laws: Dangerous for Women’s Health.”

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

The first federal refusal law, now known as the Church amendment, was enacted in 1973, immediately after *Roe v. Wade*, and states that no individual or entity funded under certain programs of the Department of Health and Human Services (HHS) may be required to provide or assist in the provision of abortion or sterilization services.<sup>1</sup> In 1974, the statute was amended in a bill authorizing biomedical and behavioral research and training to include broad language stating that no individual may be required to perform or assist in performing health-care services or research activities funded by HHS; however, the extent to which this broad language can be applied has not yet been fully defined.

In 1996, the Public Health Service Act was amended to prohibit the federal government and any state or local government from “discriminating” against certain health-care entities on the basis that an entity refuses to receive or provide abortion training, provide abortion care or abortion referrals, or provide referrals for abortion training.<sup>2</sup> In essence, it granted individual employees the right to refuse to provide, train for, or refer for abortion services, and offers certain health-care entities—specifically, postgraduate physician training programs—the right to refuse to participate in these activities.

The Balanced Budget Act of 1997 further extended the scope of refusal laws. In sections of the bill ostensibly designed to remove gag rules, which block doctors from providing

patients with comprehensive medical information, Congress for the first time extended refusal laws 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 laws 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 and health-insurance corporations.

In 2008, HHS, under the Bush administration, wrote a regulation, known as the Federal Refusal Rule, that further expanded refusal rights; the regulation offered broad rights to employees who are only tangentially involved in providing the services at issue (for example, receptionists scheduling appointments). In addition, it allowed individuals to refuse to give *referrals and counseling* about a broad range of services. This could have affected reproductive-health services and many other health-care services beyond. On February 18, 2011, the Obama administration rescinded the key elements of the HHS regulation.<sup>3</sup> This rescission repealed all of the troublesome aspects of the rule including burdensome certification requirements imposed on health-care entities and problematic definitions that could have been interpreted to allow health-care providers to refuse to provide contraception in addition to abortion care. The regulation retained only the section of the Federal Refusal Rule that provides for an enforcement process, establishing that the HHS Office of Civil Rights is authorized to receive and investigate complaints regarding violations of federal refusal statutes.

In 2010, Congress enacted health-reform legislation (the Affordable Care Act) that has two provisions relating to refusals. First, the law grants refusal rights in the health-insurance exchanges by prohibiting participating health plans from “discriminating” against individual providers and health-care facilities because of their unwillingness to “provide, pay for, provide coverage of, or refer for abortions.” (Additionally, the law specifies that it does not preempt existing refusal laws.)

Second, most health plans issued after March 23, 2010 must cover family-planning services, including the full range of Food and Drug Administration-approved methods of contraception.<sup>4</sup> The administration explicitly exempts religious houses of worship. Moreover, the policy provides an accommodation to religiously *affiliated* non-profit employers that oppose offering their employees contraceptive coverage. Under the accommodation, these organizations—such as hospitals, universities, and social-service organizations—can opt out of the policy—but in those cases, insurance companies are

responsible for covering birth control directly, ensuring that women who work at these organizations receive coverage of contraceptives seamlessly, confidentially, and without a copay.

The contraceptive policy's exemption did not satisfy the most ardent foes of birth control. Consequently, many anti-contraception advocates filed lawsuits challenging the policy. In June 2014, the Supreme Court weighed in on the issue of refusals with a decision in the case *Burwell v. Hobby Lobby Stores, Inc.* The court held that closely held, for-profit corporations may deny their employees contraceptive coverage, citing religious exemptions.<sup>5</sup> In response to the court's decision, the administration modified the contraceptive-coverage policy in July 2015, releasing rules that permit closely held, for-profit corporations to avail themselves of the same accommodation arrangement that is available to religiously affiliated non-profits. Meanwhile, legal challenges to the contraceptive-coverage policy brought by religiously affiliated non-profit organizations continue to work their way through the federal courts, with one or more additional cases expected to come before the Supreme Court in the near future.

### Current Law

This section provides the text of several refusal laws (including some not mentioned above in the summary), as well as relevant legal decisions:

#### **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'15 Omnibus Appropriations, Pub. L. No. 113-235. (First Enacted, October 1, 1988 - Current Language Enacted December 16, 2014)**

SEC. 203. 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. 204. 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—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); Consolidated Appropriations Act, 2010, Pub. L. No. 111-117; Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L.**

**No. 112-10 (April 2011); Consolidated Appropriations Act, Pub.L. No. 112-175 (September 2012); Department of Defense, Military Construction and Veterans Affairs, and Full Year Continuing Appropriations Act, 2013, Pub.L. 113-6 (March 2013), Continuing Appropriations Act, 2014, Pub.L. No. 113-46, (October 2013); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235 (December 2014)**

*GENERAL PROVISIONS—GOVERNMENT-WIDE DEPARTMENTS, AGENCIES, AND CORPORATIONS (Title VII)*

SEC. 726 (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 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.<sup>6</sup>

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

**FY'05 Consolidated Appropriations Act, Pub. L. No. 108-447, 188 Stat. 2809 (December 8, 2004). Continued in FY'06 Departments of Labor, Health, and Human Services, and Education Appropriations Act, Pub. L. No. 109-149 (December 30, 2005); Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5 (February 15, 2007); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 508d, 121 Stat. 1844, 2209 (2007); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110-329, Div. A section 101, 122 Stat. 3574, 3575 (September 2008); Consolidated Appropriations Act, 2010, Pub. L. No. 111-117 (December 2009); Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10 (April 2011); Consolidated Appropriations Act, 2012, Pub. L. No. 112-74 (December 2011); Consolidated Appropriations Act, Pub.L. No. 112-175 (September 2012); Department of Defense, Military Construction and Veterans Affairs, and Full Year Continuing Appropriations Act, 2013, Pub.L. 113-6 (March 2013), Continuing Appropriations Act, 2014, Pub.L. No. 113-46, (October 2013); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235 (December 2014)**

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

SEC. 507. (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.

**Affordable Care Act, Pub. L. No. 111-148 (Enacted March 23, 2010)**

Sec. 1303 (b)(4) NO DISCRIMINATION ON BASIS OF PROVISION OF ABORTION. — 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.

**Certain Preventive Services Under the Affordable Care Act, 45 CFR Part 147 (Jul. 2, 2013)**

...an employer that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Code would be considered a religious employer for purposes of the religious employer exemption. These proposed amendments were intended to eliminate any question as to whether group health plans of houses of worship that provide educational, charitable, or social services to their communities qualify for the exemption. Specifically, they were intended to ensure that an otherwise exempt plan is not disqualified because the employer's purposes extend beyond the inculcation of religious values or because the employer hires or serves people of different religious faiths. The Departments also proposed to clarify that, for purposes of the religious employer exemption, an employer that is organized and operates as a nonprofit entity is not limited to any particular form of entity under state law. The Departments reiterate that, under this standard, it is not necessary to determine the federal tax-exempt status of the nonprofit entity in determining whether the religious employer exemption applies.

...Based on their review of these comments, the Departments are finalizing without change the definition of religious employer in the proposed regulations.

*Burwell v. Hobby Lobby Stores, Inc.*, 134 U.S. 2751 (2014)

By a vote of 5-4, the court ruled that closely held, for-profit corporations with religious objections to providing their workers health insurance that covers birth control need not comply with the Affordable Care Act's contraceptive-coverage policy. The majority opinion held that the Religious Freedom Restoration Act (RFRA) (written to protect individuals' religious freedom) extends to closely held, for-profit corporations, and that such corporations are capable of holding a religious "belief" within the meaning of RFRA. Because, in the majority's view, the companies challenging the law are capable of holding a sincere religious belief and faced a financial penalty for noncompliance, the contraceptive-coverage policy imposed a substantial burden on their religious freedom. Although the majority conceded that guaranteeing cost-free access to contraception is a compelling interest, it ultimately held that the government did not use the least-restrictive means of furthering that interest. Justice Ginsburg dissented, arguing that the court's majority expanded radically the rights of corporations, and in doing so encourages those who would assert future religious objections to providing coverage for a wide range of health-care services, or perhaps even complying with other federal laws.

January 1, 2017

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<sup>1</sup> 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).

<sup>2</sup> Public Health Service Act, 42 U.S.C. § 238n.

<sup>3</sup> Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws, 45 CFR Part 88 (Feb. 18, 2011).

<sup>4</sup> Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 39869 (July 2, 2013) (to be codified at 45 C.F.R. pt. 147).

<sup>5</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, Nos. 13-354, 13-356, 2014 WL 2921709 (June 30, 2014).

<sup>6</sup> In 1999, P.L. 106-58 was amended as follows: (2) in subsection (c), by inserting "or otherwise provide for" after "to prescribe". This language expanded the individual provider refusal beyond those who "prescribe" to include those who "otherwise provide for" contraceptives. This language has appeared in each subsequent appropriations law.