

Amendment 828 – Protecting Patients and Health Care Providers from Government Health Care Coercion

This amendment ensures that the funds made available through the budget's health care reserve fund will not be used to violate the conscience of health care providers or to allow government bureaucrats to make health care choices for patients, including which doctors they may see.

The budget includes a \$634 billion reserve fund that the President has called a “down-payment” for health care reform. The budget includes the eight principles that the administration has identified that should be included in health reform legislation. This amendment would add the important principle that health reform should protect, rather than limit, the freedom of conscience of patients and providers.

Americans overwhelmingly oppose health reform that forces them to enroll in a particular health insurance plan or see a specific doctor. Health reform should ensure that providers are not discriminated against—or worse yet put in jail—because they refuse to provide a morally objectionable procedure.

President Obama clearly supports protecting the freedom of Americans to choose their own health care plan and doctors.

During the presidential campaign, President Obama repeatedly made assurances that Americans should not lose their ability to choose their health providers. During one of the debates, he said, “If you've got health care already, and probably the majority of you do, then you can keep your plan if you are satisfied with it. You can keep your choice of doctor.”¹

¹ For an example, this was said during the Second Presidential Debate, but was repeated multiple times on the campaign trail.

President Obama’s assurances indicate that he does not want to pursue the failed strategies of the past that would have limited patient choice. For example, one of the downfalls of “Hillarycare” in the early 1990s was that it forced a number of patients into large, government-regulated Health Maintenance Organizations (HMOs) that limit patient choice. The American people made it clear that they do not want the government—or anybody else—telling them which doctors they can see and what medications they can take.

Conscience protections for physicians and health providers are based on 35 years of statutory intent—health care reform should remain consistent with this tradition.

Dating back to the “Church amendment” of 1973, health care providers are protected from discrimination if they object to participation in certain medical procedures based on moral or religious convictions.² This law was strengthened in a 1996 Public Health Service Act amendment, which prohibits federal, state, and local governments from discriminating against health care entities and providers that do not provide, train in, or refer for abortions.³ In 2004, the Hyde-Weldon amendment, which has subsequently been approved every year since 2004, further reinforced this statutory intent⁴:

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

² Department of Health and Human Services, 45 CFR Part 88, “Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices In Violation of Federal Law.”

³ Department of Health and Human Services, 45 CFR Part 88, “Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices In Violation of Federal Law.”

⁴ Department of Health and Human Services, 45 CFR Part 88, “Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices In Violation of Federal Law.”

discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

The Department of Health and Human Services finalized a rule in January 2009 to clarify these protections for Americans serving in the health care field. This rule is appropriately enforced by the HHS Office of Civil Rights to protect providers from discrimination or coercion based on their beliefs. Unfortunately, on March 6 of this month, the new administration formally moved to begin the process of rescinding this important rule.

There is a clear need to include conscience protections in health care reform.

Freedom of conscience should be a constitutionally-protected right for all Americans. Unfortunately, there have been documented efforts to coerce individuals and institutions to perform abortions in Alaska, New Mexico, New Jersey and elsewhere.⁵ Other examples include:

- As recently as 2002, NARAL embarked on a project in Maryland to “requir[e] Maryland hospitals to provide abortion” even though abortion violates the core principles of any of the religiously affiliated hospitals in the state.⁶
- In the summer of 2008, reports surfaced of a nurse who was forced to leave two different hospitals because she refused to sign a form pledging to assist in abortions if asked (name withheld to protect her privacy).⁷
- In 2008, the American College of Obstetricians and Gynecologists published an ethics opinion that stated that

⁵ Associated Press, “Justices: ‘Quasi-public’ hospital must offer elective abortions,” November 21, 1997 and Associated Press, “Hospital, ACLU Reach Deal on Funds for Abortion Services,” November 3, 1999

⁶ National Right to Life Committee, “National Right to Life Applauds U.S. House for Passing Bill to Bar Discrimination Against Pro-Life Health Care Providers,” September 25, 2002.

⁷ Personally relayed her story to Congressional Staff, but wanted to remain anonymous.

physicians and other healthcare professionals had an obligation to refer for abortion even against their conscience.⁸

Physicians and other health care providers are professionals who constantly make judgments based on both medical expertise and ethical standards.

The foundational principle of medical ethics is “*first, do no harm.*” Many American physicians and providers have ethical concerns with certain medical services because they may pose harm to their patients. For example, the Hippocratic Oath clearly repudiates abortion—abortion causes serious harm to both unborn children and the women involved. Women can suffer significant short-term and long-term complications from abortion, including cervical lacerations, hemorrhage, serious infection, and future pre-term birth and placenta previa. Abortion can also cause serious psychological harm to women, including major depression, anxiety disorders, and Post-Abortion Syndrome.

If HHS rescinds the recent conscience protection regulations and Congress does not include conscience protections as part of health care reform, there is a real danger that medical professionals will be reduced to mere vending machines for medical procedures—instead of providing compassionate care based on medical expertise and ethical standards.

This amendment would have a positive impact on patient access to care.

By prohibiting patients from being forced to see a particular doctor or enroll in a particular health plan, this legislation would ensure that health reform continues to give patients access to their choice of providers and plans.

⁸ ACOG, “The Limits of Conscientious Objection,” November 2007.

Moreover, by ensuring conscience protections for providers, patient access will be increased, not restricted, as some have argued. Denying freedom of conscience would reduce access to health care services by forcing caring professionals out of the health care profession altogether and providing a disincentive for many to pursue a medical career.

This amendment would in no way prevent women from choosing legal procedures. Instead, this amendment would protect individual providers who have moral and religious concerns with specific services, and make sure that the government can't tell individuals which doctors they have to see or which pills to take.