



## **BACKGROUND: Provider Conscience Regulation**

Maryland Right to Life strongly supports the “Provider Conscience Regulation” recently promulgated by the United States Department of Health and Human Services (DHHS). The proposed regulations seek to ensure that federal funds are not used to support coercive or discriminatory practices or policies in violation of federal law.

America was founded on principles of religious liberty and freedom of conscience. Constitutional principles and federal laws guarantee that workers may not be coerced into performing actions that violate their conscience or be discriminated against because of their religious beliefs or moral standards.

Freedom of conscience is particularly important in the health care field, where health care workers often must deal with situations that have moral implications. Health care providers have the same rights as workers in other sectors of the economy to freedom of conscience and religious liberty.

Federal statutes specifically protecting health care providers have been in existence for decades and have been upheld by the courts. These statutes and cases include:

- The conscience provisions contained in 42 U.S.C. § 300a–7, collectively known as the “Church Amendments,” which were enacted in the 1970s to protect the conscience rights of individuals and entities that object to performing or assisting in the performance of lawful abortion or sterilization procedures;
- Public Health Service Act § 245, enacted in 1996, which prohibits the federal government and any State or local governments receiving federal financial assistance to mandate training in performing abortions or to discriminate against health care workers and entities that refuse to receive such training;
- The Weldon Amendment [Consolidated Appropriations Act, 2008, Pub. L. No. 110–161, Div. G, § 508(d), 121 Stat. 1844, 2209 (Dec. 26, 2007)], which specifies that funds will not be given to agencies that discriminate against providers or entities that do not provide, pay for, provide coverage for, or refer for abortions.”
- *Taylor v. St. Vincent’s Hospital*, 523 F.2d 75, 77 (9<sup>th</sup> Cir. 1975), which upheld a lower court decision protecting the right of a religious hospital to refuse to perform sterilizations and abortions on religious or moral grounds.

Some states offer conscience protection as well. In Maryland, persons may not be required to perform, participate in, or refer for any medical procedure that results in artificial insemination, sterilization, or abortion, and hospitals may not be required to perform such procedures. Furthermore, refusal to perform or refer for such procedures may not be grounds for civil liability or any disciplinary or recriminatory action.

However, the Maryland statute contains an exception that seems to negate the rule. Disciplinary or recriminatory action and civil liability are allowed if a patient suffers harm, which is broadly and vaguely defined, or if failure to perform the procedure is deemed “contrary to the standards of medical care.” (see Maryland Code)

In actual practice, an attitude has arisen that health care professionals and institutions should provide or assist in the provision of procedures to which they object, upon pain of discrimination or other sanction. For instance, the American College of Obstetrics and Gynecology (ACOG) takes the position that doctors with moral objections to abortion should nevertheless be required to refer patients to physicians who will perform the procedure.

Noting that ACOG and other professional organizations have established standards that define the exercise of conscience to be unprofessional, DHHS comments that such developments “promote the mistaken beliefs that rights of conscience and self-determination extend to all persons, except health care providers.”

The proposed ruling introduces no new statutes or regulations. It only seeks to clarify and ensure the enforcement of statutes already on the books. Nor does it deny necessary medical services to patients. It simply protects individual health care providers and organizations from being compelled to participate in services that violate their conscience or religious beliefs.

It should be noted conscientious objection to medical services typically involve elective procedures, such as abortion and physician-assisted suicide, rather than lifesaving medical treatment. Nothing in the conscience laws would prevent a patient from obtaining such services elsewhere.

The letter signed by 13 State Attorneys General implies that health care institutions may be “stripped of vital federal funding” if this regulation is adopted. However, this regulation is not about funding—it is about guaranteeing the fundamental civil rights of workers in the health professions. The federal statutes barring entities that receive federal funding from discriminatory or morally coercive practices are already in place. The new regulation would only seek to ensure that such statutes are applied fairly.

Promulgation of this regulation will promote awareness among health care workers of their right to refuse to participate in abortions or other medical procedure that are morally repugnant to them. Furthermore, it will enable community and faith-based organizations to participate in federal programs without fear of coercion. Finally, it will ensure that individuals from diverse ethnic backgrounds, cultural traditions, religious beliefs, or moral convictions are not discouraged from entering or practicing in health care professions.

Individuals do not waive their right to freedom of conscience and religious liberty when they enter the health care field. The right to be free from being coerced to act against one’s conscience is a fundamental human right. The DHHS is justified in upholding it.

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## Conscience Protection in the Maryland Code

§ 20-214. Effect.

(a) In general-

- (1) A person may not be required to perform or participate in, or refer to any source for, any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy.
- (2) The refusal of a person to perform or participate in, or refer to a source for, these medical procedures may not be a basis for:
  - (i) Civil liability to another person; or
  - (ii) Disciplinary or other recriminatory action against the person.

(b) Hospitals-

- (1) A licensed hospital, hospital director, or hospital governing board may not be required:
  - (i) To permit, within the hospital, the performance of any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy; or
  - (ii) To refer to any source for these medical procedures.
- (2) The refusal to permit or to refer to a source for these procedures may not be grounds for:
  - (i) Civil liability to another person; or
  - (ii) Disciplinary or other recriminatory action against the person by this State or any person.

(c) Patients-

- (1) The refusal of an individual to submit to or give consent for an abortion or sterilization may not be grounds for loss of any privileges or immunities to which the individual otherwise would be entitled.
- (2) Submitting to or granting consent for an abortion or sterilization may not be a condition precedent to the receipt of any public benefits.

(d) No immunity- Notwithstanding any other provision of this section, a health care provider, a licensed hospital, a hospital director, or a hospital governing board is not immune from civil damages, if available at law, or from disciplinary or other recriminatory action, if the failure to refer a patient to a source for any medical procedure that results in sterilization or termination of pregnancy would reasonably be determined as:

- (1) The cause of death or serious physical injury or serious long-lasting injury to the patient; and
- (2) Otherwise contrary to the standards of medical care.

[An. Code 1957, art. 43, § 556E; 1982, ch. 21, § 2; 1991, chs. 1, 441.]