



Secretariat of Pro-Life Activities

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194

202-541-3070 • FAX 202-541-3054 • EMAIL PROLIFE@USCCB.ORG • WEB WWW.USCCB.ORG/PROLIFE

Backgrounder: Is The Respect for Rights of Conscience Act Overbroad?

The Respect for Rights of Conscience Act (S. 1467, H.R. 1179; henceforth “the Conscience Act” or “the Act”) has been accused of greatly expanding the unilateral power of employers to delete almost any service from health plans: Not only could Catholics be exempt from birth control coverage, but (it is argued) racists could cite a “moral” objection to providing coverage for African-Americans; employers with disdain for single mothers could deny them maternity coverage; Scientologists could deny coverage for psychiatric care; and over 20 million women now receiving coverage for preventive services could lose that coverage.

All these claims are **false**, for the following reasons:

1. The Conscience Act does not modify any state or federal law that now regulates health coverage.

This Act amends only the new mandated benefits provisions in Title I of the health care reform act of 2010 (the Patient Protection and Affordable Care Act, or PPACA) – and its sole effect on that Act is to supply the respect for religious beliefs and moral convictions that is already part of other federal health programs, but is now lacking in PPACA.

Among the many laws on health coverage that will continue to have full effect after passage of the Conscience Act are the following:

- Any **state** mandates (for coverage of contraceptives or anything else);
- Title VII of the **Civil Rights Act of 1964**, forbidding discrimination on the basis of race, color, religion, sex, or national origin in employment benefits;
- The **Pregnancy Discrimination Act** (which became part of Title VII in 1978), forbidding discrimination in employee health benefits based on pregnancy, childbirth or related conditions;
- The **Americans with Disabilities Act of 1990**, prohibiting employers from discriminating in health coverage or other benefits against people with HIV or other disabilities;
- The **Mental Health Parity Act of 2008**, requiring equitable coverage of mental illness.

2. The Act cannot deprive anyone of coverage they now have.

Since the Conscience Act amends only mandates under PPACA that have not yet taken effect, there is no basis for saying it could deprive anyone of coverage they already have. If the coverage exists now, that is because (a) it is required by other laws (which the Act does not change), or (b) it makes sense to issuers and sponsors of insurance to cover it, which will also remain true.

3. Compared to the situation now, the Act severely restricts the available reasons for excluding a given item or service from a health plan.

There are many items and services that health plans *are* allowed to exclude from coverage now – for any reason, or for no stated reason. If these items and services become part of a federal mandate under PPACA for the first time, the Conscience Act will allow an exemption from the new mandatory service only if it violates the “religious beliefs or moral convictions” of those issuing, sponsoring or purchasing the health plan. This is the language generally used to respect rights of conscience in other federal health programs since 1973 (See www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf).

The Act itself creates two additional safeguards against any abuse of this standard:

(a) It authorizes the U.S. Department of Health and Human Services to ensure that any plan claiming a conscience exemption from a particular item or service must still be “**actuarially equivalent**” to that plan with the objectionable item or service included. If a plan excludes one service on moral or religious grounds, it must make up for that by adding or enhancing another service so the plan remains just as valuable for purchasers. This prevents the conscience exemption from becoming a pretext for anyone to refuse to cover some items on financial grounds.

(b) By reference to another provision of PPACA, the Act includes a **nondiscrimination policy** to ensure that mandated health benefits may “not be subject to denial to individuals against their wishes on the basis of the individuals’ age or expected length of life or of the individuals’ present or predicted disability, degree of medical dependency, or quality of life.”

4. The Act does not expand anyone’s unilateral authority to determine health benefits.

Will employers be able to exclude services unilaterally from employee health plans based on their own moral or religious convictions? No more so than they can now. Employers may pay well over half the cost of premiums for an employee health plan and so play an important role. But unless they are self-insured they must find an insurer willing to offer a plan that excludes specific items. They may also be answerable to any larger private organization they belong to, as well as to employees’ unions through collective bargaining. An item or service that can now be excluded for any reason will have to be specifically justified on moral or religious grounds, and replaced by an equally valuable item or service, if it falls within PPACA’s mandated benefits.

The Conscience Act does not change how the stakeholders in private health insurance negotiate a health plan. But if all who make that decision agree on an accommodation that respects religious freedom, the Act ensures that the federal government will not *forbid* them to act accordingly.

For these reasons there is no situation in which, after PPACA and this Act take effect, there will be a broader authority to exclude items from health plans on moral or religious grounds than there is now, prior to implementation of PPACA.

There is an “overbroad” agenda at work in this debate, one that endangers many Americans’ access to health coverage: the agenda of opposing religious diversity and conscience rights in health care.

The Obama administration’s new contraceptive mandate under PPACA will force many, perhaps most, Catholic organizations, especially those that serve the poor and needy, to choose between their religious and moral teaching and their commitment to health coverage for employees. If they try to offer a plan without the objectionable services, they will be punished with heavy financial penalties, or have the decision taken away from them by an insurer ordered by the government to include those services. Some will feel compelled to discontinue such coverage, pay the government’s fine, and abandon their employees to the individual market, where they may not find a comparable plan that is within their means. So a *failure* to pass the Conscience Act may reduce women’s and men’s access to the health care they want and need, besides threatening fundamental rights of conscience and religious freedom that the federal government has long respected.

In short, the Respect for Rights of Conscience Act lets Americans keep the health care coverage they enjoy now, and allows such coverage to expand further, consistent with our nation’s longstanding respect for religious freedom and rights of conscience.

3/19/12