

115TH CONGRESS
1ST SESSION

S. 301

To amend the Public Health Service Act to prohibit governmental discrimination against providers of health services that are not involved in abortion.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2017

Mr. LANKFORD (for himself, Mr. BLUNT, Mr. LEE, Mr. CRUZ, Mr. MORAN, Mr. ISAKSON, Mr. INHOFE, Mr. DAINES, Mr. THUNE, Mr. SASSE, Mr. RISCH, Mr. ROBERTS, Mr. CASSIDY, and Mrs. ERNST) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act to prohibit governmental discrimination against providers of health services that are not involved in abortion.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Conscience Protection
5 Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

1 (1) Thomas Jefferson stated a conviction com-
2 mon to our Nation’s founders when he declared in
3 1809 that “[n]o provision in our Constitution ought
4 to be dearer to man than that which protects the
5 rights of conscience against the enterprises of the
6 civil authority”.

7 (2) In 1973, the Supreme Court concluded that
8 the government must leave the abortion decision “to
9 the medical judgment of the pregnant woman’s at-
10 tending physician”, recognizing that a physician may
11 choose not to participate in abortion. *Roe v. Wade*,
12 410 U.S. 113, 164 (1973). The Court cited with ap-
13 proval a policy that “neither physician, hospital, nor
14 hospital personnel shall be required to perform any
15 act violative of personally-held moral principles”,
16 410 U.S. at 143 n. 38, and cited State laws uphold-
17 ing this principle. *Doe v. Bolton*, 410 U.S. 179,
18 197–8 (1973).

19 (3) Congress’ enactments to protect this right
20 of conscience in health care include the Church
21 amendment of 1973 (42 U.S.C. 300a–7), the Coats/
22 Snowe amendment of 1996 (42 U.S.C. 238n), and
23 the Weldon amendment approved by Congresses and
24 Presidents of both parties every year since 2004.

1 (4) None of these laws explicitly provides a
2 “private right of action” so victims of discrimination
3 can defend their conscience rights in court, and ad-
4 ministrative enforcement by the Department of
5 Health and Human Services Office for Civil Rights
6 has been lax, at times allowing cases to languish for
7 years without resolution.

8 (5) Defying the Federal Weldon amendment,
9 California’s Department of Managed Health Care
10 has mandated coverage for all elective abortions in
11 all health plans under its jurisdiction. Other States
12 such as New York and Washington have taken or
13 considered similar action, and some States may go
14 farther to require all physicians and hospitals to pro-
15 vide or facilitate abortions. On June 21, 2016, the
16 Obama Administration concluded a nearly 2-year in-
17 vestigation of this matter by determining that Cali-
18 fornia’s decision to require insurance plans under
19 the California Department for Managed Health Care
20 authority to cover all legal abortion services did not
21 violate the Weldon amendment. Until the new Ad-
22 ministration is able to reverse this finding, individ-
23 uals will have to choose between ignoring their con-
24 science or forgoing health care coverage.

1 (6) The vast majority of medical professionals
2 do not perform abortions, with 86 percent of ob/gyns
3 unwilling to provide them in a recent study (Obstet-
4 rics & Gynecology, Sept. 2011) and the great major-
5 ity of hospitals choosing to do so in rare cases or not
6 at all.

7 (7) A health care provider's decision not to par-
8 ticipate in an abortion, like Congress' decision not to
9 fund most abortions, erects no new barrier to those
10 seeking to perform or undergo abortions but leaves
11 each party free to act as he or she wishes.

12 (8) Such protection poses no conflict with other
13 Federal laws, such as the law requiring emergency
14 stabilizing treatment for a pregnant woman and her
15 unborn child when either is in distress (Emergency
16 Medical Treatment and Active Labor Act). As the
17 previous Administration has said, these areas of law
18 have operated side by side for many years and both
19 should be fully enforced (76 Fed. Reg. 9968–77
20 (2011) at 9973).

21 (9) Reaffirming longstanding Federal policy on
22 conscience rights and providing a right of action in
23 cases where it is violated allows longstanding and
24 widely supported Federal laws to work as intended.

1 **SEC. 3. PROHIBITING GOVERNMENTAL DISCRIMINATION**
 2 **AGAINST PROVIDERS OF HEALTH SERVICES**
 3 **THAT ARE NOT INVOLVED IN ABORTION.**

4 Title II of the Public Health Service Act (42 U.S.C.
 5 202 et seq.) is amended by inserting after section 245 the
 6 following:

7 **“SEC. 245A. PROHIBITING GOVERNMENTAL DISCRIMINA-**
 8 **TION AGAINST PROVIDERS OF HEALTH SERV-**
 9 **ICES THAT ARE NOT INVOLVED IN ABORTION.**

10 “(a) IN GENERAL.—Notwithstanding any other law,
 11 the Federal Government, and any State or local govern-
 12 ment that receives Federal financial assistance, may not
 13 penalize, retaliate against, or otherwise discriminate
 14 against a health care provider on the basis that the pro-
 15 vider does not—

16 “(1) perform, refer for, pay for, or otherwise
 17 participate in abortion;

18 “(2) provide or sponsor abortion coverage; or

19 “(3) facilitate or make arrangements for any of
 20 the activities specified in this subsection.

21 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
 22 tion shall be construed—

23 “(1) to prevent any health care provider from
 24 voluntarily electing to participate in abortions or
 25 abortion referrals;

1 “(2) to prevent any health care provider from
2 voluntarily electing to provide or sponsor abortion
3 coverage or health benefits coverage that includes
4 abortion;

5 “(3) to prevent an accrediting agency, the Fed-
6 eral Government, or a State or local government
7 from establishing standards of medical competency
8 applicable only to those who have knowingly, volun-
9 tarily, and specifically elected to perform abortions,
10 or from enforcing contractual obligations applicable
11 only to those who, as part of such contract, know-
12 ingly, voluntarily, and specifically elect to provide
13 abortions;

14 “(4) to affect, or be affected by, section 1867
15 of the Social Security Act (42 U.S.C. 1395dd, com-
16 monly referred to as the ‘Emergency Medical Treat-
17 ment and Active Labor Act’); or

18 “(5) to supersede any law enacted by any State
19 for the purpose of regulating insurance, except as
20 specified in subsection (a).

21 “(c) ADMINISTRATION.—The Secretary shall des-
22 ignate the Director of the Office for Civil Rights of the
23 Department of Health and Human Services—

24 “(1) to receive complaints alleging a violation of
25 this section, section 245 of this Act, or any of sub-

1 sections (b) through (e) of section 401 of the Health
 2 Programs Extension Act of 1973; and

3 “(2) to pursue the investigation of such com-
 4 plaints in coordination with the Attorney General.

5 “(d) DEFINITIONS.—For purposes of this section:

6 “(1) FEDERAL FINANCIAL ASSISTANCE.—The
 7 term ‘Federal financial assistance’ means Federal
 8 payments to cover the cost of health care services or
 9 benefits, or other Federal payments, grants, or loans
 10 to promote or otherwise facilitate health-related ac-
 11 tivities.

12 “(2) HEALTH CARE PROVIDER.—The term
 13 ‘health care provider’ means—

14 “(A) an individual physician, nurse, or
 15 other health care professional;

16 “(B) a hospital, health system, or other
 17 health care facility or organization (including a
 18 party to a proposed merger or other collabo-
 19 rative arrangement relating to health services,
 20 and an entity resulting therefrom);

21 “(C) a provider-sponsored organization, an
 22 accountable care organization, or a health
 23 maintenance organization;

1 “(D) a social services provider that pro-
 2 vides or authorizes referrals for health care
 3 services;

4 “(E) a program of training in the health
 5 professions or an applicant to or participant in
 6 such a program;

7 “(F) an issuer of health insurance cov-
 8 erage; or

9 “(G) a group health plan or student health
 10 plan, or a sponsor or administrator thereof.

11 “(3) STATE OR LOCAL GOVERNMENT THAT RE-
 12 CEIVES FEDERAL FINANCIAL ASSISTANCE.—The
 13 term ‘State or local government that receives Fed-
 14 eral financial assistance’ includes every agency and
 15 other governmental unit and subdivision of a State
 16 or local government, if such State or local govern-
 17 ment, or any agency or governmental unit or sub-
 18 division thereof, receives Federal financial assist-
 19 ance.

20 **“SEC. 245B. CIVIL ACTION FOR CERTAIN VIOLATIONS.**

21 “(a) IN GENERAL.—A qualified party may, in a civil
 22 action, obtain appropriate relief with regard to a des-
 23 ignated violation.

24 “(b) DEFINITIONS.—For purposes of this section:

1 “(1) QUALIFIED PARTY.—The term ‘qualified
2 party’ means—

3 “(A) the Attorney General of the United
4 States; or

5 “(B) any person or entity adversely af-
6 fected by the designated violation.

7 “(2) DESIGNATED VIOLATION.—The term ‘des-
8 ignated violation’ means an actual or threatened vio-
9 lation of—

10 “(A) section 245 or 245A of this Act; or

11 “(B) any of subsections (b) through (e) of
12 section 401 of the Health Programs Extension
13 Act of 1973 regarding an objection to abortion.

14 “(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—
15 An action under this section may be commenced, and relief
16 may be granted, without regard to whether the party com-
17 mencing the action has sought or exhausted available ad-
18 ministrative remedies.

19 “(d) DEFENDANTS IN ACTIONS UNDER THIS SEC-
20 TION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL
21 AS OTHERS.—

22 “(1) IN GENERAL.—An action under this sec-
23 tion may be maintained against, among others, a
24 party that is a Federal or State governmental entity.
25 Relief in an action under this section may include

1 money damages even if the defendant is such a gov-
 2 ernmental entity.

3 “(2) DEFINITION.—For the purposes of this
 4 subsection, the term ‘State governmental entity’
 5 means a State, a local government within a State,
 6 and any agency or other governmental unit or sub-
 7 division of a State or of such a local government.

8 “(e) NATURE OF RELIEF.—In an action under this
 9 section, the court shall grant—

10 “(1) all necessary equitable and legal relief, in-
 11 cluding, where appropriate, declaratory relief and
 12 compensatory damages, to prevent the occurrence,
 13 continuance, or repetition of the designated violation
 14 and to compensate for losses resulting from the des-
 15 ignated violation; and

16 “(2) to a prevailing plaintiff, reasonable attor-
 17 neys’ fees and litigation expenses as part of the
 18 costs.”.

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