

# LIBERTY COUNSEL



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April 7, 2009

The Honorable Charles E. Johnson, Secretary  
United States Department of Health and Human Services  
Office of Public Health and Science  
ATTN: Brenda Destro  
Hubert Humphrey Building  
200 Independence Avenue, S.W., Room 728E  
Washington, D.C. 20201

RE: Comments on repeal of HHS Regulation “Provider Conscience Regulation” 73  
Fed. Reg. 50,274 (August 26, 2008)

Dear Secretary Johnson:

This letter provides written comments in opposition to the proposed repeal of the United States Department of Health and Human Services (HHS) Conscience Regulation. If repealed, healthcare providers would be forced to participate in abortion and other ethically controversial practices in violation of their moral or religious beliefs at the risk of losing their jobs or board certification. Repeal of this regulation would eliminate women’s access to pro-life healthcare.

The purpose of the Conscience Regulation is to protect healthcare providers from invidious discrimination when they rely on their moral and religious beliefs in making important decisions. The idea of a conscience regulation is not new; the Conscience Regulation merely makes healthcare providers aware of their rights, enforces already-existing federal laws, and gives healthcare providers a remedy when they face discrimination based on their moral or religious beliefs. Over the past 36 years, Congress has passed three federal laws that protect the consciences of healthcare providers; the conscience regulations merely make healthcare providers aware of and clarify their rights, and they enforce the already-existing federal laws. In 1973, Congress passed the Public Health Service Act (the “Church amendment”), which states that willingness or unwillingness to perform abortions and sterilizations cannot be a condition for employment, and receipt of federal funds does not require the healthcare providers to perform those procedures. In 1996, Congress added an amendment to the Public Health Service Act that prohibits federal, state, and local governments that receive federal funds from discriminating against healthcare providers that do not provide or refer for abortions. Finally, in 2004, Congress

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passed the Hyde-Weldon Conscience Protection Amendment to protect all healthcare providers from government coercion to “perform, pay for, provide coverage of, or refer for abortions.”

The Conscience Regulation is vitally important to any healthcare provider who feels compelled not to perform abortions or refer patients to receive abortions. Repealing the Regulation would allow constitutional violations of healthcare providers’ First Amendment free exercise rights. The Regulation protects these healthcare providers from unconstitutional discrimination when they cannot perform abortions based on personal moral or religious beliefs. Ironically, the Regulation also protects healthcare providers who are willing to perform abortions. Without the Regulation, healthcare providers will be forced to perform abortions or be driven out of the medical field. Overturning the Conscience Regulation will also have the effect of worsening already existing healthcare shortages and robbing women of the ability to choose pro-life healthcare.

Healthcare providers have a duty to adhere to certain ethical standards, and they must have the freedom to adhere to time-tested standards of medical ethics. The Hippocratic Oath is the basis for modern medical ethics standards, but this patient-protecting Hippocratic Oath is not so much about protecting patients anymore. The classical version of the Hippocratic Oath states, “I will neither give a deadly drug to anybody who asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortive remedy. In purity and holiness I will guard my life and my art.” The basis for modern medical ethics actually addresses the issue of “conscience.”

Opponents of the Conscience Regulation allege that the Regulation limits women’s access to healthcare and information, and they argue that the Regulation is an attack on access to reproductive healthcare. In fact, however, forcing pro-life healthcare providers to perform abortions will do far more to restrict access to the healthcare system. Without the Conscience Regulation, pro-life doctors who refuse to perform an abortion will lose their job or board certification; this will only add to the healthcare shortages and limit patients’ opportunities to consult with a like-minded, pro-life doctor.

Beyond healthcare providers, many religiously affiliated hospitals will also be affected. A number of Roman Catholic bishops have threatened to engage in civil disobedience or to close healthcare facilities rather than perform abortions. Other religiously affiliated hospitals may likewise cease operations. Thus, repealing the Conscience Regulation would have a negative impact on the provision of healthcare outside the realm of abortion. No person should be forced against the strong dictates of conscience.

Thomas Jefferson once said, “No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority.” When civil government seeks to trample upon a person’s conscience, as would be the case if the Conscience Regulation were repealed, then such action is the beginning of tyranny.

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As the general counsel for the largest group of pro-life OB/GYNs in the country, we respectfully request that the Conscience Regulation not be repealed, and we ask that the right of conscience remain protected.

Sincerely,

A handwritten signature in black ink, appearing to read "Mathew D. Staver". The signature is written in a cursive style with a prominent horizontal stroke across the middle.

Mathew D. Staver  
Founder and Chairman

MDS/bmg