

115TH CONGRESS
1ST SESSION

H. R. 644

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Mrs. BLACK (for herself, Mr. FORTENBERRY, Mr. FARENTHOLD, Mr. HUIZENGA, Mr. ROSKAM, Mr. PITTINGER, Mr. DUNCAN of South Carolina, Mr. KELLY of Mississippi, Mrs. WAGNER, Mr. GIBBS, Mr. BANKS of Indiana, Mrs. BLACKBURN, Mr. MOOLENAAR, Mr. MOONEY of West Virginia, Mr. LATTI, Mr. JODY B. HICE of Georgia, Mr. CRAMER, Mr. ROTHFUS, Mr. RODNEY DAVIS of Illinois, Mr. WENSTRUP, Mr. STEWART, Ms. FOXX, Mr. JONES, Mr. HULTGREN, Mrs. NOEM, Mr. SMITH of New Jersey, Mr. CARTER of Georgia, Mr. JOHNSON of Louisiana, Mr. DUNCAN of Tennessee, Mr. YODER, Mr. ROE of Tennessee, Mr. WALBERG, Mr. BABIN, Mr. WILSON of South Carolina, Mr. SCALISE, Mr. LAMBORN, Mr. PALAZZO, Mr. MITCHELL, Mr. BRIDENSTINE, Mr. LUETKEMEYER, Mr. GOHMERT, Mr. THOMAS J. ROONEY of Florida, Mr. BRADY of Texas, Mr. ALLEN, Mr. FRANKS of Arizona, Mr. GUTHRIE, Mrs. WALORSKI, Mr. MARCHANT, Mr. KELLY of Pennsylvania, Mr. ROKITA, Mr. HENSARLING, Mr. OLSON, Mr. MEADOWS, Mr. CHABOT, Mr. ADERHOLT, Mr. GRAVES of Missouri, Mr. JOHNSON of Ohio, Mr. YOHO, Mr. FLEISCHMANN, Mr. BRAT, Mr. BILIRAKIS, Mrs. ROBY, Mr. LOUDERMILK, Mr. BIGGS, Mr. POE of Texas, Mr. LAMALFA, Mr. PEARCE, Mr. WEBSTER of Florida, Mr. HUDSON, Mr. PERRY, Mr. HILL, Mr. RUTHERFORD, and Mr. HARRIS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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:

8 (1) Thomas Jefferson stated a conviction com-
9 mon to our Nation’s founders when he declared in
10 1809 that “[n]o provision in our Constitution ought
11 to be dearer to man than that which protects the
12 rights of conscience against the enterprises of the
13 civil authority”.

14 (2) In 1973, the Supreme Court concluded that
15 the government must leave the abortion decision “to
16 the medical judgment of the pregnant woman’s at-
17 tending physician”, recognizing that a physician may
18 choose not to participate in abortion. *Roe v. Wade*,
19 410 U.S. 113, 164 (1973). The Court cited with ap-
20 proval a policy that “neither physician, hospital, nor
21 hospital personnel shall be required to perform any
22 act violative of personally-held moral principles”,
23 410 U.S. at 143 n. 38, and cited State laws uphold-
24 ing this principle. *Doe v. Bolton*, 410 U.S. 179,
25 197–8 (1973).

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

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

14 (5) Defying the Federal Weldon amendment,
15 California’s Department of Managed Health Care
16 has mandated coverage for all elective abortions in
17 all health plans under its jurisdiction. Other States
18 such as New York and Washington have taken or
19 considered similar action, and some States may go
20 farther to require all physicians and hospitals to pro-
21 vide or facilitate abortions. On June 21, 2016, the
22 Obama Administration concluded a nearly two-year
23 investigation of this matter by determining that
24 California’s decision to require insurance plans
25 under the California Department for Managed

1 Health Care authority to cover all legal abortion
2 services did not violate the Weldon amendment.
3 Until the new Administration is able to reverse this
4 finding, individuals will have to choose between ig-
5 noring their conscience or forgoing health care cov-
6 erage.

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

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

18 (8) Such protection poses no conflict with other
19 Federal laws, such as the law requiring emergency
20 stabilizing treatment for a pregnant woman and her
21 unborn child when either is in distress (Emergency
22 Medical Treatment and Active Labor Act). As the
23 previous Administration has said, these areas of law
24 have operated side by side for many years and both

1 should be fully enforced (76 Fed. Reg. 9968–77
2 (2011) at 9973).

3 (9) Reaffirming longstanding Federal policy on
4 conscience rights and providing a right of action in
5 cases where it is violated allows longstanding and
6 widely supported Federal laws to work as intended.

7 **SEC. 3. PROHIBITING GOVERNMENTAL DISCRIMINATION**
8 **AGAINST PROVIDERS OF HEALTH SERVICES**
9 **THAT ARE NOT INVOLVED IN ABORTION.**

10 Title II of the Public Health Service Act (42 U.S.C.
11 202 et seq.) is amended by inserting after section 245 the
12 following:

13 **“SEC. 245A. PROHIBITING GOVERNMENTAL DISCRIMINA-**
14 **TION AGAINST PROVIDERS OF HEALTH SERV-**
15 **ICES THAT ARE NOT INVOLVED IN ABORTION.**

16 “(a) IN GENERAL.—Notwithstanding any other law,
17 the Federal Government, and any State or local govern-
18 ment that receives Federal financial assistance, may not
19 penalize, retaliate against, or otherwise discriminate
20 against a health care provider on the basis that the pro-
21 vider does not—

22 “(1) perform, refer for, pay for, or otherwise
23 participate in abortion;

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

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

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

5 “(1) to prevent any health care provider from
6 voluntarily electing to participate in abortions or
7 abortion referrals;

8 “(2) to prevent any health care provider from
9 voluntarily electing to provide or sponsor abortion
10 coverage or health benefits coverage that includes
11 abortion;

12 “(3) to prevent an accrediting agency, the Fed-
13 eral Government, or a State or local government
14 from establishing standards of medical competency
15 applicable only to those who have knowingly, volun-
16 tarily, and specifically elected to perform abortions,
17 or from enforcing contractual obligations applicable
18 only to those who, as part of such contract, know-
19 ingly, voluntarily, and specifically elect to provide
20 abortions;

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

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

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

7 “(1) to receive complaints alleging a violation of
8 this section, section 245 of this Act, or any of sub-
9 sections (b) through (e) of section 401 of the Health
10 Programs Extension Act of 1973; and

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

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

14 “(1) FEDERAL FINANCIAL ASSISTANCE.—The
15 term ‘Federal financial assistance’ means Federal
16 payments to cover the cost of health care services or
17 benefits, or other Federal payments, grants, or loans
18 to promote or otherwise facilitate health-related ac-
19 tivities.

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

22 “(A) an individual physician, nurse, or
23 other health care professional;

24 “(B) a hospital, health system, or other
25 health care facility or organization (including a

1 party to a proposed merger or other collabo-
2 rative arrangement relating to health services,
3 and an entity resulting therefrom);

4 “(C) a provider-sponsored organization, an
5 accountable care organization, or a health
6 maintenance organization;

7 “(D) a social services provider that pro-
8 vides or authorizes referrals for health care
9 services;

10 “(E) a program of training in the health
11 professions or an applicant to or participant in
12 such a program;

13 “(F) an issuer of health insurance cov-
14 erage; or

15 “(G) a group health plan or student health
16 plan, or a sponsor or administrator thereof.

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

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

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

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

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

8 “(A) the Attorney General of the United
9 States; or

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

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

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

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

19 “(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—
20 An action under this section may be commenced, and relief
21 may be granted, without regard to whether the party com-
22 mencing the action has sought or exhausted available ad-
23 ministrative remedies.

24 “(d) DEFENDANTS IN ACTIONS UNDER THIS SEC-
25 TION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL
26 AS OTHERS.—

1 “(1) IN GENERAL.—An action under this sec-
2 tion may be maintained against, among others, a
3 party that is a Federal or State governmental entity.
4 Relief in an action under this section may include
5 money damages even if the defendant is such a gov-
6 ernmental entity.

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

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

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

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

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