

# Health Care Refusals

Susan Berke Fogel  
Director, Reproductive Health

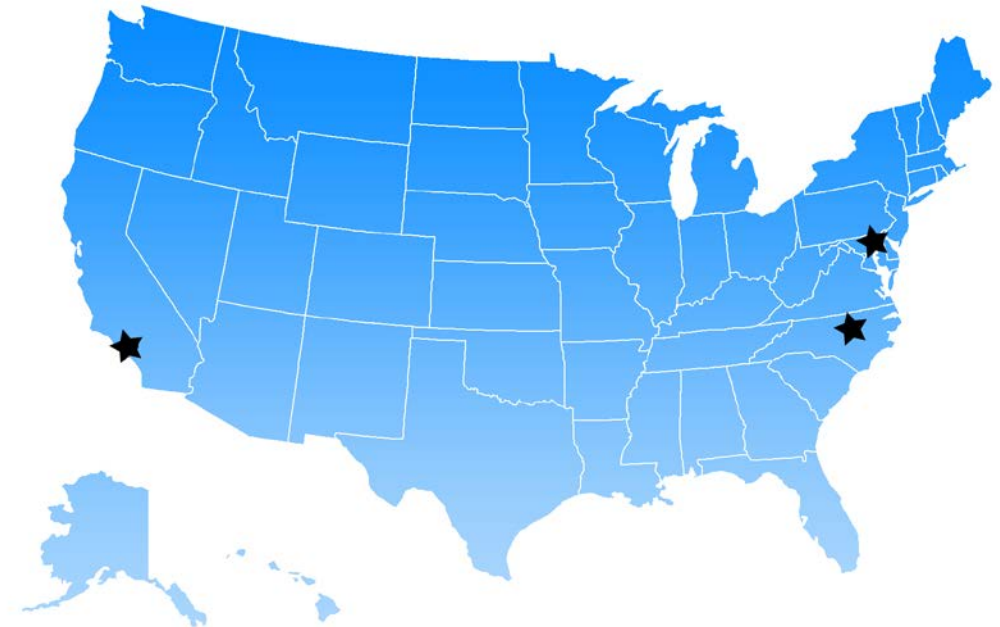
September 12, 2019



# About NHeLP

---

- National non-profit committed to improving health care access and quality for underserved individuals and families
- State & Local Partners:
  - Disability rights advocates
  - Poverty & legal aid advocates
  - Reproductive rights, health, and justice
- Offices: CA, DC, NC
- Join our mailing list at [www.healthlaw.org](http://www.healthlaw.org)
- Follow us on Facebook & Twitter  
@nhelp\_org



# Overview

---

- Framing health care refusals
- Underlying federal statutes
- New and proposed rules
- Impact of refusals and exemptions
- California Healthy Youth Act

# Health Care Refusals and Standards of Care

---

Religious exemptions are permission to refuse to provide care that there is a duty to provide

Quality care is evaluated against accepted standards of evidence, is patient-centered and prevention-focused

Refusals allow individuals, entities to not meet those standards

# Ethical and Religious Directives for Catholic Health Care

---

- 1 of 6 people seen in a Catholic hospital each year
- 5 of 10 largest hospital systems in US is Catholic (#2, 3, 4, 7, 8)
  - CommonSpirit (Dignity + CHI) is #2
- Most are governed by the ERDs that prohibit:
  - Abortion – often defined as the fetus having a heartbeat
  - Sterilization
  - Contraception
  - Assisted reproduction
  - Gender affirming care
- Some Dignity Hospitals - Common Values
  - Less Catholic
  - Allows family planning and sterilization, but prohibits abortion, ART
- Most people do not know whether an entity is Catholic or whether it restricts (Stulberg, Freedman)

# Church Amendment

## 42. U.S.C. 300a-7

---



(b) as condition of public funding,

- cannot require **individual** to **perform or assist** abortion or sterilization
- Cannot require **institution** to make facilities or personnel available for **performance** of abortion or sterilization on its premises

(c) & (e) **Entity** or biomedical or behavioral research cannot discriminate in employment for **refusal or willingness** to perform **abortion or sterilization**; cannot deny training or study of refusal to participate in **abortion or sterilization**

(d) Individual not required to perform or assist **in any part of health service**

# Weldon Amendment (Appropriations rider)

---

- Government may not discriminate:
- If health care entity does not **provide, pay for, provide coverage of, or refer for abortions**
- “health care entity” includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan
- See also ACA §1303 – **Health plan** in an Exchange cannot discriminate if **provider or facility refuses to provide abortion**



The New & Proposed Rules\*

---

# Who Can Refuse to Do What?

\* New rule is enjoined and postponed  
to Nov. 22, 2019





## New Rule - Who can refuse? \*

---

### Statutes:

- Individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan

### Rule adds:

- **Person** (1 USC 1) = include corporations, companies, associations, firms, partnerships, societies, and joint stock companies
- State, public agency, public institution, public organization, or other public entity.
- **Plan sponsor** not engaged in health care (ie an employer)
- **Workforce** = everyone in the health care system including volunteers, trainees, other members or agents of a covered entity

# What can they refuse to do? \*

---

## **Statutes:**

Provide, cover, pay for, provide coverage of, refer, perform or assist in performance, teach/train

## **Rule:**

- Assist in the performance = “articulable connection to . . .”
- Does not require a moral or religious objection
  - “Choose not to provide” or “Would rather not”
- Referral = provide any information by any means . . . If the health service is the possible outcome

# Department of Labor Proposed religious exemption

---

- Federal contractors
- Original rule:
  - Exemption to non-discrimination in hiring applied to religious entities (ie church, synagogue, mosque)
- Proposed rule:
  - Redefines religious
  - Entity only needs to hold itself out as religious
  - Would allow for-profit corporations to use the religious exemption (think Hobby Lobby)
  - Can require adherence to religious principles in hiring
  - Would permit refusal to hire LGBTQ, single parent, others

# Impact

---

- Contraceptive coverage: any employer can decide not to cover – no longer need a religious objection
- OCR complaints
  - Vermont nurses - required to “participate” in abortion
  - CA FACT Act violates Weldon (Supreme Court already enjoined)
- Redefining discrimination on the basis of sex to exclude LGBTQ
- *Missionary Guadalupanas of the Holy Spirit v. Rouillard* (CA abortion coverage)  
California Court of Appeals – “only legally tenable interpretation of the law is that abortions are basic health care services, which health care service plans are required to cover.”

## California Healthy Youth Act (CHYA) - challenges

---

- CA has the country's most holistic, inclusive Sex Ed law (Jan 1 2016)
  - Requires Sex Ed be medically accurate, age-appropriate, and unbiased.
  - At least once in middle school and at least once in high school
- Increased opposition to implementation in East Bay Area, Orange County, and San Diego.
- Visit the ACLU sex ed resource page or contact the ACLU ([sexualhealth@acluca.org](mailto:sexualhealth@acluca.org)) to get involved.



## THANK YOU

### Washington DC Office

1444 I Street NW, Suite 1105  
Washington, DC 20005  
ph: (202) 289-7661  
fx: (202) 289-7724  
nhelpdc@healthlaw.org

### Los Angeles Office

3701 Wilshire Blvd, Suite #750  
Los Angeles, CA 90010  
ph: (310) 204-6010  
fx: (213) 368-0774  
nhelp@healthlaw.org

### North Carolina Office

200 N. Greensboro St., Suite D-13  
Carrboro, NC 27510  
ph: (919) 968-6308  
fx: (919) 968-8855  
nhelpnc@healthlaw.org

[www.healthlaw.org](http://www.healthlaw.org)

Susan Berke Fogel  
Director Reproductive Health

---



[www.healthlaw.org](http://www.healthlaw.org)



@nhelp\_org



@nhelp\_org