

FACT SHEET

## Health Care Refusals Harm Patients: The Threat to Reproductive Health Care

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Across the nation, the personal beliefs of individuals and institutions are interfering with patients' access to health care. Major provider organizations including the American Medical Association, American College of Obstetricians and Gynecologists, American College of Surgeons, American Academy of Pediatrics, and American College of Emergency Physicians all agree that the provider's personal beliefs "must be balanced against the fundamental obligations of the medical profession and physicians' paramount responsibility and commitment to serving the needs of their patients."<sup>1</sup> Yet some providers still assert a right to deny patients medically appropriate health care services, information, and referrals. These providers place their personal beliefs above medically accepted standards of care and patients' health needs.

It is not just health care providers and institutions that are asserting their personal beliefs and restricting patient access to health care. Religiously-affiliated managed care plans may try to exclude coverage for reproductive health services. Religiously-affiliated employers, such as colleges and charitable organizations, also refuse to provide coverage for certain services to their employees.<sup>2</sup> Recently, even owners of for-profit companies have refused to provide contraceptive coverage in their employee health plans.<sup>3</sup> These bosses are imposing their personal beliefs on their employees by denying them coverage for needed medical services.

Moreover, some who support the right to refuse based on personal beliefs claim that refusals do not pose any harm to patients. The presumption is that patients can just go somewhere else, or that patients can just pay for services that are excluded from insurance coverage. This presumption is simply wrong and ignores the harm suffered by those on the receiving end of the refusal. Many do not realize that an individual or institutional refusal to provide services, information, referrals, or coverage can have very serious emotional, physical, and financial consequences for patients.

As made clear in the examples below, most patients who are refused health care services or information are women. Refusals perpetuate and reinforce the idea that it is acceptable to deny health care services, information, or insurance coverage to women based on their reproductive capacity. Subjecting a woman to discrimination based on her need for reproductive health care, which is inextricably bound to her status as a woman, is itself a real harm, even if a woman receives the services she needs.

### Refusals have serious consequences for patients and the health care system

- Refusals endanger patients' lives and health and can have irreversible consequences;
- Refusals can further traumatize patients who are already in physical and emotional distress;
- Refusals violate patients' legal rights;
- Refusals increase health care costs for individuals;
- Refusals create inefficiency in the delivery of health care, with costs to both individuals and the system.

## Refusals endanger patients' lives and health and can have irreversible consequences

- Certain medications, including contraception and emergency contraception, are only effective within a narrow time-frame. A refusal to dispense these medications may result in delays that put women at greater risk of unintended pregnancy, which is associated with an increased risk of morbidity for women and adverse effects for infants.<sup>4</sup>
- Some HIV medications are also highly time-sensitive. A delay resulting from a pharmacist's objection to treating someone based on his or her sexual orientation could make the medicine less or perhaps completely ineffective, placing the patient's health and life at risk.
- Some hospitals and medical professionals, based on their religious affiliation or personal beliefs, refuse to stabilize women with miscarriages by completing uterine evacuation until there is no longer a detectable fetal heartbeat.<sup>5</sup> In some cases, only completing the miscarriage by performing an abortion will stabilize the patient, and there is no medical treatment that would allow the pregnancy to continue.<sup>6</sup> Delays in care can result in infertility, infection, and even death.
- A religious hospital's refusal to provide an abortion to a woman with certain severe medical conditions endangers her life, especially if there is no other provider in the area.<sup>7</sup> Women's health is also endangered by providers who refuse to perform or refer for abortion care based on their personal beliefs. A woman may need an abortion in order to receive treatment for cancer, or because a medication she needs to prevent seizures causes serious birth defects. Delays in accessing care may result in a decline in her condition, requiring even more aggressive treatment or causing permanent health damage.
- Some hospitals, based on their religious affiliation, refuse to treat women with ectopic pregnancies with the medication methotrexate or surgery that would leave their fallopian tubes intact even though these treatments are the medically accepted standard of care in some cases. These providers believe that the medication causes an abortion, even though ectopic pregnancies are almost never viable.<sup>8</sup> Instead, these providers remove the entire fallopian tube, subjecting women to unnecessary invasive surgery that reduces their future fertility. Some providers transfer women to nonsectarian hospitals where they can receive the standard of care,<sup>9</sup> but this results in delays that place women at risk of tubal rupture, the number one cause of first trimester death.<sup>10</sup>
- Some health care providers are opposed to infertility treatment altogether,<sup>11</sup> or are opposed to providing it to certain groups of people, such as unmarried individuals or those who are gay or lesbian.<sup>12</sup> Because fertility declines with age, a delay in care resulting from a refusal may decrease a woman's chances of becoming pregnant.<sup>13</sup> A delay may also eliminate a woman's opportunity to use her own eggs, requiring her to seek and pay for a donor.
- Refusals that interfere with access to highly effective forms of contraception, such as hormonal contraceptives or IUDs, can be especially dangerous for a woman with a medical condition whose life or health may be endangered by pregnancy. These women and their partners also may not have the option of surgical sterilization if the only hospital in their area is Catholic-affiliated.<sup>14</sup>

## Refusals can further traumatize patients who are already in physical and emotional distress

- A woman experiencing an ectopic pregnancy or miscarriage likely is already frightened because of her medical emergency and saddened by the inevitable loss of her pregnancy. A refusal to treat her until there is no longer a detectable fetal heartbeat only increases the trauma of the experience. Rather than being treated immediately and released from the hospital to begin healing both physically and emotionally, she is forced to

undergo a delay in receiving care critical to her health.

- A rape survivor seeking treatment in an emergency room might be denied emergency contraception (EC) based on the objections of a doctor, nurse, or religiously-affiliated hospital.<sup>15</sup> The provider could refuse to dispense the drug, to write a prescription for her to get it elsewhere, or to even tell her about it. Because emergency contraception is time sensitive, any refusal potentially increases her risk of pregnancy. A rape survivor who is denied EC or is not told of its existence must deal with the anxiety of not knowing whether she will have to face a pregnancy resulting from rape.

## Refusals violate patients' legal rights

### *Refusals deny patients care to which they are legally entitled*

- The Emergency Medical Treatment and Active Labor Act (EMTALA) requires that patients receive prompt evaluation and stabilization of their urgent medical conditions.<sup>16</sup> Despite this legal requirement, some individuals and institutions have denied or delayed care to women experiencing ectopic pregnancies or miscarriages because they are religiously opposed to any medical intervention that ends a pregnancy, even when necessary to save a woman's life.<sup>17</sup>
- An employer may offer its employees an insurance plan which excludes abortion coverage. Employees may be unable to get coverage for abortion care, even when it is necessary to save a woman's life. This violates the Pregnancy Discrimination Act (PDA). The PDA prohibits employers from treating pregnancy-related medical conditions differently from other medical conditions, explicitly requiring insurance coverage of abortion when a woman's life is endangered.<sup>18</sup>
- Under the Affordable Care Act (ACA) all new health insurance plans must cover certain preventive services, including contraception and screening and counseling for sexually transmitted infections with no cost-sharing.<sup>19</sup> Nevertheless, some employers are challenging this benefit, claiming that providing their employees with coverage for these critical health services violates their religious beliefs.<sup>20</sup>
- Section 1557 of the Affordable Care Act (ACA) is a federal law that protects persons from discrimination based on their race, color, national origin, sex, age, or disability in programs or activities that receive Federal financial assistance, are administered by an Executive agency, or are created under Title I of the ACA.<sup>21</sup> So, if for example, an employer refused to provide health insurance benefits to its female employees because of a personal belief that only men are heads of households and need insurance coverage, that would violate Section 1557's prohibition on sex discrimination.

### *Refusals deny patients critical information about their health condition, violating their right to informed consent*

- A refusal can leave patients unaware of the treatments available to them or that they have received medically inaccurate information, violating their right to informed consent under federal and state law.<sup>22</sup> A provider who thinks that a patient will terminate her pregnancy if given certain information regarding fetal anomalies may claim that his or her religious beliefs justify withholding information about the fetus's condition from the patient.
- A doctor who is opposed to assisted reproduction may not inform someone who needs treatment that reduces fertility (such as radiation to treat testicular or ovarian cancer) that sperm banking or egg-retrieval can increase the patient's chances of having biologically-related children. If the patient is not given this information before radiation treatments, that opportunity is lost forever.

## Refusals increase health care costs for individuals

*Refusals cause patients to pay for health care, even when they are insured*

- An infertility practice group accepted Guadalupe Benitez as a patient, and subjected her to a year of invasive tests and treatments.<sup>23</sup> When it became clear that she needed in vitro fertilization to become pregnant, every doctor in the practice refused, claiming that their religious beliefs prevented them from performing the procedure for a lesbian. This clinic was the only one covered by her health insurance plan, so Ms. Benitez had to pay for treatment at another clinic, despite having insurance coverage for infertility treatment.

*Refusals add expenses to health care for those who can least afford it*

- A health care refusal in a rural area can require a patient to drive long distances in order to get needed care. The additional time and expense falls most heavily on those with low-incomes or who do not have the job flexibility to take time off to seek health care.
- In urban areas, where many low income residents do not have cars, a refusal can require a patient to pay to take public transportation to a willing provider, or to hire a taxi to reach a willing hospital or pharmacy—a significant additional expense for someone with a low income.

## Refusals create inefficiency in the delivery of health care, with costs to both individuals and the system

*Refusals may result in patients undergoing additional medical procedures, subjecting them to unnecessary risks*

- A woman who has a cesarean section and wishes to have a post-partum tubal ligation immediately following delivery cannot do so at a Catholic hospital, even though having the procedure at that time is medically recommended, presents fewer risks to the patient, and is more cost-effective than delaying the procedure to a later time.<sup>24</sup> If the patient cannot have the procedure immediately following delivery, she must first recover from the cesarean surgery and then schedule the tubal ligation at least six weeks later when she is busy caring for her newborn. She may also have to find another doctor to perform the surgery, disrupting the continuity of her care.
- In Wisconsin, a pharmacist refused to fill a prescription for emergency contraception for a mother of six, berating her in front of other customers. Traumatized after the encounter, the woman did not seek to fill the prescription elsewhere. She got pregnant and had an abortion, since her financially strained family could not support another child.<sup>25</sup>
- Some states, such as New York, automatically enroll Medicaid beneficiaries into religiously affiliated managed care plans that do not provide family planning services.<sup>26</sup> While a patient may still obtain the services elsewhere with her Medicaid card, she may not even be aware of the prohibition until she sees her doctor and tries to get birth control.

*Refusals undermine confidence in the health care profession*

- Patients rely on health care professionals to give them essential information about their condition and treatment options. Refusals to disclose critical information and make referrals for services greatly undermine public confidence in the health care system.
- Patients must be able to trust their health care providers to give them comprehensive information and treatment based on the providers' professional training and assessment of their medical needs, without fear that their

providers are allowing their religious beliefs to cloud their professional judgment.

- Fearing judgment or a refusal to provide care, patients may withhold information or provide inaccurate information about their medical histories, current symptoms, or personal health habits, leading to potential misdiagnoses or ineffective treatment.

*Refusals can undermine efforts to improve public health and reduce health care disparities*

- A hospital or health care provider with a religious or moral opposition to birth control may refuse to counsel sexually active patients on the use of condoms<sup>27</sup> to prevent the risk of transmitting HIV or other STDs, contributing to higher rates of these diseases.
- A health care provider refusal may make a patient feel guilty, ashamed, alienated from the health care system, and fearful of being judged by other providers. A patient may avoid contact with the health care system entirely, including use of preventive care, until his or her condition becomes more serious, reducing the chances of the patient recovering and contributing to greater health care costs. A patient may delay seeking medical attention until an illness becomes unbearable enough to force a visit to one of our nation's already overburdened emergency rooms.

## Conclusion

Real people can suffer real harms when they are denied access to health care services, information, and referrals. Patients rely on their providers to use their medical expertise and professional training to guide treatment decisions. Refusals based on providers' personal beliefs undermine the trust that patients place in their providers.

- 1 Comments from Am. Med. Ass'n et al. to Dep't of Health & Human Servs. (Apr. 8, 2009) (regarding the Rescission of the Regulation entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law").
- 2 For example, Catholic Charities, which employs people of all faiths and provides a variety of social services to people of all faiths, objected to "contraceptive equity" laws in New York and California, which require all insurance plans to include contraceptives if the plans cover other prescription drugs and devices. Both state laws include a narrow exemption for religious employers, for which Catholic Charities does not qualify, so Catholic Charities challenged the laws. The highest courts of both states upheld the laws as advancing the states' interests in increasing women's access to health care and eliminating gender discrimination. Catholic Charities of Diocese of Albany v. Serio, 859 N.E.2d 459 (N.Y. 2006); Catholic Charities of Sacramento, Inc. v. Superior Court, 85 P.3d 67 (Cal. 2004).
- 3 See, National Women's Law Center, Challenges to the Birth Control Coverage Benefit, <http://www.nwlc.org/challenges-birth-control-coverage-benefit>.
- 4 Ctrs. for Disease Control & Prevention, Dep't of Health & Human Servs., Unintended Pregnancy Prevention (Apr. 30, 2010), <http://www.cdc.gov/reproductivehealth/UnintendedPregnancy/index.htm>.
- 5 Lori R. Freedman et al., *When There's a Heartbeat: Miscarriage Management in Catholic-Owned Hospitals*, 98 Am. J. Pub. Health 1774, 1774 (2008).
- 6 Royal Coll. of Obstetricians & Gynaecologists, *The Management of Early Pregnancy Loss*, Guideline 25 1 (Oct. 2006); Craig P. Griebel et al., *Management of Spontaneous Abortion*, 72 Am. Fam. Physician 1243, 1248 (Oct. 2005). Miscarriage is also referred to as spontaneous abortion.
- 7 The U.S. Conference of Catholic Bishops disagreed with a Catholic-affiliated hospital's position that the Directives permit abortion where in the absence of an abortion neither the woman nor the fetus would survive. Comm. on Doctrine, U.S. Conf. of Catholic Bishops, *The Distinction Between Direct Abortion and Legitimate Medical Procedures 2* (2010), available at <http://old.usccb.org/doctrine/direct-abortion-statement2010-06-23.pdf>.
- 8 Ninety-seven percent of pregnancies that develop outside of the uterus develop within a fallopian tube, and these are never viable. Royal Coll. of Obstetricians & Gynaecologists, *The Management of Tubal Pregnancy*, Guideline 21 6 (May 2004).
- 9 Angel M. Foster et al., *Ibis Reprod. Health, Assessing Hospital Policies & Practices Regarding Ectopic Pregnancy & Miscarriage Management 5* (2010), available at [http://nwlc.org/sites/default/files/pdfs/ibis\\_rh\\_-\\_nwlc\\_qualitative\\_study\\_report.pdf](http://nwlc.org/sites/default/files/pdfs/ibis_rh_-_nwlc_qualitative_study_report.pdf).
- 10 Ectopic pregnancies account for ten to fifteen percent of all maternal deaths in the United States. Anne-Marie Lozeau & Beth Potter, *Diagnosis and Management of Ectopic Pregnancy*, 72 Am. Fam. Physician 1707, 1707 (2005).
- 11 For example, Directive 41 of the Ethical and Religious Directives for Catholic Health Care Services states:  
"Homologous artificial fertilization (that is, any technique used to achieve conception using the gametes of the two spouses joined in marriage) is prohibited when it separates procreation from the marital act in its unitive significance (e.g., any technique used to achieve extracorporeal conception)." U.S. Conf. of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services 25* (5th ed. 2009), available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>.
- 12 See *Lamda Legal: Benitez v. North Coast Medical Group* (Jul. 1, 2001), <http://www.lamdalegal.org/in-court/cases/benitez-v-north-coast-womens-care-medical-group.html>.
- 13 Am. Soc'y for Reprod. Med., *Infertility: An Overview: A Guide for Patients 9* (2003) (explaining that "[f]ertility declines with age because fewer eggs remain in [a woman's] ovaries, and the quality of the eggs remaining is lower than when [she was] younger."), available at [http://www.asrm.org/uploadedFiles/ASRM\\_Content/Resources/Patient\\_Resources/Fact\\_Sheets\\_and\\_Info\\_Booklets/infertility\\_overview.pdf](http://www.asrm.org/uploadedFiles/ASRM_Content/Resources/Patient_Resources/Fact_Sheets_and_Info_Booklets/infertility_overview.pdf). See also Office on Women's Health, U.S. Dept. of Health & Human Servs., *Infertility Fact Sheet* (2009) (noting that aging affects a woman's ability to have a baby because "[h]er ovaries become less able to release eggs," "[s]he has a smaller number of eggs left," those "eggs are not as healthy," and "[s]he is more likely to have health conditions that can cause fertility problems"), available at <http://www.womenshealth.gov/publications/our-publications/fact-sheet/infertility.cfm>.
- 14 Directive 53 of the Ethical and Religious Directives bans sterilization for both men and women. U.S. Conf. of Catholic Bishops, *supra* note 11, at 27.
- 15 The Catholic Health Association has opined that EC is not an abortifacient, and can therefore be used to treat rape victims presenting in the ER of Catholic-affiliated hospitals. Sandra Reznik, "*Plan B: How It Works*," *Health Progress*, Jan.-Feb. 2010, at 59, 61, available at <http://www.mergerwatch.org/storage/pdf-files/Health%20Progress%20JanFeb2010.%20Plan%20B%20How%20It%20Works.pdf>. Nonetheless, individual Bishops, who assert their authority over Catholic hospitals in their Diocese, as well as individual health care providers, have voiced religiously based opposition to the dispensation of EC.
- 16 The Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (2010).
- 17 Foster et al., *supra* note 9.
- 18 Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) states: "This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion."
- 19 Health Resources and Serv. Admin., U.S. Dep't of Health and Human Serv., *Women's Preventive Services: Required Health Plan Coverage Guidelines* (2011), available at <http://www.hrsa.gov/womensguidelines/>. Nat'l Women's Law Ctr., *Women's Preventive Services in the Affordable Care Act* (July 25, 2012), available at <http://www.nwlc.org/resource/women%E2%80%99s-preventive-services-affordable-care-act-what%E2%80%99s-new-august-1-2012>.
- 20 See, National Women's Law Center, *Challenges to the Birth Control Coverage Benefit*, <http://www.nwlc.org/challenges-birth-control-coverage-benefit>.
- 21 See Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1557 (2010), amended by Health Care and Education Affordability and Reconciliation Act, Pub. L. No. 111-152 (2010) (to be codified at 42 U.S.C. § 18116).
- 22 Most states have statutes that allow a patient to sue for malpractice when the patient is harmed as a result of not being told of all available treatment options and the risks and benefits of those options. Federal regulations explicitly require all hospitals receiving Medicare funds to obtain informed consent from all patients. 42 C.F.R. § 482.13(b)(2) (2010).
- 23 *Lamda Legal: Benitez v. North Coast Medical Group*, *supra* note 12.
- 24 Nikki Zite, Sara Wuellner & Melissa Gilliam, *Failure to Obtain Desired Postpartum Sterilization: Risk and Predictors*, 105 *Obstetrics & Gynecology* 794 (2005).
- 25 Annysa Johnson, *State Probes Drug Refusal: Pharmacist Wouldn't Fill Order for Contraceptive*, *Milwaukee J. Sentinel*, May 11, 2005, at B1.
- 26 Henry L. Davis, *Church-Sponsored Fidelis Expanding Rapidly*, *Buffalo News*, Apr. 13, 1998, at B1. Patients may still obtain the services elsewhere with their Medicaid card.
- 27 Pope Benedict appears to have supported condom use to prevent the spread of HIV. Congregation for the Doctrine of Faith, *Note on the Banalization of Sexuality: Regarding Certain Interpretations of "Light of the World,"* [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20101221\\_luce-del-mondo\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20101221_luce-del-mondo_en.html) (last visited Jan. 22, 2013). Others still maintain a religious opposition to the use of condoms, even when life is at stake. The National Catholic Bioethics Center, for example, states "the more common opinion among moralists faithful to the magisterium is that the use of the condom would be wrong because it could endanger the life of the spouse and could be an act of contraception." E.g. John M. Haas, *The Pope and Condoms*, *Nat'l Catholic Bioethics Ctr.*, Nov. 23, 2010, <http://www.catholiceducation.org/articles/media/me0107.htm>.