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## **REPRODUCTIVE RIGHTS & HEALTH**

# **The Trump Administration Weaponized the Weldon Amendment: It's Time for it to Go**

A health care provider's personal beliefs should never dictate health care. Yet the federal Weldon Amendment allows personal beliefs, not patient health or the standard of care, to determine the care a patient receives.

The Weldon Amendment is a rider that has been attached to the annual Labor-HHS appropriations bill since 2005. Although it is written to prohibit "discrimination" against health care entities – including hospitals, health insurance plans, doctors and nurses – that refuse to provide, cover, pay for, or refer for abortion, it really allows health care providers to leave patients without the care they need. There are no provisions in the Weldon Amendment to protect patient access to abortion services.<sup>1</sup> And because a violation of the law comes with an extreme penalty – the potential loss of all federal health-related funds – it has a chilling effect on lawmakers who want to address barriers to abortion.

For too long, the Weldon Amendment has prioritized personal beliefs over patient care and has served as a looming threat to states and localities seeking to protect access to abortion. Now, the threat is no longer theoretical – the Trump-Pence Administration weaponized the Weldon Amendment in unprecedented ways to penalize state actors that protect abortion access and to deny patients access to critical care.

## **The Trump Administration Used the Weldon Amendment to Punish States That Protect Abortion Access**

The Trump Administration used the Weldon Amendment to prevent states from enforcing state laws that protect abortion access. For example, on December 16, 2020, the Trump Administration announced it would withhold \$200 million in federal Medicaid funds quarterly from California.<sup>2</sup> The Trump Administration asserted that the state's requirement that health plans include abortion coverage violates the Weldon Amendment. This happened despite the fact that California had already certified that no Weldon violation had occurred: no health care entity covered by the Weldon Amendment complained and California never took any action that could constitute "discrimination."<sup>3</sup>

## **The Trump Administration Relied on the Weldon Amendment to Justify Opening Up a Discriminatory New Division**

In January 2018, the Trump Administration relied on the Weldon Amendment as justification for establishing a new division – the "Conscience and Religious Freedom Division" within HHS.<sup>4</sup> That office is solely focused on emboldening health care providers and institutions to use personal beliefs to discriminate against patients. Failing to demonstrate any real need to open the office, the Administration pointed to the Weldon Amendment, along with other federal refusal of care laws, as justification for opening the new office. In the years since the office opened, the Administration has diverted resources away from other critical HHS programs to fund the division's attempts to put provider's beliefs ahead of patient care.<sup>5</sup>

## The Trump Administration Tried to Drastically Expand the Reach of the Weldon Amendment

In April 2019, the Trump Administration issued a final rule that drastically expands the reach of the Weldon Amendment and other federal laws permitting refusals.<sup>6</sup> The rule goes well beyond the text of the Weldon Amendment to create a new right for many individuals to refuse care, such as a receptionist or hospital room scheduler. It also allows health care providers to refuse to provide information to patients seeking abortion. Under the rule, a rape survivor could be denied emergency birth control; a transgender person could be denied gender-affirming care; or a pregnant person could be denied information and counseling on their pregnancy options.

## The Trump Administration Relied on the Weldon Amendment to Justify Other Attacks on Reproductive Health Care Access

The Weldon Amendment was used to justify many of the Trump-Pence Administration's efforts to deny patients access to critical care in a range of situations that go far beyond the scope of the law. For example, the Weldon Amendment was cited multiple times throughout the Trump Administration rules that allow sweeping exemptions from the Affordable Care Act's contraceptive coverage requirement, leaving employees and students without birth control coverage.<sup>7</sup> And when the Trump Administration eliminated the requirement that Title X clinics provide pregnancy options counseling, it claimed the requirement violated the Weldon Amendment.<sup>8</sup>

## Refusals to Provide Care Are Harmful, Especially for Those Who Already Face Barriers to Care

Refusals of care threaten access to essential healthcare services. Refusals lead to negative health outcomes by reducing access to care, impairing patients' informed consent, and violating medical standards of care. Women, people of color, LGBTQ+ people, immigrants and refugees, and people living with HIV/AIDS or disabilities—communities that already face barriers to healthcare—are disproportionately harmed, financially, physically, and mentally, by refusals.

## Eliminating the Weldon Amendment is Good Policy and What Voters Want

Eliminating the Weldon Amendment is important for protecting patient care, and it is also what voters want. Voters strongly oppose religious exemption laws like the Weldon Amendment, and are more likely to support an elected official who opposes these laws.<sup>9</sup>

Patient health must come first. The Weldon Amendment has always been dangerous, but the Trump Administration deployed the Weldon Amendment in unprecedented and dangerous ways. To protect patient access to care and reverse the harms of the Trump Administration, the Weldon Amendment must be eliminated.

## Notes

1. Other federal laws, such as EMTALA and Section 1557 of the ACA still apply. Yet, Weldon's lack of patient protections has caused confusion and emboldens health care entities to refuse care despite the requirements of these and other federal laws.
2. U.S. DEPT OF HEALTH AND HUMAN SERVS., HHS TO DISALLOW \$200M IN CALIFORNIA MEDICAID FUNDS DUE TO UNLAWFUL ABORTION INSURANCE MANDATE, REFERS VERMONT MEDICAL CENTER TO DOJ FOR LAWSUIT OVER CONSCIENCE VIOLATIONS (Dec. 16, 2020), <https://www.hhs.gov/about/news/2020/12/16/hhs-disallow-200m-california-medicaid-funds-due-unlawful-abortion-insurance-mandate.html>. In January 2020, the Trump Administration issued a notice of violation to the state of California. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., HHS ISSUES NOTICE OF VIOLATION TO CALIFORNIA FOR ITS ABORTION COVERAGE MANDATE (Jan. 24, 2020), <https://www.hhs.gov/about/news/2020/01/24/hhs-issues-notice-of-violation-to-california-for-its-abortion-coverage-mandate.html>.
3. When a health plan sought an exemption from the law for certain employers, California granted the exemption.
4. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., HHS ANNOUNCES NEW CONSCIENCE AND RELIGIOUS FREEDOM DIVISION (Jan. 18, 2018), <https://www.hhs.gov/about/news/2018/01/18/hhs-ocr-announces-new-conscience-and-religious-freedom-division.html>.
5. See e.g., Dept't of Health and Human Servs., *Fiscal Year 2019 Office for Civil Rights, Justification of Estimates for Appropriations Committees* (2018), <https://www.hhs.gov/sites/default/files/fy2019-ocr-congressional-justification-accessible.pdf>; Dep't of Health and Human Servs., *FY 2020 Budget in Brief*, 151 (2019), <https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf>.
6. "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority 84 Fed. Reg. 23,170 (May 21, 2019) (codified at 45 C.F.R. pt. 88).
7. Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57,536 (Nov. 15, 2018); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 82 Fed. Reg. 57,592 (Nov. 15, 2018).
8. Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7,714 (Mar. 4, 2019).
9. Nat'l Women's Law Ctr., *Voters Oppose Religious Exemptions Laws* (2017), <https://nwlc.org/wp-content/uploads/2017/05/NWLC-Refusals-Memo-May-3-2017-1.pdf>.