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# The Weldon Amendment: A Poison Pill Rider for Abortion Access

A health care provider's personal beliefs should never dictate health care. Yet a federal law known as the Weldon Amendment allows personal beliefs, not patient health and 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 in Congress since 2005. Although it is written to prohibit any entity subject to the rider from "discriminat[ing]" against certain 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 discriminate against patients by denying them the care they need. There are no provisions in the Weldon Amendment to protect patient access to abortion services.<sup>1</sup>

And it has also been weaponized to penalize states that want to protect abortion access. A state or federal agency could face a significant penalty for violating the law – the potential loss of all its federal health-related funds – so the Weldon Amendment can chill state efforts to protect patient access to abortion care.

The dangers of the Weldon Amendment are even more dire now following the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which declared that there is no constitutional right to abortion.<sup>2</sup> *Dobbs* has emboldened state legislators who want to ban abortion, with more than a dozen states banning abortion in the immediate wake of *Dobbs*, and other state legislators continuing to push for abortion bans.<sup>3</sup> On the other hand, there are many state legislators who want to protect abortion access, both for their state's own residents and for patients who must travel to another state in order to get the care they need. Data show that many pregnant patients are leaving their states to access abortion care: in the months right after the *Dobbs* decision, 11,980 more people had abortions in states where abortion was still legal when compared to pre-*Dobbs*.<sup>4</sup> This means that it is critical both that states that want to protect abortion access are able to do so and that patients seeking care are not turned away. Yet the Weldon Amendment threatens these two important goals.

## **The Weldon Amendment has been weaponized by anti-abortion policymakers to threaten state action to protect abortion access.**

For too long, the Weldon Amendment has loomed menacingly over states that want to protect abortion access. In the wrong hands, its extreme penalty has been used as a weapon to block states from ensuring their residents get the abortion care they need. For example, in 2020, the Trump Administration announced it would withhold \$200 million in federal Medicaid funds quarterly from California, asserting that the state's requirement that health plans include abortion coverage violated the Weldon Amendment.<sup>5</sup> The Trump Administration took this action even though no California official took any action against an entity covered by the Weldon Amendment that could constitute a violation of the law.<sup>6</sup>

## **The Weldon Amendment has been used by anti-abortion policymakers to embolden refusals of care.**

By giving a green light to refusals of abortion care, the Weldon Amendment puts patients' health and lives in danger, even in states where abortion is legal. A single instance of refusal of care can lead to a patient never getting the care they need – or receiving it only after enduring significant delays and harm.<sup>7</sup>

Additionally, the Weldon Amendment has been used by anti-abortion policymakers to justify measures that would embolden even more refusals of care. For example, the Trump Administration relied on the Weldon Amendment for a range of efforts to deny patient care, including:

- Issuing a rule that attempted to allow anyone involved in the health care system – including a receptionist or scheduler – to refuse to do their job if the patient was seeking abortion care, and to allow health care providers to refuse to provide information to patients.<sup>8</sup>
- Finalizing rules that allowed sweeping exemptions to the Affordable Care Act's contraceptive coverage requirement, leaving employees and students without birth control coverage.<sup>9</sup>
- Eliminating an important requirement that Title X family planning clinics provide pregnancy options counseling.<sup>10</sup>
- Opening an office within the Department of Health and Human Services solely dedicated to emboldening

health care providers and institutions to use personal beliefs to discriminate against patients.<sup>11</sup>

## **Eliminating the Weldon Amendment is good policy and what voters want. Congress is finally starting to recognize the importance of permanently eliminating it.**

The Weldon Amendment is pernicious because it emboldens refusals of care and aims to stop states from taking necessary action to protect their residents and those who travel to their states for abortion care. Recent polling found that a majority of voters opposed laws allowing health care entities and providers or hospitals to refuse to provide abortion care based on religious or personal beliefs – meaning policies like the Weldon Amendment are contrary to what voters want.<sup>12</sup>

Fortunately, recognizing the harm of the Weldon Amendment, both the U.S. House and Senate made historic progress by removing the Weldon Amendment from their Labor-HHS bills in Fiscal Years 2022 and 2023, an important sign of progress.<sup>13</sup> However, Congress eventually included the Weldon Amendment in the final appropriations package for both years – and it unfortunately remains in law.

In order to ensure that everyone has the freedom to control their own bodies, lives, and futures, the Weldon Amendment must be eliminated permanently.

1. There are other federal laws that offer protections for patients from refusals of care, such as the Emergency Medical Treatment and Active Labor Act (EMTALA) and the non-discrimination provision (Section 1557) of the Affordable Care Act. Yet, the Weldon Amendment's lack of patient protections has caused confusion about the application of those laws, and emboldens health care entities to refuse care despite the requirements of these and other federal laws.
2. *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct.2228, 2242 (2022).
3. Caroline Kitchener, N. Kirkpatrick, Daniel Santamariña, Kevin Schaul, and Lauren Tierney, *States Where Abortion is Legal, Banned or Under Threat*, THE WASHINGTON POST (last updated May 16, 2023, 10:13 AM), <https://www.washingtonpost.com/politics/2022/06/24/abortion-state-laws-criminalization-roe/>.
4. Society of Family Planning, #WeCount Report (Oct. 28, 2022), [https://www.societyfp.org/wp-content/uploads/2022/10/SFPWeCountReport\\_AprtoAug2022\\_ReleaseOct2022-1.pdf](https://www.societyfp.org/wp-content/uploads/2022/10/SFPWeCountReport_AprtoAug2022_ReleaseOct2022-1.pdf).
5. U.S. DEP'T 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/hhsdisallow-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/>.
6. In 2019, the Trump Administration also conducted two other Weldon Amendment investigations against California and Hawaii for laws meant to protect patients who seek care anti-abortion centers, also known as crisis pregnancy centers: <https://www.hhs.gov/guidance/document/ocr-issues-notice-resolution-state-hawaii-after-hawaii-takes-action-safeguarding>; <https://www.hhs.gov/guidance/document/ocr-issues-notice-resolution-state-hawaii-after-hawaii-takes-action-safeguarding>.
7. *Refusals to Provide Health Care Threaten the Health and Lives of Patients Nationwide*, National Women's Law Center (May 15, 2023), <https://nwlc.org/resource/refusals-to-provide-health-care-threaten-the-health-and-lives-of-patients-nationwide-2/>.
8. *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). The rule proposed by the Trump administration never went into effect because it was blocked by multiple federal courts. The Biden administration proposed a new rule in late 2022 that would rescind many of the onerous and harmful provisions of the Trump rule.
9. *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). The Departments of Health and Human Services, Labor, and Treasury have proposed a new regulation which would rescind the moral exemption and create a new pathway to contraceptive access for those impacted by the religious exemption. *Coverage of Certain Preventative Services Under the Affordable Care Act*, 88 Fed. Reg. 7236 (Feb. 2, 2023), <https://www.federalregister.gov/documents/2023/02/02/2023-01981/coverage-of-certain-preventive-services-under-the-affordable-care-act>. The regulation has not been finalized as of publication.
10. *Compliance with Statutory Program Integrity Requirements*, 84 Fed. Reg. 7,714 (Mar. 4, 2019). The Department of Health and Human Services has since rescinded large portions of this rule, including the harmful restrictions on pregnancy options counseling. 42 C.F.R. § 59, (Oct. 7, 2021), <https://public-inspection.federalregister.gov/2021-21542.pdf>.
11. 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-ocrannounces-new-conscience-and-religious-freedom-division.html>.
12. Voters oppose refusals of care. Polling conducted in June 2022 found that a majority of voters (54%) in states where abortion is legal, oppose allowing health care providers to refuse abortion care based on their religious or personal beliefs and a majority of voters (57%) oppose allowing hospitals to refuse abortion care based on religious objections. Polling results on file with National Women's Law Center.
13. H.R. 2471, 117th Cong. (1st Sess. 2021) Fiscal Year 2022: <https://appropriations.house.gov/sites/republicans.appropriations.house.gov/files/documents/BILLS-117--AP--APOO-FY2022LHSSubcommitteeAppropriationsBill.pdf>; *Senator Murry Statement on the Historic Introduction of the Senate LHHS Funding Bill Without the Hyde and Weldon Amendments; Groundbreaking Investments in Reproductive and Maternal Health*, (Oct. 18, 2021) <https://www.murray.senate.gov/senator-murray-statement-on-the-historic-introduction-of-the-senate-lhhs-funding-bill-without-the-hyde-and-weldon-amendments-groundbreaking-investments-in-reproductive-and-maternal-health/>. H.R. 8295, 117th Cong. (2d Sess. 2022) Fiscal Year 2023: <https://www.congress.gov/117/bills/hr8295/BILLS-117hr8295rh.pdf>; *Chairman Leahy Releases Fiscal year 2023 Senate Appropriations Bills*, (July 28, 2022) <https://www.appropriations.senate.gov/news/majority/breaking-chairman-leahy-releases-fiscal-year-2023-senate-appropriations-bills>.