

117TH CONGRESS
1ST SESSION

H. R. 6060

To amend the Public Health Service Act to prohibit governmental discrimination against health care providers that do not participate in abortion.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2021

Mr. HARRIS (for himself, Mr. BABIN, Mrs. CAMMACK, Mr. HUDSON, Mr. GROTHMAN, Mr. DUNCAN, Mr. ADERHOLT, Mr. POSEY, Mr. TIMMONS, Mr. LAMBORN, Mr. NORMAN, Mr. HICE of Georgia, Mr. BUDD, Mr. BIGGS, Mrs. MILLER of Illinois, Mr. CHABOT, Mr. MOONEY, Ms. HERRELL, Mr. MASSIE, Mr. MOORE of Utah, Mr. CARTER of Georgia, Mr. FORTENBERRY, Mrs. BOEBERT, Mr. RODNEY DAVIS of Illinois, Mr. PALMER, Ms. FOXX, Mr. MAST, Mr. WILLIAMS of Texas, Mrs. HINSON, Mr. WALBERG, Mr. MCKINLEY, Mr. ROGERS of Alabama, Mr. LAMALFA, Mr. WEBER of Texas, Mr. GOHMERT, Mrs. MILLER-MEEKS, Mr. GOOD of Virginia, Mr. ROY, Mr. MOORE of Alabama, Mr. LUETKEMEYER, Mr. LATURNER, Mr. LATTA, Mr. GOODEN of Texas, Mr. SMUCKER, Mr. WENSTRUP, Mr. LAHOOD, Mr. GRAVES of Louisiana, Mr. CRAWFORD, Mr. RUTHERFORD, Mr. ROUZER, Mr. THOMPSON of Pennsylvania, Mr. MOOLENAAR, Mr. HERN, Mr. MEIJER, Mr. CLINE, Mr. ROSENDALE, Mr. BUCSHON, Mr. LOUDERMILK, Mr. HUIZENGA, Mr. CARL, Mrs. HARTZLER, Mr. BURGESS, Mr. PENCE, Mr. ALLEN, Mr. KUSTOFF, Mr. BERGMAN, Mr. COLE, Mrs. WALORSKI, Mr. KELLER, Mr. BOST, Mrs. LESKO, Mr. JACKSON, Mr. GRAVES of Missouri, Mr. DAVIDSON, Ms. LETLOW, Mr. STEIL, Mr. WILSON of South Carolina, Ms. STEFANIK, Mrs. MCCLAIN, Mr. BANKS, Mr. RICE of South Carolina, Mr. SMITH of Nebraska, Mr. FITZGERALD, Mr. C. SCOTT FRANKLIN of Florida, Mr. BURCHETT, Mr. WEBSTER of Florida, Mr. SIMPSON, Mr. GUTHRIE, Mr. FEENSTRA, Mr. GUEST, Mr. STEUBE, Mr. CLYDE, Mr. CRENSHAW, Mr. RESCHENTHALER, Mr. FALLON, Mr. BACON, Mr. DIAZ-BALART, Mr. GRIFFITH, Mr. HOLLINGSWORTH, and Mr. JOHNSON of Louisiana) 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 health care providers that do not participate 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 2021”.

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

1 act violative of personally-held moral principles”,
2 410 U.S. at 143 n. 38, and cited State laws uphold-
3 ing this principle. Doe v. Bolton, 410 U.S. 179,
4 197–8 (1973).

5 (3) Religious diversity adds to the strength of
6 our medical field, and no doctor should have to
7 choose between giving up their faith or moral convic-
8 tions and abandoning a vital medical mission. Con-
9 gress’ enactments to protect this right of conscience
10 in health care include the Church amendments (42
11 U.S.C. 300a–7), the Coats/Snowe amendment (42
12 U.S.C. 238n), and the Weldon amendment approved
13 by Congresses and Presidents of both parties every
14 year since 2004 (including in section 507(d) of divi-
15 sion A of the Further Consolidated Appropriations
16 Act, 2020 (Public Law 116–94; 133 Stat. 2534,
17 2607)).

18 (4) Courts have declined to find that these laws
19 provide a “private right of action” thereby leaving
20 victims of discrimination unable to defend their con-
21 science rights in court, while at the same time ad-
22 ministrative enforcement by the Office for Civil
23 Rights of the Department of Health and Human
24 Services has been inconsistent, at times allowing
25 cases to languish for years without resolution.

1 (5) Defying the Weldon amendment, Califor-
2 nia’s Department of Managed Health Care has man-
3 dated coverage for elective abortions in all health
4 plans under its jurisdiction. Other States such as
5 New York, Illinois, and Washington have taken or
6 considered similar action, and some States may go
7 farther to require all physicians and hospitals to pro-
8 vide or facilitate abortions. On June 21, 2016, the
9 Office for Civil Rights of the Department of Health
10 and Human Services under the Obama Administra-
11 tion concluded a nearly 2-year investigation of this
12 matter by determining that California’s decision to
13 require insurance plans under the California Depart-
14 ment for Managed Health Care authority to cover
15 abortion services did not violate the Weldon amend-
16 ment. At least 28,000 individuals and families sub-
17 sequently lost abortion-free health plans as a result
18 of this mandate.

19 (6) On January 24, 2020, the Office for Civil
20 Rights of the Department of Health and Human
21 Services disavowed its prior findings and issued a
22 notice of violation of the Weldon amendment to Cali-
23 fornia. After the State’s continued noncompliance
24 with the Weldon amendment, the Centers for Medi-
25 care & Medicaid Services, on December 16, 2020,

1 announced the disallowance of \$200,000,000 per
2 quarter in Federal funds to California beginning in
3 the first quarter of 2021. Unless the Biden Adminis-
4 tration provides effective and continuing enforce-
5 ment against California and other States, individuals
6 will continue to be coerced contrary to law into
7 choosing between violating their consciences or for-
8 going health care coverage for themselves, their em-
9 ployees, or their families.

10 (7) On May 21, 2019, the Secretary of Health
11 and Human Services issued a final conscience rule
12 that implements approximately 25 Federal con-
13 science protection provisions and provides mecha-
14 nisms to enforce protections enacted by Congress to
15 ensure that the government and government-funded
16 entities are not unlawfully discriminating against in-
17 dividuals, health care providers, or health care enti-
18 ties. Despite this regulation providing for enforce-
19 ment of laws passed by Congress, a Federal district
20 court vacated the rule. Now, litigation is pending be-
21 fore the United States Court of Appeals for the Sec-
22 ond Circuit where 78 members of Congress have
23 filed a brief in support of the rule, as well as the
24 United States Court of Appeals for the Ninth Cir-
25 cuit. Litigation in both Circuits have been halted be-

1 cause the Biden Administration has indicated its in-
2 tent to revisit the rule.

3 (8) The vast majority of medical professionals
4 do not perform abortions, with up to 86 percent of
5 obstetricians/gynecologists unwilling to provide them
6 (Obstetrics & Gynecology, Sept. 2011) and the great
7 majority of hospitals choosing to do so only in rare
8 cases or not at all.

9 (9) A health care provider's decision not to par-
10 ticipate in an abortion, like Congress' decision not to
11 fund most abortions, erects no barrier to those seek-
12 ing to perform or undergo abortions but leaves each
13 party free to act as he or she wishes.

14 (10) Such protection poses no conflict with
15 other Federal laws, such as the law requiring stabi-
16 lizing treatment for a pregnant woman and her un-
17 born child when either needs emergency care (Emer-
18 gency Medical Treatment and Active Labor Act). As
19 previous Administrations have said, these areas of
20 law have operated side by side for many years and
21 both should be fully enforced (76 Fed. Reg. 9968–
22 77 (2011) at 9973).

23 (11) Reaffirming longstanding Federal policy
24 on conscience rights and providing a right of action

1 in cases where it is violated allows longstanding and
2 widely supported Federal laws to work as intended.

3 **SEC. 3. PROHIBITING DISCRIMINATION AGAINST HEALTH**
4 **CARE PROVIDERS THAT DO NOT PARTICI-**
5 **PATE IN ABORTION.**

6 Title II of the Public Health Service Act (42 U.S.C.
7 202 et seq.) is amended by inserting after section 245 the
8 following:

9 **“SEC. 245A. PROHIBITING DISCRIMINATION AGAINST**
10 **HEALTH CARE PROVIDERS THAT DO NOT**
11 **PARTICIPATE IN ABORTION.**

12 “(a) IN GENERAL.—Notwithstanding any other law,
13 the Federal Government, and any person or entity that
14 receives Federal financial assistance, including any State
15 or local government, may not penalize, retaliate against,
16 or otherwise discriminate against a health care provider
17 on the basis that the provider does not or declines to—

18 “(1) perform, refer for, pay for, or otherwise
19 participate in abortion;

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

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

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

1 “(1) to prevent any health care provider from
2 voluntarily electing to participate in abortions or
3 abortion referrals where not prohibited by any other
4 law;

5 “(2) to prevent any health care provider from
6 voluntarily electing to provide or sponsor abortion
7 coverage or health benefits coverage that includes
8 abortion where not prohibited by any other law;

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

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

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

25 “(c) ADMINISTRATION.—The Secretary—

1 “(1) may issue regulations under—

2 “(A) this section;

3 “(B) the Religious Freedom Restoration
4 Act of 1993 (42 U.S.C. 2000bb et seq.), with
5 respect to any program or activity funded, ad-
6 ministered, or conducted by the Department of
7 Health and Human Services;

8 “(C) any of subsections (b) through (e) of
9 section 401 of the Health Programs Extensions
10 Act of 1973 (42 U.S.C. 300a–7) regarding an
11 objection based on a religious belief or moral
12 conviction; and

13 “(D) any other law protecting the exercise
14 of conscience or religious freedom under pro-
15 grams or activities funded, administered, or
16 conducted by the Department of Health and
17 Human Services, including any laws listed
18 under the final rule issued by the Secretary of
19 Health and Human Services titled ‘Protecting
20 Statutory Conscience Rights in Health Care;
21 Delegations of Authority’ (84 Fed. Reg. 23170;
22 May 21, 2019);

23 “(2) shall designate the Director of the Office
24 for Civil Rights of the Department of Health and
25 Human Services—

1 “(A) to receive complaints alleging a viola-
2 tion of any provision of this section or any pro-
3 vision of law referred to or listed under para-
4 graph (1); and

5 “(B) to promptly investigate such com-
6 plaints, issue findings, and require corrective
7 action in cases of such a violation; and

8 “(3) shall, as permitted under law (including
9 the Constitution of the United States), induce com-
10 pliance of a person or entity, including a State or
11 local government, refusing to comply with a provi-
12 sion of this section, or any provision of law referred
13 to or listed under paragraph (1), by terminating, in
14 whole or in part, any Federal financial assistance
15 provided by the Secretary to such person or entity.

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

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

23 “(2) HEALTH CARE PROVIDER.—The term
24 ‘health care provider’ includes—

1 “(A) an individual physician, health care
2 assistant, nurse, pharmacist, health researcher,
3 or other health care personnel;

4 “(B) a hospital, laboratory, pharmacy,
5 health system, or other health care or medical
6 research facility or organization (including a
7 party to a proposed merger or other collabo-
8 rative arrangement relating to health services,
9 and an entity resulting therefrom);

10 “(C) a provider-sponsored organization, an
11 accountable care organization, or a health
12 maintenance organization;

13 “(D) a social services provider that pro-
14 vides or authorizes referrals for health care
15 services;

16 “(E) a program of training or education in
17 the health professions or medical research, a
18 participant in such a program, or any individual
19 applying or otherwise aspiring to participate in
20 such a program;

21 “(F) an issuer of health insurance cov-
22 erage or of a health plan; or

23 “(G) a health care sharing ministry;

1 “(H) a health insurance plan, including
2 group, individual, or student health plans, or a
3 sponsor or administrator thereof; or

4 “(I) any other health care organization,
5 program, facility, or plan.

6 “(3) STATE OR LOCAL GOVERNMENT.—The
7 term ‘State or local government’ includes every
8 agency and other governmental unit and subdivision
9 of a State or local government, if such State or local
10 government, or any agency or governmental unit or
11 subdivision thereof, receives Federal financial assist-
12 ance.

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

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

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

18 “(1) QUALIFIED PARTY.—The term ‘qualified
19 party’ means—

20 “(A) the Attorney General of the United
21 States; or

22 “(B) any person or entity adversely af-
23 fected by the designated violation without re-
24 gard to whether such person or entity is a
25 health care provider.

1 “(2) DESIGNATED VIOLATION.—The term ‘des-
2 ignated violation’ means an actual or threatened vio-
3 lation of section 245A or of any other provision of
4 law referred to or listed under section 245A(c)(1).

5 “(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—
6 An action under this section may be commenced, and relief
7 may be granted, without regard to whether the party com-
8 mencing the action has sought or exhausted any available
9 administrative remedies.

10 “(d) DEFENDANTS IN ACTIONS UNDER THIS SEC-
11 TION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL
12 AS OTHERS.—

13 “(1) IN GENERAL.—An action under this sec-
14 tion may be maintained against any person or entity
15 receiving Federal financial assistance, including a
16 State governmental entity. Relief in an action under
17 this section may include money damages even if the
18 defendant is a governmental entity.

19 “(2) DEFINITION.—For the purposes of this
20 subsection, the term ‘State governmental entity’
21 means a State, a local government within a State,
22 and any agency or other governmental unit or sub-
23 division of a State, or of such a local government.

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

1 “(1) all appropriate relief, including injunctive
2 relief, declaratory relief, and compensatory damages
3 to prevent the occurrence, continuance, or repetition
4 of the designated violation and to compensate for
5 losses resulting from the designated violation; and

6 “(2) to a prevailing plaintiff, reasonable attor-
7 neys’ fees and litigation costs.”.

○