

## What are Conscience Protections?

Conscience protections are statutes in federal and state law that protect healthcare providers who refuse to participate in services such as abortion or euthanasia to which they have a religious or moral objection from discrimination in employment.

## Who is Covered Under State and Federal Conscience Protections?

- Individual healthcare providers
- Hospitals
- Researchers
- Health insurance plans
- Provider-sponsored organizations
- Applicants for internships or residencies
- Health maintenance organizations
- Other healthcare professionals
- Healthcare facilities
- Other healthcare entities

## Complaints

Complaints of federal conscience protection violations are filed in writing by mail, fax, or email with the HHS Office for Civil Rights (OCR). Conscience-related civil rights complaints are extremely rare. Between 2008, when the OCR first took over enforcement of conscience protections and 2018, OCR received a total of 44 conscience-related complaints, or less than 4 a year. For comparison, in the same time frame OCR received over 160,000 privacy rule complaints, an average of over 16,000 each year.

## Federal Conscience Protections

### [Title VII | Civil Rights Act of 1964](#)

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on race, color, religion, sex, or national origin. Section 12 focuses specifically on protections from religious-based discrimination. Employers are required to accommodate the “sincerely held” religious beliefs of their employees. In Title VII, religious beliefs are defined broadly, and the protections apply even if the beliefs are unique or held only by a few individuals. As Title VII requires reasonable accommodations for the religious beliefs of employees, it also lays the framework for the necessity of conscience protections for providers in healthcare settings. Title VII has 50 years of litigation history giving healthcare employers a strong set of guidelines for applying conscience protections.

### [42 U.S.C. § 300a-7 et seq. | The Church Amendments](#)

The Church Amendments are a series of amendments enacted in the 1970s that protect individuals and entities who refuse to assist or perform abortions or sterilizations if doing so would conflict with their personal religious or moral convictions. Individuals or entities that receive federal grants or loans cannot be forced to perform or assist in abortions or sterilizations. Public health officials cannot impose requirements on providers contradictory to religious beliefs or moral convictions. Moreover, entities that receive federal funding may not discriminate against individuals in employment, including

internships and residencies, based on the individual's willingness or refusal to perform abortions or sterilizations. Employers must provide reasonable accommodations for employees who do not wish to participate in activities contrary to their religious beliefs.

#### [42 U.S.C. § 238n | Public Health Service Act \(Coats-Snowe Amendment\) | 1996](#)

Section 245 of the Public Health Service Act, referred to as the Coats-Snowe Amendment, prohibits the Federal Government and all state and local governments that receive federal funding from discriminating against a healthcare entity that refuses to train to perform abortions or refer employees to an entity that can provide abortion or abortion training.

#### [PL 111-117 | The Weldon Amendment | 2005](#)

Every year since 2005, Congress has included the Weldon Amendment in the appropriations measure that funds the federal Departments of Health and Human Services, Education, and Labor. It prohibits federal agencies, federally funded programs, and state and local governments that receive funding through the bill from discriminating against any healthcare entity that refuses to provide, pay for, provide coverage of, or refer abortion services.

#### [42 U.S.C. § 147 | The Affordable Care Act | 2010](#)

The Patient Protection and Affordable Care Act (ACA) was passed in 2010 to expand health insurance coverage in the United States. Conscience protections within the ACA include:

- Section 1303(b)(4) which prohibits qualified health plans (QHPs) offered through individual market exchanges from discriminating against providers and health care facilities if they refuse to provide, pay for, provide coverage of, or refer abortions.
- Section 1553 which prohibits discrimination against individuals or health care entities that refuse to assist in the death of any individual such as by physician assisted suicide, euthanasia, or mercy killing.

#### [48 C.F.R. §1609.7001 \(c\)\(7\) | Federal Employees Health Benefits Plan Regulation | 1992](#)

48 C.F.R. §1609.7001 (c)(7) protects providers who deliver care under the Federal Employees Health Benefits Plan from having to discuss treatment options for which they have a religious or moral objection.

#### [42 USC 1395cc | Advance Directives](#)

Medicaid and Medicare plans are prohibited from requiring provider entities to inform or counsel individuals regarding assisted suicide. Healthcare entities receiving federal funding may not require employees to counsel or inform patients regarding advance directives including assisted suicide.

## South Dakota Conscience Protections

### [36-11-70. Refusal to dispense medication](#)

Pharmacists are not required to dispense medications that may cause abortion or cause the death of any person via assisted suicide, euthanasia, or mercy killing.

### [34-23A-12. No liability for refusal to perform abortion](#)

Physicians, nurses, or another person who refuses to perform or assist in the performance of an abortion are protected from liability for damages arising from that refusal.

**34-23A-13. Medical facility not to discriminate for performance or refusal to perform abortion**  
Prohibits hospitals or other medical facilities from dismissing, suspending, demoting, or showing any other prejudice against physicians, nurses, or other personnel who refuse to perform or assist with abortions.

**34-23A-14. Hospital not required to perform abortions**

Hospitals are not required to admit patients for the purpose of terminating a pregnancy and cannot be held liable for refusing to participate in pregnancy termination if the hospital has adopted a policy of not admitting patients for the purpose of terminating pregnancies.

**34-12D-11. Withdrawal or withholding of life sustaining treatment**

A health care provider cannot be required to participate in the withdrawal or withholding of life-sustaining treatment. However, a health care provider electing for any reason not to participate in the withholding or withdrawal of life-sustaining treatment must make a reasonable effort to locate and to transfer the patient to a physician or health care provider willing to honor the declaration declining life-sustaining treatment.

**34-12D-12. Providing treatment, artificial nutrition, and hydration**

A health care provider who objects to providing treatment or artificial nutrition and hydration may transfer the individual to a health care provider willing to honor the declaration. However, the provider must continue to provide the treatment or care until the transfer occurs.

**34-12D-13. Immunity from civil or criminal liability, and from professional discipline**

A health care provider is not subject to civil or criminal liability or professional disciplinary action for giving effect to (or declining to give effect to) a declaration requesting the withdrawal or withholding of life-sustaining treatment.

**34-12D-14. Withdrawal or withholding of treatment neither suicide nor homicide**

Death resulting from the withdrawal or withholding of life-sustaining treatment is not considered a suicide on the part of the declarant or a homicide on the part of the attending physician or other health care providers.

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