

# California Sets Example for Comprehensive Women’s Health Care Coverage

## Background

Since 1975, California law<sup>1</sup> has required health care plans to cover basic health services. In August 2014, the California Department of Managed Health Care (DMHC), the state agency responsible for enforcing that state law and negotiating managed care health plans, sent [letters](#) to health issuers clarifying that abortion, like prenatal care and delivery, is basic health care that must be covered under state law. The enforcement letters were sent after the agency learned that a secular insurance company had marketed large group policies that essentially eliminated abortion coverage to two religiously affiliated universities, Loyola Marymount University and Santa Clara University.

Importantly, none of the health insurance companies that received the letters were religiously affiliated and none objected to DMHC’s policy clarification. In addition, DMHC noted in its letters that although health plans are generally required to provide coverage of abortion, no religiously affiliated health insurance company would be required to provide coverage for a service to which it religiously or morally objects.

In response, Life Legal Defense Foundation and Alliance Defending Freedom sent a [letter](#) to DMHC alleging that the DMHC’s enforcement of state law violates the Weldon Amendment, an appropriations rider that prohibits any government from discriminating against certain “health care entities” on the basis that they do not provide, pay for, provide coverage of or refer for abortions.<sup>2</sup> Complaints were also filed alleging this violation to U.S. Department of Health and Human Services’ Office of Civil Rights (OCR) on behalf of [churches and a church- run school](#), the [California Catholic Conference](#), and [employees at Loyola Marymount University](#). Notably, none of the complaints were sent on behalf of a “health care entity” as defined in the Weldon Amendment.

Throughout OCR’s investigation of these complaints, the U.S. Conference of Catholic Bishops (USCCB) has repeatedly called on Congress to pass harmful legislation which would codify the Weldon Amendment and enable a broad range of health professionals to [refuse care and coverage of abortion](#), even in emergency situations, including the so-called [Abortion Non-Discrimination Act \(ANDA\)](#) and now the [Conscience Protection Act](#).

In June 2016, following an extensive investigation of the complaints, the U.S. Department of Health and Human Services Office of Civil Rights (OCR) determined there was no violation of the Weldon Amendment. None of the health issuers that received DMHC’s letter, or any other health care entity as defined under the Weldon Amendment lodged a complaint and sought enforcement of the law. OCR also noted that DMHC’s policy allows for religious accommodation, which one issuer obtained in order to provide a religiously-affiliated employer a health plan that did not provide abortion coverage. OCR’s straightforward interpretation of federal law underscores that states may implement policies to improve women’s health care access, and that only those entities protected under the Weldon Amendment may take action to enforce the law.

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<sup>1</sup> Knox Keene Act See Cal. Health and Safety Code §§ 1345(b), 1367(i); see also, e.g., Committee to Defend Reproductive Rights v. Cory, 132 Cal. App. 852 (1982).

<sup>2</sup> The language was first included in the 2005 Labor-HHS Appropriations Act Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 508(d)(1), 118 Stat. 2809, 3163 (2004).

## Talking Points for Members of Congress

- For nearly 40 years, California has required managed health care plans to provide meaningful, comprehensive coverage for basic services. The California Department of Managed Health Care simply enforced its longstanding policy to ensure that Californians have coverage for the full range of covered health services, including abortion.
- California's commonsense policy furthers health care access for women. It ensures that each woman can make personal medical decisions, which are best for her health and well-being.
- OCR fairly enforced federal law. As OCR noted, no health insurance company objected to the policy.
- Anti-abortion activists – not health care entities – raised complaints about the policy. It is clear that California policymakers were doing the right thing and implementing policy that responds to the health care needs of communities across the state.
- Regardless of how one personally feels about abortion, we can all agree that each woman should have access to safe medical care if and when she needs it. Ensuring coverage for all pregnancy options ensures women's access to quality professional care without delay.
- When employers try to interfere with health care services insurance companies must provide by law, patient care and personal medical decision-making are undermined. Women deserve to have access to the health care they need, and health insurance should enable a woman to take care of her own health and well-being.
- Ensuring that health plans provide coverage for abortion does not require an individual to use that coverage. California's policy simply ensures that women have adequate health insurance that includes the full range of women's health services, including abortion.

## Difficult Q&A

### **Q: Does California's law require health plans that object to abortion to provide coverage for abortion?**

**A:** DMHC enforced longstanding California law to ensure that insurance providers offer coverage of essential, basic health care. Reproductive health care services, including abortion, are a component of baseline health care. The great thing about the enforcement of this law is that it ensures that every woman with health care coverage can make the best decision for herself and her family.

Notably, health care companies that were contacted by the DMHC complied with no trouble, including the two insurers that previously sought to market restrictive policies to religiously-affiliated large group employers. The organizations objecting to this policy are politically motivated and are not impacted by DMHC's enforcement letters.

### **Q: Does California's law require employers that object to abortion to purchase a health insurance policy that covers abortion?**

**A:** It is important to note that the California agency that issued the enforcement letters, DMHC, does not regulate employers at all; it regulates the commercial managed care market. California's law simply ensures that insurance providers offer women enrolled in their health plans meaningful access to the full range of reproductive health care services, including abortion. Because insurers must offer comprehensive care, an employer can't use a subpar health plan to deny a woman the full range of reproductive health care options. In short: this enforcement of state law helps ensure that a woman's

reproductive health care isn't her boss' business, and that a woman can access the health care she need regardless of where she works.

*If pressed:*

If an employer wants to deny its employees the comprehensive coverage DMHC requires, it can self-insure. Self-insured plan benefits are governed by federal law instead of state law, and there is no federal requirement that private health insurance plans provide coverage of abortion.

**Q: Life Legal Defense Foundation, Alliance Defending Freedom, and the California Catholic Conference alleged in their complaint to the Office of Civil Rights that California's policy violates the Weldon Amendment. How does this policy of requiring plans to cover abortion not contravene the Weldon Amendment?**

**A:** As OCR noted in its response, no health issuer has alleged discrimination or objection to the policy. In The only organizations that raised objections are advocacy groups – the Legal Life Defense Foundation, Alliance Defending Freedom, the California Catholic Conference, and the U.S. Conference of Catholic Bishops – all of which are opposed to women's access to safe and legal abortion. It is also important to note that the Department of Managed Health Care has said that it will not require religiously affiliated health plans to provide or pay for a service to which they religiously or morally object, and indeed, DMHC permitted a secular health issuer to offer a limited-scope plan to a religiously-affiliated employer that had religious objections to covering abortion.

**Q: What if one personally objects to abortion and does not want coverage of abortion?**

California's law does not require any person to use a health care service they oppose under an insurance plan. Rather, this law ensures that every woman will be able to make the best choice for her and her family.

*If pressed:*

Health insurance is based upon shared risks and shared protections, and allowing someone to "cherry pick" the services they want covered would fundamentally undermine the health insurance system.

**Q: What is the Abortion Nondiscrimination Act (ANDA) and the Conscience Protection Act? Are these two pieces of legislation necessary to protect employers and insurers in California from providing coverage that they object to?**

**A:** Under ANDA and Conscience Protection Act, health care facilities, insurance plans, and a broad range of health care professionals could refuse to provide pregnant women with complete information about their medical options, or refuse to provide abortion services to women— even in cases of medical emergency, rape, or incest. The Conscience Protection Act also enables employers to interfere in the personal medical decisions of their employees. ANDA and the Conscience Protection Act would seriously threaten women's health, privacy, and dignity.

California's policy does not require employers or insurers to provide coverage they object to. The California DMHC does not regulate employers at all; rather, it simply requires that insurance providers offer women enrolled in their health plans meaningful access to the full range of reproductive health care services, including abortion. No insurance providers have objected, and the DMHC has said that it will not require religiously affiliated health plans to provide or pay for a service to which they religiously

or morally object. ANDA and the Conscience Protection Act are harmful and unnecessary pieces of legislation with sweeping, dangerous implications for women's health.