

LIFE: AT THE HEART OF THE LAW

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www.LLDF.org

United States Department of Health and Human Services
Office for Civil Rights
Via Email to OCRComplaint@hhs.gov

Complaint for Discrimination in Violation of Federal Conscience Protections

Contact attorneys for complainants:

Catherine W. Short
Life Legal Defense Foundation
P.O. Box 2105
Napa, CA 94558
(707) 224-6675
LLDFojai@earthlink.net

Casey Mattox
Matt Bowman
Alliance Defending Freedom
801 G Street NW
Washington, DC 20001
(202) 393-8690
cmattox@alliancedefendingfreedom.org

Complaint filed on behalf of:

Foothill Church and Foothill Christian School
Skyline Church
Alpine Christian Fellowship
The Shepherd of the Hills Church
City View Church
Faith Baptist Church
Calvary Chapel Chino Hills

All complainants can be reached through their counsel, identified above.

Agency and State committing the discrimination:

California Department of Managed Health Care
State of California
980 9th Street, Ste. 500
Sacramento, CA 95814-2725
(888) 466-2219

Date and nature of discriminatory acts:

Complainants are churches and a church-run school for pre-K through eighth grade. The Complainants believe that abortion is a grave moral evil and object to being morally complicit through the provision of insurance coverage for abortion to their employees.

On August 22, 2014, the California Department of Managed Health Care (DMHC) notified all private health care insurers in the state, including those through whom Complainants purchase their employee plan, that all health care plans issued in California must *immediately* cover elective abortions. The insurers were instructed to amend their policies to remove any limitations on health coverage for abortions, such as excluding coverage for “voluntary” or “elective” abortions or limiting coverage to “therapeutic” or “medically necessary” abortions. Therefore DMHC ordered elective abortion coverage into these churches’ health insurance plans. Insurers have confirmed to some of the churches that these changes have already been made in their plans over their objections.

DMHC justified this change in policy by interpreting the applicable California law mandating coverage of “basic health care services” to require coverage for all abortions. Because DMHC simply read this abortion coverage requirement into the pre-existing 1975 law, Health & Safety Code section 1340 et seq., there is no exemption for any religious employer, including churches.

Each of the Complainants are nonprofit organizations. These churches are “religious employers” for purposes of California Health & Safety Code section 1367.25 and thus are not required to provide coverage in their employee health plans for any contraceptive methods contrary to its religious tenets. However, because no exemption exists from the DMHC order of August 22, 2014, these churches’ staff health insurance plans were changed to include elective abortion coverage without their authorization and over their objections.

This directive of the DMHC constitutes unlawful discrimination against a health care entity under section 507 of the Consolidated Appropriations Act, Pub L. No 113-76, 128 Stat. 5 (Jan. 17, 2014) (the Hyde-Weldon Conscience Protection Amendment). DMHC is “subject[ing] Complainants’ “health insurance plan” “to discrimination,” by denying its approval of the plan that omitted elective abortions, solely “on the basis that the [plan] does not . . . provide coverage of . . . abortions.” DMHC is an arm of the State of California and purports to be interpreting and applying the law of California, a state that receives billions of taxpayer dollars through “funds made available in this Act” in this and recent appropriations. California accepted those funds with full knowledge of the requirements of the Hyde-Weldon Amendment, but it has chosen to ignore this law. *The need to remedy this discrimination is urgent because it is immediately forcing Complainants to offer their employees a health plan that includes elective abortions.*

DMHC's requirement is contrary to California law and DMHC's prior approval of health care plans excluding coverage for elective abortion for Complainants and others. DMHC's novel reading of California law to discriminate against Complainants' plans is also belied by California's history of excluding elective abortion coverage in its own plans for its own state employees. Nothing in California law or the California Constitution requires private health plans to cover abortions.

On August 22, 2014, counsel sent a letter to Shelley Rouillard, the director of the DMHC, pointing out the fact that her interpretation of California law, while not only erroneous in its own right, also violated the Hyde-Weldon Conscience Protection Amendment. On September 8, Ms. Rouillard responded via letter, in which she restated the department's position that California law mandates that health plans cover all legal abortions. She did not address the conflict with the Hyde-Weldon Conscience Protection Amendment other than saying the DMHC had "carefully considered all aspects of state and federal law in reaching its position."

Complainants request that this Office enforce the terms of the Hyde-Weldon Amendment and prevent California from discriminating against them in violation of this federal law. Because DMHC's discrimination is causing immediate injury, resulting in the immediate inclusion of elective abortion coverage by the Complainants in violation of their religious convictions and forcing Complainants to consider cancellation of these plans, we ask that you act urgently.

Date: October 9, 2014

By: _____


Catherine W. Short
Legal Director



Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency

Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814-2725
Phone: (916) 324-8176
Fax: (916) 255-5241

August 22, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

Mark Morgan
California President of Anthem Blue Cross
Blue Cross of California, dba Anthem Blue Cross
21555 Oxnard Street
Woodland Hills, CA 91367

Re: Limitations or Exclusions of Abortion Services

Dear Mr. Morgan:

It has come to the attention of the Department of Managed Health Care (DMHC) that some Blue Cross of California (Blue Cross) contracts contain language that may discriminate against women by limiting or excluding coverage for termination of pregnancies. The DMHC has reviewed the relevant legal authorities and has concluded that it erroneously approved or did not object to such discriminatory language in some evidence of coverage (EOC) filings. The DMHC has performed a survey and has discovered that such language is present in EOCs for products covering a very small fraction of California health plan enrollees.

The purpose of this letter is to remind plans that the Knox-Keene Health Care Service Plan Act of 1975¹ (Knox Keene Act) requires the provision of basic health care services and the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.

Exclusions and limitations are also incompatible with both the California Reproductive Privacy Act and multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or to have a legal abortion.^{2,3} A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

¹ Health & Safety Code § 1340, *et seq.*

² Consistent with 42 U.S.C. § 18054(a)(6), this letter shall not apply to a Multi-State Plan.

³ Although health plans are required to cover legal abortions, no individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstance to participate in the provision of or payment for a specific service if they object to doing so for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objections.

Regardless of existing EOC language, effective as of the date of this letter, Blue Cross must comply with California law with respect to the coverage of legal abortions.

Required Action

1. Blue Cross must review all current health plan documents to ensure that they are compliant with the Knox-Keene Act with regard to legal abortion. This includes plan documents previously approved or not objected to by the DMHC.

In regards to coverage for abortion services, the descriptors cited below are inconsistent with the Knox-Keene Act and the California Constitution. Blue Cross must amend current health plan documents to remove discriminatory coverage exclusions and limitations. These limitations or exclusions include, but are not limited to, any exclusion of coverage for “voluntary” or “elective” abortions and/or any limitation of coverage to only “therapeutic” or “medically necessary” abortions. Blue Cross may, consistent with the law, omit any mention of coverage for abortion services in health plan documents, as abortion is a basic health care service.

2. To demonstrate compliance, health plans are directed to file any revised relevant health plan documents (e.g. EOCs, subscriber documents, etc.) with the Department as an Amendment to the health plan’s license within 90 days of the date of this letter. The filing should highlight as well as underline the changes to the text as required by the California Code of Regulations, title 28, §1300.52(d).

Authority Cited

California Constitution, article 1, section 1; Health and Safety Code §1340, et seq. and Health and Safety Code §123460 et seq., and implementing regulations.

If you have any questions concerning the guidance issued in this letter, please contact your Plan’s Office of Plan Licensing reviewer.

Sincerely,



MICHELLE ROUILLARD
Director
Department of Managed Health Care

cc: Terry German, Associate General Counsel, Blue Cross of California



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www.LLDF.org

August 22, 2014

Shelley Rouillard, Director
Department of Managed Health Care
California Help Center
980 9th Street, Ste. 500
Sacramento, CA 95814-2725

VIA ELECTRONIC TRANSMISSION AND FACSIMILE

Dear Ms. Rouillard:

We are writing in response to the decision of the California Department of Managed Health Care (DMHC) to revoke approval for the health care plans of two Catholic universities, Loyola Marymount University and Santa Clara University, on the grounds that the policies do not cover elective abortion. The DMHC's broadly states that all health insurance plans in California must cover abortion as a "basic health care service."

We write as pro-life legal organizations Life Legal Defense Foundation and Alliance Defending Freedom, and on behalf of The Cardinal Newman Society, a non-profit organization promoting and defending Catholic education including at institutions in California.

The DMHC decision apparently rests on two untenable positions. The first is the self-evidently false proposition that all abortions, including **elective** abortions, are "medically necessary" and thus must be covered pursuant to the Knox-Keene Act. In the context of abortion, "medically necessary" and "elective" are antonyms. Second, the decision asserts that the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. The California Constitution, as currently interpreted, prohibits **the state** from discriminating against women who choose to terminate a pregnancy, by withholding funding for abortions. *CDRR v. Myers*, 29 Cal.3d 252 (1981). This decision does not prohibit private actors such as religious employers from deciding what services its employee health insurance policies will cover.

More importantly, however, federal law prevents California from mandating that a health insurance plan include abortion coverage. Specifically, the annual federal appropriations act, most recently enacted at Section 507 of the

Consolidated Appropriations Act, Pub. L. No. 113-76, 128 Stat. 5 (Jan. 17, 2014), commonly referred to as the Weldon Amendment, provides:

- (1) **None of the funds made available in this Act may be made available** to a Federal agency or program, or **to a State or local government, if such** agency, program, or **government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not** provide, pay for, **provide coverage of,** or refer for **abortions.**
- (2) In this subsection, **the term “health care entity” includes** an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, **a health insurance plan,** or any other kind of health care facility, organization, or **plan.**

Consequently, DMHC cannot deny approval to or otherwise penalize a health insurance plan for failing to provide coverage of some or all abortions and remain in compliance with the Weldon Amendment. In its failed lawsuit against the Amendment, California admitted that all of its departments are subject to the Amendment due to some of those departments receiving over \$40 billion in federal funds for programs in the areas of education, health, and employment. *See* Brief of the State of California, in *California v. United States*, No. 3:05-cv-00328-JSW (N.D. Cal. June 23, 2006).

The DMHC's action is a clear violation of the Weldon Amendment and, if not reversed, could trigger loss of funding to the entire state and its departments.

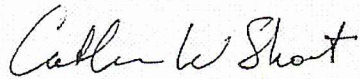
By copy of this letter, we are providing notice to key members of California's congressional delegation and other members of the United States House of Representatives of this violation of the Appropriations Act.

We are also hereby notifying California health insurance companies of the applicable federal law that prohibits the state of California from selectively discriminating against plans because they do not cover abortion. By this public letter we are also notifying employers whom we believe would be interested in obtaining a health plan that does not pay for abortion, so that they know such health plans may not legally be rejected or penalized by the state due to their lack of abortion coverage.

Finally, if DMHC does not reverse its decision, we are prepared to file complaints with the Office of Civil Rights of the Department of Health and Human Services, which has promised to enforce and police the Weldon Amendment “to ensure that Department funds do not support coercive or discriminatory practices, or policies in violation of federal law.” 45 C.F.R. Part 88.

Ms. Shelley Rouillard
August 22, 2014
Page 3 of 3

Very truly yours,



Catherine Short
Legal Director
Life Legal Defense Foundation
Ojai, California

Matthew S. Bowman
Senior Legal Counsel
Alliance Defending Freedom
Washington, D.C.

on behalf of

Patrick J. Reilly
President
The Cardinal Newman Society
Manassas, Virginia

cc: Rep. Darrell Issa (CA-49)
Rep. Dana Rohrabacher (CA-48)
Rep. Kevin McCarthy (CA-23)
Rep. Tom McClintock (CA-4)
Rep. Chris Smith (NJ-4)

Michael Engh, SJ, President, Santa Clara University
David Burcham, President, Loyola Marymount University
William Cox, President, Alliance of Catholic Health Care
Mark Morgan, California President, Anthem Blue Cross
Wade J. Overgaard, Senior Vice-President, Kaiser Permanente
Paul Markovich, President and CEO, Blue Shield of California
Michael Myers, CEO, GEM Health Care Plan
Steven Sell, President, Health Net of California, Inc.
Brandon Cuevas, President and CEO, United Healthcare of California
John Ternan, President, Aetna Health of California

DEPARTMENT OF
**Managed
Health Care**

Edmund G. Brown Jr., Governor
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Health and Human Services Agency

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September 8, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

Catherine Short
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Life Legal Defense Foundation
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Ojai, CA 93024

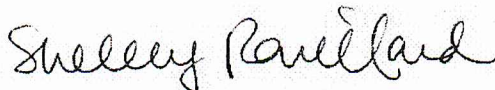
Re: August 22, 2014 Correspondence

Dear Ms. Short:

I have reviewed your letter dated August 22, 2014, in which you assert that the Department of Managed Health Care (DMHC) is violating the Weldon Amendment by reminding health plans of their legal obligation to cover abortion, and that you are prepared to file complaints with the Office of Civil Rights of the federal Department of Health and Human Services if the DMHC does not reverse its position.

The DMHC carefully considered all relevant aspects of state and federal law in reaching its position. The Knox-Keene Health Care Service Plan Act of 1975 requires health plans to cover abortion as a basic health care service. Additionally, the California Constitution provides that health plans must treat maternity services and legal abortion neutrally. The DMHC is obligated to enforce the law, which compels the position it has taken. Accordingly, the DMHC will not reverse its position on the scope of required abortion coverage, which is outlined in the letters I sent to health plans on August 22, 2014.

Sincerely,



Shelley Rouillard
Director
Department of Managed Health Care