

Dana Cody, Esq.  
*Executive Director*  
Catherine W. Short, Esq.  
*Legal Director*  
Mary Riley  
*Administrative Director*  
Allison K. Aranda, Esq.  
*Senior Staff Counsel*

**Board of Directors**

John R. Streett, Esq.  
*Chairman*  
Dana Cody, Esq.  
Joanna Galbraith, Esq.  
Christian Hon  
Royce Hood  
Marcella Tyler Ketelhut  
David Shaneyfelt, Esq.  
Terry L. Thompson, Esq.  
Colette Wilson, Esq.  
Anthony E. Wynne, JD

**Advisory Board**

The Hon. Steve Baldwin  
*San Diego, California*  
Daniel Cathcart, Esq.  
*Los Angeles, California*  
Raymond Dennehy, PhD.  
*San Francisco, California*  
The Rev. Joseph D. Fessio, SJ  
*San Francisco, California*  
Robert P. George  
*Princeton University*  
The Hon. Ray Haynes  
*Riverside, California*  
James Hirsén, Esq.  
*Riverside, California*  
The Hon. Howard Kaloogian  
*Los Angeles, California*  
David Llewellyn, Esq.  
*Sacramento, California*  
Anne J. O'Connor, Esq.  
*New Jersey*  
Charles E. Rice, Esq.  
*South Bend, Indiana*  
Ben Stein, Esq.  
*West Hollywood, California*  
Andrew Zepeda, Esq.  
*Beverly Hills, California*

Northern California  
(Administration)  
P.O. Box 2105  
Napa, California 94558  
(707) 224-6675

Southern California  
P.O. Box 1313  
Ojai, California 93024  
(805) 640-1940

**www.LLDF.org**

LIFE: AT THE HEART OF THE LAW

United States Department of Health and Human Services  
Office for Civil Rights  
Via Email to [OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)

Complaint for Discrimination in Violation of Federal Conscience Protections

*Contact attorneys for complainants:*

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

Matthew Bowman, Esq.  
Casey Mattox, Esq.  
Alliance Defending Freedom  
801 G Street NW  
Washington, DC 20001  
(202) 393-8690  
[mbowman@alliancedefendingfreedom.org](mailto:mbowman@alliancedefendingfreedom.org)

*Complaint filed on behalf of:*

Gretchen Gusich  
Michael Berg  
Gigi Kurz  
Christopher Kazcor  
V. Martin Nemoianu  
Erin Stackle  
James Hanink

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 9<sup>th</sup> Street, Ste. 500  
Sacramento, CA 95814-2725  
(888) 466-2219

*Date and nature of discriminatory acts:*

Complainants are employees of a religious institution, Loyola Marymount University in Los Angeles, and participants in its employee health care plan. With state approval, that plan did not cover elective abortion. On August 22, 2014, the California Department of Managed Health Care (DMHC) reversed its approval and notified all private health care insurers in the state, including those through whom LMU purchases its employee plan, that all health care plans issued in California must 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 the Complainants’ own LMU health plan.

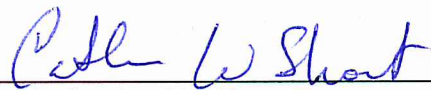
This directive of the DMHC constitutes unlawful discrimination against a health care entity under section 507 of the Consolidated Appropriations Act, Pub L. No 113-76, 128 Stat. 5 (Jan. 17, 2014) (the Hyde-Weldon Conscience Protection Amendment). DMHC is “subject[ing] Complainants’ “health insurance 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 an enormous amount of “funds made available in this Act” in this and recent appropriations. *The need to remedy this discrimination is urgent because it is immediately depriving Complainants of a health plan that omits elective abortions.*

DMHC’s requirement is contrary to California law and prior decisions from DMHC approving the Complainant’s employer’s health plan and other plans excluding coverage for elective abortion. Nothing in California law or constitution requires private health plans to cover abortions.

On August 22, 2014, the undersigned attorney 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.”

Date: September 10, 2014

By: \_\_\_\_\_

  
Catherine W. Short Esq.



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

---

Department of Managed Health Care  
980 9<sup>th</sup> 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 1975<sup>1</sup> (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.<sup>2,3</sup> A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

---

<sup>1</sup> Health & Safety Code § 1340, *et seq.*

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

<sup>3</sup> 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



LIFE: AT THE HEART OF THE LAW

Dana Cody, Esq.  
*Executive Director*  
Catherine W. Short, Esq.  
*Legal Director*  
Mary Riley  
*Administrative Director*  
Allison K. Aranda, Esq.  
*Senior Staff Counsel*

**Board of Directors**

John R. Streett, Esq.  
*Chairman*  
Dana Cody, Esq.  
Joanna Galbraith, Esq.  
Christian Hon  
Royce Hood  
Marcella Tyler Ketelhut  
David Shaneyfelt, Esq.  
Terry L. Thompson, Esq.  
Colette Wilson, Esq.  
Anthony E. Wynne, JD

**Advisory Board**

The Hon. Steve Baldwin  
*San Diego, California*  
Daniel Cathcart, Esq.  
*Los Angeles, California*  
Raymond Dennehy, PhD.  
*San Francisco, California*  
The Rev. Joseph D. Fessio, SJ  
*San Francisco, California*  
Robert P. George  
*Princeton University*  
The Hon. Ray Haynes  
*Riverside, California*  
James Hirsén, Esq.  
*Riverside, California*  
The Hon. Howard Kaloogian  
*Los Angeles, California*  
David Llewellyn, Esq.  
*Sacramento, California*  
Anne J. O'Connor, Esq.  
*New Jersey*  
Charles E. Rice, Esq.  
*South Bend, Indiana*  
Ben Stein, Esq.  
*West Hollywood, California*  
Andrew Zepeda, Esq.  
*Beverly Hills, California*

Northern California  
(Administration)  
P.O. Box 2105  
Napa, California 94558  
(707) 224-6675

Southern California  
P.O. Box 1313  
Ojai, California 93024  
(805) 640-1940

**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.

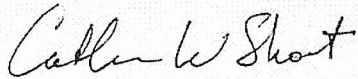
By copy of this letter, we are providing notice to key members of California's congressional delegation and other members of the United States House of Representatives of this violation of the Appropriations Act.

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  
State of California  
Health and Human Services Agency

---

Department of Managed Health Care  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814-2725  
Phone: (916) 324-7155  
Fax: (916) 327-6352

September 8, 2014

**VIA ELECTRONIC MAIL & U.S. MAIL**

Catherine Short  
Legal Director  
Life Legal Defense Foundation  
P.O. Box 1313  
Ojai, CA 93024

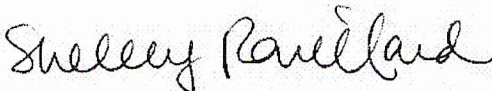
Re: August 22, 2014 Correspondence

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