

RELIGIOUS REFUSALS IN HEALTH CARE: A PRESCRIPTION FOR DISASTER

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This report was authored by:

Movement Advancement Project

The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight, and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen efforts for maximum impact. MAP's policy research informs the public and policymakers about the legal and policy needs of LGBT people and their families.

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TABLE OF CONTENTS

INTRODUCTION 1

HOW A GROWING SET OF HEALTH CARE REFUSALS IS UNDERMINING PATIENT CARE 1

HOW RELIGIOUS REFUSALS IMPACT AND THREATEN HEALTH & WELLBEING 6

CONCLUSION 9

ENDNOTES 10



INTRODUCTION

In many medical schools, people wishing to become doctors are asked to take the Hippocratic Oath, which, in essence, asks doctors to commit to putting their patients' health and wellbeing first, and to do no harm.¹ Now, a series of laws, rules and regulations are undermining that foundation of our medical system.

Across the country, there is a growing effort to create religious exemptions in many areas of life. Religious exemptions are carve outs to existing laws and policies that aim to allow people, organizations, or businesses to be exempt from a law if they claim that the law violates their religious or moral beliefs. Religious exemptions have many forms but often allow individuals, companies, and even government employees, grantees, and contractors to deny services, medical care, and much more. Because these exemptions in healthcare settings result in a refusal to provide care, this report uses the term "religious refusals" for the remainder of this report. Religious refusals can even allow hospital administrators to keep a doctor from providing the best care to their patients because the hospital objects to providing that care. For example, some exemptions mean women could be denied birth control or other health care coverage because of their employer's religious beliefs, or that LGBT people can be denied basic services because of a government contractor's disapproval of who they are. In short, religious exemptions allow people and businesses to put their personal religious beliefs before the beliefs of their employees or patients and are out of step with what's best for the health and wellbeing of children, women, families, and society as a whole.

Efforts to create religious exemptions are focusing on healthcare providers, allowing them to choose what patients they will care for and what treatment they will and won't offer, not based on medical standards or patient needs, but rather based on their own personal approval or disapproval of the patient or the care they require. When healthcare service providers, hospital administrators, or healthcare institutions can refuse to care for certain patients or refuse to perform certain types of procedures, this harms the health and wellbeing of all people, though it often particularly harms women, LGBT people, their families, and others who already face barriers to health care. Patients' health should always come first, and no one should be denied health care because of the personal beliefs of a doctor, hospital, or pharmacy.

This report examines the impact of religious refusals specifically on the health and wellbeing of people in the United States. First, it explores the mechanisms by which laws and policies are permitting medical providers to discriminate—from recent announcements by the U.S. Department of Health and Human Services to state laws permitting discrimination in the provision of services. Second, this report examines some key types of health care, vital to millions of people, that are most often at risk when healthcare providers or institutions are allowed to make decisions about what treatment they provide and which patients to serve based on their personal beliefs rather than medical needs or standards.

HOW A GROWING SET OF HEALTH CARE REFUSALS IS UNDERMINING PATIENT CARE

In 1973, the U.S. Supreme Court's decision in *Roe v. Wade* legalized access to abortion care nationwide. Nearly immediately after this decision, federal and state lawmakers who disagreed with this outcome began pushing new laws to allow medical providers to put their own beliefs before patients' needs and wellbeing. These new laws allowed medical professionals to refuse to provide certain types of procedures, particularly abortion and any procedure resulting in "sterilization," including medically-necessary hysterectomies.² Over the past decade there has been a dedicated and growing effort to expand these rights of refusal even further, putting patients' health at even greater risk.

There are several key ways in which exemptions have expanded healthcare and patient refusals:

- **Federal law permits some individuals and healthcare institutions to refuse to perform abortions and sterilization procedures in certain circumstances.** A number of existing federal religious refusal laws, such as the so-called Weldon Amendment, Church Amendments, and Coats Amendment, have been used to discriminate and impede access to critical health care services including birth control, sterilization, certain infertility treatments, abortion, and transition related medical care. Religious refusals have allowed individuals and entities to deny not just health care but also information about necessary health care such as abortion and sterilization, and in some circumstances to turn away those seeking these reproductive health care services. Religious refusals have also permitted some entities to

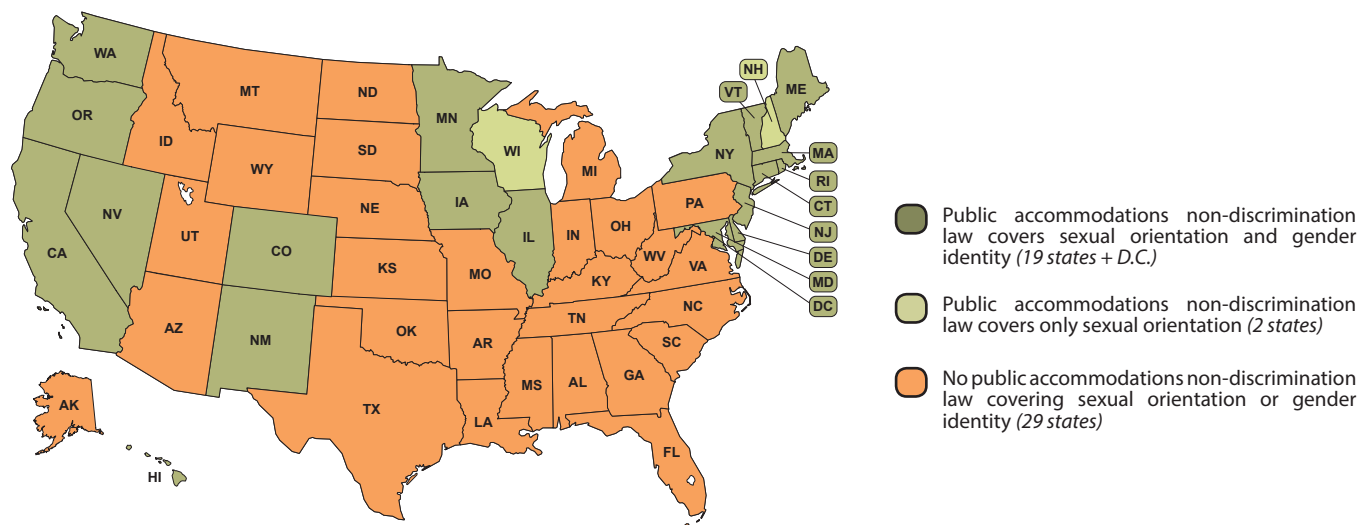
implement policies preventing their employees from treating patients seeking abortion or sterilization. Additionally, under religious refusals such as the Coats Amendment, federal, state, and local governments receiving federal financial assistance cannot require abortion training as a condition of physician licensing or as a condition of a state accreditation of a medical training program, which harms those patients who make seek abortion or miscarriage management from a provider untrained in the provision of this necessary, pregnancy-related care.

- **In 2017, new regulations made it much easier for employers and universities to opt out of requirements that they cover contraception and other reproductive health needs.** In May 2017, a presidential executive order encouraged federal agencies to create new religious and moral exemptions to the Affordable Care Act, specifically to its requirement that health insurance plans must cover birth control and other contraceptive care.³ In October 2017, the Trump Administration released two new rules allowing any employer or university with a sincerely held religious belief or moral objection to refuse to comply with the Affordable Care Act requirement of providing insurance coverage of birth control, without additional cost.⁴ These rules jeopardize contraceptive coverage and financial stability for the more than 62.4 million women in the United States who became eligible for coverage through the Affordable Care Act.⁵ It also may mean that more corporations will take advantage of the exemption. A 2017 analysis by the Center for American Progress found that between January 2014 and March 2016, the majority of requests for a religious accommodation to providing contraceptive coverage under the Affordable Care Act were from for-profit corporations.⁶
- **In 2018, the U.S. Department of Health and Human Services issued a proposed regulation that seeks to radically expand refusals.** This proposed regulation reinterprets federal laws and dangerously expands the ability of health care providers and institutions to deny patients care based on religious or moral beliefs.⁷ For example, the proposed rule provides a broad definition of what it means to “assist in the performance” of an activity to include healthcare workers far beyond physicians. This broad definition allows anyone from a receptionist or scheduler to assert a new right to refuse to do their jobs.

If this regulation is adopted, it would make it much easier for many providers to turn patients away because of personal disapproval of who they are or the treatments they require, and exacerbate the barriers to care that women, LGBT people, and many others already face.

- **The Department of Health and Human Services also created a new division dedicated to promoting healthcare discrimination based on religious or moral beliefs.** The new division at the Office for Civil Rights, called the “Conscience and Religious Freedom Division,” is tasked with encouraging healthcare providers and institutions to discriminate against women, LGBT people, and anyone else based on moral or religious beliefs, opening the door to widespread discrimination in health care and undermining the Office for Civil Rights’ important responsibility to enforce nondiscrimination laws.⁸
- **Virtually every state has healthcare-specific religious refusal laws that allow medical providers to refuse to perform certain procedures or to prescribe or dispense medications, as shown in Figure 1 on the next page.**
 - **Abortion care and sterilization procedures.** Virtually all states (45) allow healthcare providers to refuse to perform abortion services, and 43 states permit healthcare institutions to refuse to treat a woman seeking an abortion.⁹ Some states also provide exemptions to healthcare providers and/or healthcare institutions that do not want to provide medically necessary procedures that may result in sterilization.¹⁰
 - **Vaccinations.** Forty-seven states and D.C. permit parents to opt out of vaccinating their children before attending school,¹¹ leaving those children who have compromised immune systems vulnerable to many deadly preventable diseases.¹² Eighteen states also allow “philosophical” exemptions for those who object to immunizations because of personal, moral, or other beliefs that aren’t necessarily part of a specific faith tradition.¹³
 - **Prescriptions.** Six states permit pharmacists to deny medically-necessary prescriptions for contraceptives and still retain their license¹⁴ while other states give pharmacists broader exemptions beyond contraception. In Georgia,

Figure 2: Most States Lack Nondiscrimination Laws Protecting LGBT People From Discrimination In Public Businesses, Including Healthcare Providers



Source: Movement Advancement Project. "Non-Discrimination Laws." March 16, 2018. http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

case currently before the U.S. Supreme Court, a Colorado bakery is arguing that it should be allowed to refuse service to same-sex couples. The case has far reaching implications: should the Supreme Court rule in favor of the baker, it would open the door for businesses and other places of public accommodation large and small, including healthcare providers across the country, to refuse service to customers based on religious or moral beliefs *even if state law prohibits such discrimination*.

As outlined above, healthcare religious refusal laws are already widespread in the United States, making recent efforts to create new exemptions even more dangerous and a real threat. These broad religious refusals—and the recent attempts to reinterpret them or make them even broader—puts many groups of people (especially women and LGBT people) at particular risk of discrimination, and it further threatens the health and wellbeing of people in the United States.

RELIGIOUS REFUSALS IN HEALTH CARE: A PRESCRIPTION FOR DISASTER



REFUSING TO PROVIDE NEEDED TREATMENT JEOPARDIZES
THE HEALTH AND WELLBEING OF MILLIONS OF PEOPLE



ALLOWING DOCTORS TO PUT THEIR PERSONAL BELIEFS BEFORE PATIENT HEALTH CREATES A SLIPPERY SLOPE



Refusing to prescribe birth control or provide reproductive health care. In 12 states, providers can refuse to provide *any* kind of contraception or related care. In six states, pharmacists can refuse to fill birth control prescriptions.



Refusing to care for sexual health, including HIV treatment or testing. Providers can refuse to test for or treat STIs or prescribe medications like the HIV-prevention drug PrEP, if doing so violates their religious beliefs about, for example, unmarried or LGBT people's sexual health.



Refusing to care for children of LGBT parents. In Michigan, a pediatrician was able to legally turn away an infant for a newborn checkup because the baby had two mothers.



Refusing to care for women or LGBT people. Providers can refuse to treat women if the treatment, such as medically-necessary hysterectomies, violates their religious beliefs. In many states, providers can turn away LGBT people if treatment violates their beliefs. Mississippi allows providers to refuse any kind of care to transgender people, whether or not that medical care is transition-related.



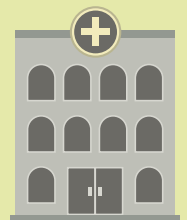
Refusing to give emergency care. In Michigan, a hospital refused to treat a pregnant woman who was miscarrying and needed emergency care. She was turned away three times without care, endangering her life.



Refusing to treat drug addiction if providers think drug use is a moral failing. Religious refusal laws allow healthcare providers to deny care based on the personal objections of staff.



HEALTH CARE SHOULD BE BASED ON MEDICAL BEST PRACTICES AND
THE HEALTH NEEDS OF THE PATIENT—NOT THE PERSONAL, MORAL OR
RELIGIOUS BELIEFS OF THE HEALTHCARE PROVIDER.



HOW RELIGIOUS REFUSALS IMPACT AND THREATEN HEALTH & WELLBEING

The growing number of religious refusals in federal law, court cases, agency guidance, and state laws threatens everyone's health and wellbeing. Allowing healthcare providers to decide which procedures to perform and which patients to serve based on personal beliefs rather than medical standards can make it much harder for people to get medically necessary care. It also leaves patients in a terrible position of having to spend their energy on finding a doctor who will treat them, rather than spending their energy on getting better. For communities such as LGBT people, people of color, low-income people, or individuals with disabilities, finding competent and qualified healthcare providers is already difficult, and this added burden could result in them not receiving care at all, or avoiding treatment for fear of discrimination. This is especially true in low-income or rural areas, where many fewer healthcare providers exist in the first place: if one doctor refuses treatment, there may be no alternative source of care available. These religious refusals therefore pose significant threats to health.

In a growing number of areas across the United States, religiously affiliated hospitals are the primary healthcare provider. An estimated one in six hospital beds in the United States is in a Catholic hospital (the religious denomination operating more clinics and hospitals than any other religious denomination) and in ten states at least one in three hospital beds is in a Catholic hospital.¹⁸ Research also finds that women of color are more likely to give birth at a Catholic or a Catholic-affiliated hospital.¹⁹ In these healthcare facilities, healthcare providers' ability to provide medically necessary care, even when a patient's life is in danger, can be restricted, severely limiting access to health care for millions of people. There have been documented instances of this exemption being used to withhold life-saving care, including emergency care in the midst of a miscarriage or refusing to provide medically-necessary hysterectomies.²⁰

Additionally, healthcare providers have been fired for providing medical care that is best for their patients but contradicts the religious edicts of a hospital.²¹

The key risks to people's health and health care from religious refusals include:

- **Creating a health care system where patients' health comes second to health care providers' personal beliefs.** With the expansion of religious refusals available to healthcare providers, patients may find that many healthcare procedures may be denied not based on medically accepted standards but because a health care provider, administrative staff, or a health care entity has personal objections to that treatment. The implications of this are far-reaching. For example, what happens if a doctor believes drug use is morally wrong and does not want to treat a patient with an addiction? Should a pediatrician be able to refuse to make parents aware of certain vaccinations? What about a doctor who has moral objections to blood transfusions?
- **Allowing hospital administrators, insurers, and other non-medical professionals to interfere with a doctor's ability to treat a patient based on their medical judgment and expertise.** For example, some hospitals have refused not only to provide reproductive or transition-related care themselves, but also to prohibit doctors who have admitting privileges at the hospital to provide that care—often overriding a doctor's determination that a treatment is medically necessary. The rule proposed by the Department of Health and Human Services makes it even more likely that non-doctors can interfere with a doctor's ability to provide treatments they deem to be medically necessary. Until now, laws like the Church Amendments typically allowed someone to refuse to perform certain duties if those duties had some reasonable connection to a treatment they object to, but the proposed rule would eliminate the requirement that the connection be a reasonable one. This means that staff whose duties are very remotely connected to a procedure they object to—like bringing food to a patient, scheduling a follow-up, preparing a patient's room, or transporting them from one room to another—may be able to refuse to do their job, interfering with or even preventing the patients' treatment.
- **Restricting access to a wide range of reproductive health care, including emergency care.** Women and LGBT people, in particular, are put at risk when corporations, pharmacists and doctors can use their moral and religious beliefs, rather than medical best practices, to decide what reproductive-related services and medications to provide. These broadening religious refusals mean that physicians, pharmacists, and other healthcare providers could

refuse to provide contraceptive care to women, assisted reproductive care to same-sex couples or transgender parents, or any transition-related or gender-affirming care to transgender people.

A 2016 report from the ACLU documented many instances of people being denied emergency health care at Catholic hospitals, including care in the midst of a miscarriage or for those experiencing other pregnancy complications (see Tamesha's story in the sidebar on the right).²²

- **Permitting refusals of care for sexual health, including sexually transmitted infection and HIV-related health care.** When healthcare providers can make decisions about what care to provide or what prescriptions to issue based on religious beliefs, sexual health care is at risk. General healthcare providers could refuse to treat a sexually transmitted infection, or could refuse to provide HIV prevention care like PrEP. They could also refuse to provide any sexual health care, such as access to medications like Viagra, either at all or to specific populations like unmarried people.
- **Allowing healthcare providers to limit information shared with patients.** Expanded religious refusals can allow providers not only to refuse to provide care, but also to refuse to tell a patient about their diagnosis or their treatment options, or to give them misleading information—preventing patients from making an informed decision about their care, and in some cases interfering with their ability to get life-saving and urgent care.
- **Refusing healthcare has disproportionate impact on some patients.** Religious refusals in health care pose the risk for permitting healthcare providers to refuse care that impacts some people more than others. This could potentially put people of minority faiths, unmarried people, single parents, and others at risk, including:
 - **Women.** Healthcare refusal laws allow virtually any healthcare provider to refuse to provide or participate in many kinds of health care for women, regardless of how tenuous a connection to reproductive health care. These laws allow healthcare providers to shame women for their personal health decisions. Women should be able to access the health care they need without risk of judgment, discrimination, or refusal.

Refused Medical Care Three Times: Tamesha Means

Tamesha Means was 18 weeks pregnant with her third child when her water broke. She rushed to the nearest hospital, which is operated by Mercy Health Partners in Muskegon, Michigan. Because she was only 18 weeks along, the pregnancy was not viable. Ending the pregnancy would have been the safest course of action, but the hospital's religious policies forbade it—so they gave Tamesha two Tylenol and sent her home without telling her that there was virtually no way she could give birth to a healthy baby. When Tamesha returned the next morning, she was bleeding, in severe pain, and showing signs of an infection; again, she was turned away. Even after she returned a third time, in excruciating pain, the hospital staff began filling out the discharge paperwork. It was only when Tamesha began to deliver that the hospital provided care. The baby died within hours.

Excerpted from "Health Care Denied: Patients and Physicians Speak Out About Catholic Hospitals and the Threat to Women's Health and Lives," ACLU, 2016, https://www.aclu.org/sites/default/files/field_document/healthcaredenied.pdf#page=9.

In Mississippi, more than half of the children are born to unmarried parents,²³ and the law passed in 2016 means that these these parents, particularly mothers, are at increased risk for discrimination.

- **Transgender people.** Transgender people are already experiencing significant levels of healthcare discrimination: a recent Center for American Progress survey found that, in 2016, 29% of transgender people said a doctor or health care provider refused to see them because of their gender identity, and a further 12% said they saw a doctor but that doctor refused to give them needed health care related to their gender transition.²⁴

The Department of Health and Human Services' proposed regulation would make this sort of discrimination even more common. For example, the regulation suggests—without a legal basis—that laws creating exemptions related to sterilization can be applied to care for gender dysphoria—even though this care has a merely incidental impact on fertility and

is primarily performed to treat an unrelated medical condition, just like certain cancer treatments and many medications. On top of that, the proposed regulation's sweeping language can encourage providers to refuse to provide not only treatments for gender dysphoria, but treatments for any condition for a transgender patient, based on their objection to simply asking a transgender person about the transition-related treatments they've received or their unsubstantiated belief that the condition might have some remote connection to the patient's transgender status.

Several religiously-affiliated hospitals have already relied on sterilization-related exemptions to refuse care to transgender patients, including sex reassignment surgeries and various hormone treatments.²⁵ Primary care providers have turned transgender people away because they refuse to have to discuss their patients' ongoing hormone therapy—a problem that the proposed regulation would make far worse.

On the state level, the law recently passed in Mississippi (described on page 3) grants an exemption to *any* form of care for transgender people, not only care that can be categorized under sterilization. This includes even basic care such as routine check-ups, all simply because the patient is transgender. As of this report's publication, similar legislation is under consideration in Kentucky, Colorado, and Oklahoma.²⁶

- **Refusing care for LGB people.** Regardless of why they are seeking health care, LGBT people, in particular, may be refused service by healthcare providers who could claim a religious objection. Same-sex couples, for example, who want to become parents could be refused service at reproductive clinics. Anyone could be denied prescriptions for HIV treatment or prevention. And this discrimination isn't hypothetical. According to a survey conducted by the Center for American Progress, nearly one in ten LGB people said they were refused service by a doctor or other healthcare provider in the last year prior to the survey because of their sexual orientation.

Refused Surgery Because He's Transgender: Evan Minton

In September 2016, Evan Minton, a transgender man, was scheduled to receive a hysterectomy related to his diagnosis with gender dysphoria. The hospital where the procedure was to be performed was Mercy San Juan Medical Center, a hospital in the Dignity Health chain, which is the fifth largest healthcare system in the United States and operates 29 hospitals in California. Two days prior to the appointment, a nurse called to discuss the surgery and Minton mentioned that he is transgender. The next day, the hospital canceled the procedure over his doctor's objections—even though they allowed his doctor to perform a hysterectomy for a non-transgender patient on the same day that Evan's surgery was supposed to take place. As Evan's doctor explained, "I routinely perform hysterectomies at Mercy San Juan... This is the first time the hospital has prevented me from doing this surgery. It's very clear to me that the surgery was canceled because Evan is transgender."

Adapted from "ACLU Sues Dignity Health for Discrimination Against Transgender Patient," ACLU, April 19, 2017. <https://www.aclunc.org/news/aclu-sues-dignity-health-discrimination-against-transgender-patient>.

- **Refusing care of children of LGBT parents.** Though not necessarily LGBT themselves, there have been instances where physicians have refused to care for children because they have an LGBT parent. In Michigan, which does not prohibit discrimination in places of public accommodation, a pediatrician was able to legally turn away an infant for a newborn checkup because the baby had two mothers.²⁷

Newborn Turned Away by Pediatrician: The Contreras Family

Krista and Jami Contreras, living in Michigan, were eager to bring their 6-day-old daughter, Bay, for her first pediatrician appointment. The doctor that they had carefully chosen knew they were lesbians and after the first prenatal visit, they were under the impression that everything was fine. But the morning they arrived for the appointment after baby Bay's birth, another doctor in the practice greeted them instead.

"The first thing Dr. Karam said was, 'I'll be your doctor, I'll be seeing you today because Dr. Roi decided this morning that she prayed on it and she won't be able to care for Bay,'" Jami explained. "Dr. Karam told us she didn't even come to the office that morning because she didn't want to see us."

"Krista and I are obviously gay," said Jami. "As far as we know, Bay doesn't have a sexual orientation yet so I'm not really sure what that matters... We're not your patient—she's your patient. And the fact is that your job is to keep babies healthy and you can't keep a baby healthy that has gay parents?" Jami added.

Adapted from Abby Phillip, "Pediatrician refuses to treat baby with lesbian parents and there's nothing illegal about it," The Washington Post, February 19, 2015, https://www.washingtonpost.com/news/morning-mix/wp/2015/02/19/pediatrician-refuses-to-treat-baby-with-lesbian-parents-and-theres-nothing-illegal-about-it/?utm_term=.5347ce608c4e.

CONCLUSION

Allowing healthcare providers to ignore standard medical best practices and instead put their personal beliefs before patient health has the potential to gravely harm millions of people and their families' health. These expansions of religious refusals threaten to completely upend the careful balance of religious freedom and other important rights, and instead grant providers a license to put their personal views before the healthcare needs of the patient. Patients' health and wellbeing should always come first.

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