

September 1, 2004

RE: Hyde-Weldon conscience protection provision
of Labor-HHS appropriations bill

Dear Member of Congress:

When the House takes up the Labor-HHS appropriations bill (as yet unnumbered), perhaps next week, there may be an attempt to strike the Hyde-Weldon conscience protection provision (Section 509d). The National Right to Life Committee (NRLC) urges you to support retention of this provision, which was approved by the Appropriations Committee on July 14. The provision would prevent any level of government from discriminating against a health care provider merely because the provider declines to “provide, pay for, provide coverage of, or refer for abortions.”

The Hyde-Weldon provision embodies the same non-discrimination policy as the Abortion Non-Discrimination Act (ANDA), a bill that the House passed on September 25, 2002 (107th Congress) by a vote of 229 to 189 (roll call no. 412). Unfortunately, that bill was not acted on by the Senate.

Current federal law (“Coats-Snowe Amendment,” 42 U.S.C. §238n) protects the conscience rights of health care providers who do not wish to offer or undergo *abortion training*. The Hyde-Weldon provision would provide consistent federal protection from government discrimination for other health care providers such as doctors, hospitals, and insurers who decline to participate in abortions. The text of the committee-approved language appears below.

The Hyde-Weldon provision is an urgently needed response to a national effort on the part of certain groups to employ the coercive powers of state and local government agencies and courts to force health-care providers, including religiously affiliated hospitals, to perform or fund abortions. For example, in Alaska the state supreme court ruled that a community hospital must perform late abortions against the ethical decision of the hospital’s board of directors. Catholic hospitals and HMOs have been pressured by authorities in New Jersey and New York for refusal to provide abortions or abortion-related services. In Connecticut, a certificate of need was denied to a proposed outpatient surgical center because it declined to perform abortions, after abortion activists intervened in the proceedings. A hospital merger in New Hampshire was undone when pro-abortion activists intervened with the state attorney general. The city council of St. Petersburg, Florida, forced a private hospital to leave a non-profit consortium because the consortium followed a pro-life policy.

The Hyde-Weldon provision:

- **affirms that government entities that receive government funds cannot engage in invidious discrimination.** This is consistent with numerous other federal laws basing

HYDE-WELDON CONSCIENCE PROVISION, PAGE 2

the receipt of funds on the guarantee of civil rights. Such laws do not result in actual defunding of state or local governments; rather, they result in these governments conforming to the federal non-discrimination standard.

- **does not “gag” clinics that receive federal funding under Title X of the Public Health Service Act.** The Hyde-Weldon provision does not prohibit any health care provider from voluntarily offering any abortion-related service; it merely ensures that no government agency will discriminate against providers who decline to offer the specific abortion-related services mentioned in the provision. Under the federal Title X statute, as construed by the Department of Health and Human Services in 2001, Title X clinics are required to provide clients, upon request, with “neutral, factual” *information* about abortion, but they are *not* required to provide direct referrals for abortion, and they *may not* make appointments, arrange transportation, or otherwise facilitate abortions.
- **is fully consistent with the Emergency Medical Treatment and Active Labor Act (42 USC 1395dd),** which requires critical-care facilities to provide stabilizing care to protect “the health of the individual (or, with respect to a pregnant woman, the health of the woman or *her unborn child*).”
- **is consistent with Medicaid case law that require states to co-fund abortions performed on Medicaid-eligible women in the few circumstances for which federal reimbursement is available (currently life of the mother, rape, and incest).** Such abortions can be and are performed by willing abortion providers, without states forcing specific health care providers to provide abortions in violation of their religious beliefs or ethical standards.

If a motion is offered to strike the Hyde-Weldon language, NRLC urges you to oppose that motion. **NRLC will include the roll call on any such motion in our scorecard of key pro-life votes for the 108th Congress.**

Thank you for your consideration of NRLC's position on this important issue

Sincerely,



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HYDE-WELDON CONSCIENCE PROVISION, PAGE 3

Text of the Hyde-Weldon Conscience Protection provision:

At the end of section 509, add the following:

(d) (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.