



LIFE: AT THE HEART OF THE LAW

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August 22, 2014

Shelley Rouillard, Director
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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
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Very truly yours,



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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
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