



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

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Kwame Raoul
Attorney General
Office of the Attorney General
State of Illinois
500 South Second Street
Springfield, IL 62701

RE: OCR Transaction Numbers DO-20-361761 and DO-20-366673

February 17, 2023

Dear Attorney General Raoul:

We are writing to inform you that the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) has completed a review of its investigation into whether Illinois's abortion coverage requirement as established in P.A. 101-13 violates the Weldon Amendment.

The Weldon Amendment provides that:

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.¹

The statute defines "health care entity" to include "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."²

The Department had previously opened an investigation based on two complaints. Complainants in the first complaint were two entities and an individual in their capacities as employers and health plan sponsors: The Thomas More Society, Dr. Richard Mantoan, and Southlands Smiles Dental Professionals. Amanda Adams filed the second complaint on behalf of her foster son James Dunn, and on her own behalf, as a payor of Mr. Dunn's plan. Both complainants object to Illinois's requirement that health insurance plans include abortion coverage. However, OCR explained in its August 2021 Withdrawal of the January 2020 Notice of Violation of the Weldon Amendment against the State of California, discussing its June 2016 letter to Life Legal

¹ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. H, § 507(d), 136 Stat. 4459, 4908 (Dec. 29, 2022) ("Weldon Amendment").

² Weldon Amendment § 507(d)(2).

Foundation,³ that it is insufficient for a purchaser of a health plan to assert a claim of discrimination against a health plan under the Weldon Amendment. The health plan issuer itself must complain of the treatment the plan has received by a funded entity in order for the alleged conduct to constitute a violation of the Weldon Amendment.⁴ This application of the Weldon Amendment is consistent with the application of the Weldon Amendment that OCR announced in 2016.⁵ It is also consistent with the United States District Court for Northern District of California's interpretation of the statute as protecting a limited number of individuals and entities.⁶

To date, OCR has not received any evidence showing that the issuers of the health plans in question believe that Illinois discriminated against those health plans for their failure to provide abortion coverage. Accordingly, we are now closing these matters.

If you have any questions about this letter, please contact Civil Rights Analyst Janet Santos at Janet.Santos@hhs.gov.

OCR is providing a copy of this letter to the Complainants in these matters.

Sincerely,

/s/

Luis Perez
Deputy Director
Office for Civil Rights
U.S. Department of Health and Human Services

³ See August 13, 2021, Notice of Withdrawal of the January 2020 Notice of Violation to the State of California, available at <https://www.hhs.gov/conscience/conscience-protections/ca-letter/index.html> (discussing Letter from Jocelyn Samuels, Director, Office for Civil Rights, to Catherine W. Short, Vice President of Legal Affairs, Life Legal Foundation (and others) (June 21, 2016)).

⁴ See August 13, 2021, Notice of Withdrawal of the January 2020 Notice of Violation to the State of California, available at <https://www.hhs.gov/conscience/conscience-protections/ca-letter/index.html>

⁵ Letter from Jocelyn Samuels, Director, Office for Civil Rights, to Catherine W. Short, Vice President of Legal Affairs, Life Legal Foundation (and others) (June 21, 2016).

⁶ See *City & Cnty. of San Francisco v. Azar*, 411 F. Supp. 3d 100 I, IO17-18 (N.D. Cal. 2019).